

Urban Mass Transportation Act of 1964 and related laws

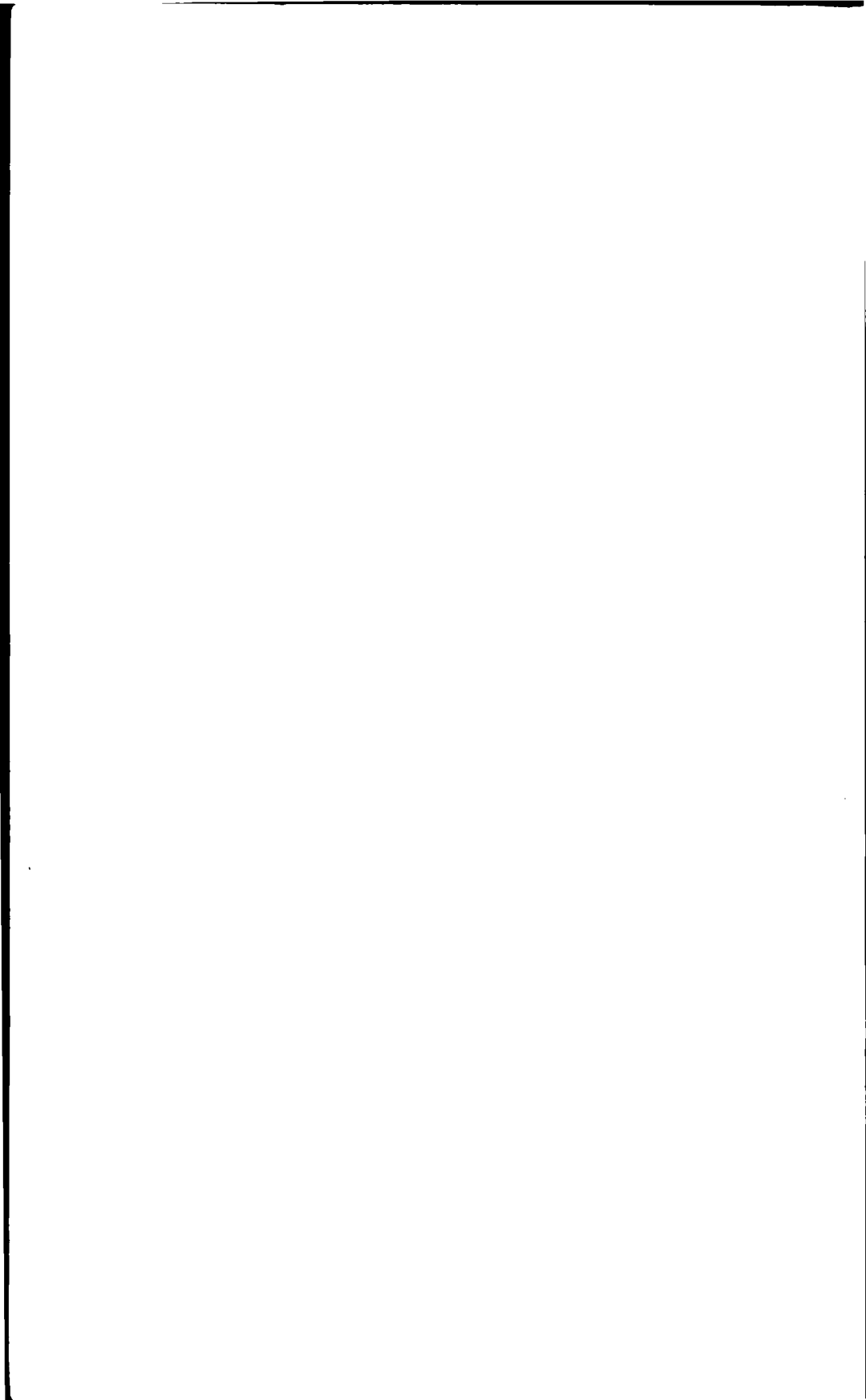
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US. DOT. UMTA.
UMTA ACT OF 1964
& RELATED LAWS,
AMENDED THRU
1976.

as amended through February 5, 1976

U S DEPARTMENT
OF TRANSPORTATION
Urban Mass
Transportation
Administration
Washington, D C. 20590





FOREWORD

This book contains the statutes authorizing and governing the Federal urban mass transportation program and the Urban Mass Transportation Administration (UMTA), as well as other statutory material relevant to mass transportation and government operations generally. It is designed as a guidebook for UMTA staff as well as UMTA grantees and interested members of the general public.

Part I of this volume contains the basic authorizing statute, the Urban Mass Transportation Act of 1964, as amended through February 5, 1976 (the Act). All amendments have been incorporated into the text of the Act. The footnotes offer explanatory material and statutory references, identify related material found in other legislation, and contain provisions of legislation governing the UMTA program that have been amended, superseded, overtaken by events or have expired.

Part I also contains related material from the Urban Mass Transportation Act of 1970 and the National Mass Transportation Assistance Act of 1974.

Part II sets out the Federal-aid highway laws which are relevant to the UMTA program.

Part III contains an extensive selection of statutory materials relevant to both the substantive aspects of UMTA programs and the administrative operations of the agency.

It should be noted that many of the activities and operations of the Urban Mass Transportation Administration are now or soon will be governed by Federal regulatory materials which are not reprinted in this book. Information about UMTA regulations can be obtained through the Office of the Chief Counsel, UMTA, Department of Transportation, Washington, D.C. 20590.

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**PART I—THE FEDERAL URBAN MASS TRANSPORTATION PROGRAM—
BASIC LAW**

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**PART I—THE FEDERAL URBAN MASS
TRANSPORTATION PROGRAM—BASIC LAW
URBAN MASS TRANSPORTATION ACT OF 1964**

Public Law 88-365, 78 Stat. 302, 49 U.S.C. 1601 et seq.

An Act

To authorize the Secretary of Transportation¹ to provide additional assistance for the development of comprehensive and coordinated mass transportation systems, both public and private, in metropolitan and other urban areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Urban Mass Transportation Act of 1964."

Findings and Purposes²

1601 SECTION 2. (a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the welfare and vitality of urban areas, the satisfactory movement of people and goods within such areas, and the effectiveness of housing, urban renewal, highway, and other federally aided programs are being jeopardized by the deterioration or inadequate provision of urban transportation facilities and services, the intensification of traffic congestion, and the lack of coordinated transportation and other development planning on a comprehensive and continuing basis; and

(3) that Federal financial assistance for the development of efficient and coordinated mass transportation systems is essential to the solution of these urban problems.

¹ As originally enacted, the Act vested urban mass transportation functions in the Administrator of the Housing and Home Finance Agency. The Department of Housing and Urban Development Act (Pub. L. 89-174) transferred those functions to the Secretary of Housing and Urban Development. By section 20 of Public Law 90-19, the Act was amended to read "Secretary of Housing and Urban Development." Reorganization Plan No. 2 of 1968 (see Part III, p. 55) transferred most urban mass transportation functions to the Secretary of Transportation. Unless otherwise indicated, all references to the Secretary mean the Secretary of Transportation.

² See also the statement of findings and purposes contained in section 1 of the Urban Mass Transportation Assistance Act of 1970 (p. 29) and section 2 of the National Mass Transportation Assistance Act of 1974 (p. 26).

(b) The purposes of this Act are—

(1) to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private; and

(3) to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.

Federal Financial Assistance ^{3, 4}

§ 1602

SECTION 3.⁵ (a) (1) The Secretary is authorized, in accordance with the provisions of this Act and on such terms and conditions as he may prescribe to make grants or loans (directly, through the purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof in financing (1) the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas and in coordinating such service with highway and other transportation in such areas ⁶, and (2) the establishment and organization of

³ The Federal-aid highway law (see Part II) authorizes the use of certain Federal-aid highway funds to assist in improving urban mass transportation. Section 142 of title 23 authorizes the use of funds for the construction of highway lanes and other facilities specially designed to enhance urban mass transportation by bus. Section 137 authorizes the use of funds for acquisition and construction of fringe parking facilities if adequate public transportation service is made available for persons using such facilities. Under both sections, Federal funds can be used to pay up to 70 percent of the cost of such projects (Section 108 of Public Law 91-605).

In addition, sec. 121 of the Federal-Aid Highway Act of 1973 amended 23 USC 142 to permit construction of exclusive or preferential bus, truck, and emergency vehicle lanes as part of the Interstate System. Such projects are not subject to the four-lane requirement or other Interstate standard requirements contained in 23 USC 109(b). The Federal share payable for projects pursuant to 23 USC 142(b) is 90 percent—the same Federal-State ratio applicable to other projects on the Interstate System.

⁴ Section 301(e) of Public Law 93-87 provides that the "provisions of assistance under the amendments made by this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable."

⁵ Section 2 of Public Law 91-453 changed section 3 by deleting the existing subsections (a) and (b), redesignating subsection (c) as subsection (e), and inserting new subsections (a), (b), (c), and (d). The substance of the changes made in section 3 by Public Law 91-453 is as follows:

(i) eliminate the requirements that:

"Loans under this section shall be subject to the restrictions and limitations set forth in paragraphs (1), (2), and (3) of section 202(b) of the Housing Amendments of 1955. The authority provided in section 203 of such Amendments to obtain funds for loans under clause (2) of section 202(a) of such Amendments shall (except for undischursed loan commitments) hereafter be exercised by the Secretary (without regard to the proviso in section 202(d) of such amendments) solely to obtain funds for loans under this section;"

and replace these requirements with the provisions set forth in the last paragraph of subsection (c); (ii) impose the requirement that State Governors must have an opportunity to comment on certain applications for capital assistance (*but see* footnote 10); and

(iii) establish the new authorities and requirements set forth in subsections (b) and (d).

⁶ In *McDonald v. Stockton Metropolitan Transit District*, 36 Cal. App. 3d 436, 111 Cal. Rptr. 637 (1974), where a transit district had contracted, *inter alia*, to install bus stop shelters as part of a capital grant project, it was held that where the district had refused to install such shelters as part of the completed

public or quasi-public transit corridor development corporations or entities.⁷ Eligible facilities and equipment may include personal property including buses and other rolling stock and real property including land (but not public highways), within the entire zone affected by the construction and operation of transit improvements, including station sites, needed for any efficient and coordinated mass transportation system which is compatible with socially, economically, and environmentally sound patterns of land use.⁸ No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have

(A) the legal, financial, and technical capacity to carry out the proposed project; and

(B) satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and the equipment.

The Secretary may make loans for real property acquisition pursuant to subsection (b) upon a determination, which shall be in lieu of the preceding determination, that the real property is reasonably expected to be required in connection with a mass transportation system and that it will be used for that purpose within a reasonable period. No grant or loan funds shall be used for payment of ordinary governmental or nonproject operating expenses, nor shall any grant or loan funds be used to support procurements utilizing exclusionary or discriminatory specifications.⁹

(2) It is declared to be in the national interest to encourage and promote the development of transportation systems embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on continuing comprehensive transportation planning process carried on in conformance with the objectives of this paragraph.^{10, 11}

project, the Department of Transportation has authority under the Urban Mass Transportation Act of 1964 to either withhold further financial assistance, or to bring suit for damages or for specific performance to enforce the grant contract.

⁷ Clause (2) was added by section 104(a) of Pub. L. 93-503.

⁸ Amended by section 104(b) of Pub. L. 93-503. Prior to the change, the sentence read as follows:

"Eligible facilities and equipment may include land (but not public highways), buses and other rolling stock, and other real and personal property needed for an efficient and coordinated transportation system."

⁹ Added by section 106 of Pub. L. 93-503.

¹⁰ Section 102(3) of Pub. L. 93-503 deleted language which required that an applicant for assistance for a project located wholly or partly in a State in which there is statewide comprehensive transportation planning to furnish a copy of its application to the Governor of each State affected concurrently with submission to the Secretary; and that if within 30 days thereafter, the Governor submitted comments to the Secretary, the Secretary would have been required to consider such comments before taking final

(b) The Secretary is authorized to make loans under this section to States or local public bodies and agencies thereof to finance the acquisition of real property and interests in real property for use as rights-of-way, station sites, and related purposes, on urban mass transportation systems, including the net cost of property management and relocation payments made pursuant to section 7.¹² Each loan agreement under this subsection shall provide for actual construction of urban mass transportation facilities on acquired real property within a period not exceeding ten years following the fiscal year in which the agreement is made. Each agreement shall provide that in the event acquired real property or interests in real property are not to be used for the purposes for which acquired, an appraisal of current value will be made at the time of that determination, which shall not be later than ten years following the fiscal year in which the agreement is made. Two-thirds of the increase in value, if any, over the original cost of the real property shall be paid to the Secretary for credit to miscellaneous receipts of the Treasury. Repayments of amounts loans shall be credited to miscellaneous receipts of the Treasury. A loan made under this subsection shall be repayable within ten years from the date of the loan agreement or on the date a grant agreement for actual construction of facilities on the acquired real property is made, whichever date is earlier. A grant agreement for construction of facilities under this Act may provide for forgiveness of the repayment of the principal and accrued interest on the loan then outstanding in lieu of a cash grant in the amount thus forgiven, which for all purposes shall be considered a part of the grant and of the Federal portion of the cost of the project. An applicant for assistance under this subsection shall furnish a copy of its application to the comprehensive planning agency of the community affected concurrently with submission to the Secretary. If within thirty days thereafter (or, in a case where the comprehensive planning agency of the community (during such thirty-day period) requests more time, within such longer period as the Secretary may determine) the comprehensive planning agency of the community affected submits comments to the Secretary, the Secretary must consider the comments before taking final action on the application.

(c) No loan shall be made under this section for any project for which a grant is made under this section, except—

(1) loans may be made for projects as to which grants are made for relocation payments; and

action on the application. The former requirement, contained in the original Act, has now been superseded by statutory requirements for planning and for Federal, State, and local review and comment applicable to Federally assisted urban mass transportation projects, which requirements are contained in the following laws:

(1) Sections 3 (a) and (d), 4(a), 5, and 14(a) of the Urban Mass Transportation Act of 1964;

(2) Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (see part III, p. 114);

(3) Section 401 of the Intergovernmental Cooperation Act of 1968; and

(4) Section 4332(2)(c) of the National Environmental Policy Act of 1969 (see Part III, p. 82); Office of Management and Budget Circular A-95, (see Part III, p. 80), establishes procedures which implement the requirements for project notification and review of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and section 401 of the Intergovernmental Cooperation Act of 1968. Office of Management and Budget Circular A-85, establishes procedures to implement the requirement of the Intergovernmental Cooperation Act of 1968 for consultation with State and local governments on major actions affecting program operation or organization.

¹¹ Added by section 102(4) of Pub. L. 93-503.

¹² See footnote 34.

(2) project grants may be made even though the real property involved in the project has been or will be acquired as a result of a loan under subsection (b).

Interest on loans made under this section shall be at a rate not less than (i) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs and probable losses under the program. No loans shall be made, including renewals or extensions thereof, and no securities or obligations shall be purchased which have maturity dates in excess of forty years.

(d) Any application for a grant or loan under this Act to finance the acquisition, construction, reconstruction, or improvement of facilities or equipment which will substantially affect a community or its mass transportation service shall include a certification that the applicant—

(1) has afforded an adequate opportunity for public hearings pursuant to adequate prior notice, and has held such hearings unless no one with a significant economic, social, or environmental interest in the matter requests a hearing;

(2) has considered the economic and social effects of the project and its impact on the environment; and

(3) has found that the project is consistent with official plans for the comprehensive development of the urban areas.¹³

Notice of any hearings under this subsection shall include a concise statement of the proposed project, and shall be published in a newspaper of general circulation in the geographic area to be served. If hearings have been held, a copy of the transcript of the hearings shall be submitted with the application.¹⁴

(e) ¹⁵ No financial assistance shall be provided under this Act to any State or local public body or agency thereof for the purpose, directly or indirectly, of acquiring any interest in, or purchasing any facilities or other property of a private mass transportation company, or for the purpose of constructing, improving, or reconstructing any facilities or other property acquired (after the date of the enactment of this Act) from any such company, or for the purpose of providing by contract or otherwise for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing mass transportation company, unless (1) the Secretary finds ¹⁶ that such assistance is essential to a program, proposed or under active preparation, for a unified or officially

¹³ See footnote 10.

¹⁴ The public hearing requirements of section 3(d) and the environmental protective requirements of section 14, which were added by sections 2 and 6 respectively of Public Law 91-453, have been held not to apply to projects for which grants or loans were approved prior to October 15, 1970. *Newman v. Department of Transportation et al.*, 2 E.R.C. 1617 (U.S.D.C., E.D.N.Y., 1971).

¹⁵ Subsection 3(e) was formerly subsection (c), but was redesignated by section 2(1) of Public Law 91-453.

¹⁶ The Secretary of Housing and Urban Development is authorized to advise and assist the Secretary in making determinations under sections 3(e)(1), 4(a), and 5 and to act jointly with the Secretary in establishing the criteria referred to in section 4(a). See section 1(a)(1) of Reorganization Plan No. 2 of 1968 (Part III, p. 55).

coordinated urban transportation system as part of the comprehensively planned development of the urban area, (2) the Secretary finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies,¹⁷ (3) just and adequate compensation will be paid to such companies for acquisition of their franchises or property to the extent required by applicable State or local laws,¹⁸ and (4) the Secretary of Labor certifies that such assistance complies with the requirements of section 13(c) of this Act.

(f) ¹⁹ No Federal financial assistance under this Act may be provided for the purchase or operation of buses ²⁰ unless the applicant or any public body receiving such assistance for the purchase or operation of buses, or any publicly owned operator receiving such assistance, shall as a condition of such assistance enter into an agreement with the Secretary that such public body, or any operator of mass transportation for such public body, will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in the agreement authorized by this subsection. Such agreement shall provide for fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under this Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. In addition to any other remedies specified in the agreement, the Secretary shall have the authority to bar a grantee or operator from the receipt of further financial assistance for mass transportation facilities and equipment where he determines that there has been a continuing pattern of violations of the terms of agreement. Upon receiving a complaint regarding an alleged violation, the Secretary shall investigate and shall determine whether a violation has occurred. Upon determination that a violation has occurred, he shall take appropriate action to correct the violation under the terms and conditions of the agreement.

(g) No Federal financial assistance shall be provided under this Act for the construction or operation of facilities and equipment for use in providing

¹⁷ In the case of *South Suburban Safeway Lines, Inc. v. City of Chicago et al.*, 285 F. Supp. 676 (U.S. D.C., N.D., Ill., 1968), *aff'd* 416 F. 2d 535 (C.A. 7, 1968), the court held that a private mass transportation company allegedly damaged by lawful competition from a publicly-owned system receiving assistance under this Act has no standing under subsection 3(e)(2) (formerly subsection 3(c)(2)) to sue to enjoin the expenditure of grant funds to such a public system. In *Hudson Transit Lines, Inc. v. Brinegar*, (memorandum decision, July 25, 1974, U.S.D.C., D.N.J., *appeal dismissed*) it was held that the mere consideration of an application for a capital grant without final action by the Secretary of Transportation is not subject to judicial review under the provisions of the Administrative Procedure Act (5 U.S.C. 701-706).

¹⁸ In the case of *Rose City Transit Co. v. City of Portland, Or. App.*, 525 P2d 1325 (1974) a proceeding involving the acquisition by the city of the assets of a private transit operator using Federal funds to pay two-thirds of the acquisition cost, it was held that the provisions of section 3(e) requiring just and adequate compensation to be paid to the extent required by applicable State or local laws had no application with respect to the issue of whether or not the plaintiffs were entitled to the going concern value of their franchise to operate a transit business within the boundaries of defendant city. The court also held that the provisions of section 13(c) were intended to protect the interests of affected transit employees only, and were inapplicable to the issue of the plaintiffs' liability for meeting pension claims of former employees Appeal to Oregon Supreme Court pending.

¹⁹ Added by section 813(a) of Pub. L. 93-383. See also section 164(a) of the Federal-Aid Highway Act of 1973 (Part II, p. 51).

²⁰ Amended to include operation of buses by section 109(b) of Pub. L. 93-503.

public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in schoolbus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators. The subsection shall not apply to an applicant with respect to operation of a schoolbus program if the applicant operates a school system in the area to be served and operates a separate and exclusive schoolbus program for this school system. This subsection shall not apply unless private schoolbus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) was so engaged in schoolbus operations any time during the twelve-month period immediately prior to the date of the enactment of this subsection. A violation of an agreement under this subsection shall bar such applicant from receiving any other Federal financial assistance under this Act.²¹

(h) Notwithstanding any other provision of this Act, or of any contract or agreement entered into this Act, up to one-half of any financial assistance provided under this Act (other than under section 5) to any State or local public body or agency thereof for the fiscal year 1975 or any subsequent fiscal year may, at the option of such State or local body or agency, be used exclusively for the payment of operating expenses (incurred in connection with the provision of mass transportation service in an urban area or areas) to improve or to continue such service, if the Secretary finds (in any case where the financial assistance to be so used was originally provided for another project) that effective arrangements have been made to substitute and, by the end of the fiscal year following the fiscal year for which such sums are used, make available (for such other project) an equal amount of State or local funds (in addition to any State or local funds otherwise required by this Act to be contributed toward the cost of such project). Any amounts used for the payment of operating expenses pursuant to this subsection shall be subject to such terms and conditions (including the requirement for local matching contributions), required for the payment of operating expenses under other provisions of this Act, as the Secretary may deem necessary and appropriate.²²

Long-Range Program

§ 1603 SECTION 4. (a) No²³ Federal financial assistance shall be provided pursuant to subsection (a) of section 3 unless the Secretary determines²⁴ that the facilities and equipment for which the assistance is sought are needed for carrying out a program, meeting criteria established by him,

²¹ Added by section 109(a) of Pub. L. 93-503.

²² Added by section 110 of Pub. L. 93-503.

²³ Reference to section 5 as it read prior to the enactment of Pub. L. 93-503 was deleted by section 103(b) of that act.

²⁴ See footnote 16.

for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and are necessary for the sound, economic, and desirable development of such area.²⁵ Such program shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban area, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area. The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 3 cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost." The Federal grant for any such project to be assisted under section 3 shall be in an amount equal to 80 per centum of the net project cost.²⁶ The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds. Such remainder may be provided in whole or in part from other than public sources, and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant.²⁷

(b) To finance grants under this Act there is hereby authorized to be appropriated at any time after its enactment not to exceed \$75,000,000 for fiscal year 1965; \$150,000,000 for fiscal year 1966; \$150,000,000 for each of the fiscal years 1967, 1968, and 1969; \$190,000,000 for fiscal year 1970;

²⁵ See footnote 13.

²⁶ Section 301(a) of the Federal-Aid Highway Act of 1973 (Public Law 93-87) raised the Federal grant limitations from a discretionary two-thirds of the net project cost to a mandatory 80 percent; however, the effect of that amendment is limited by the language of section 301(b) which provides that the amendment "... shall apply only with respect to projects which were not subject to administrative reservation on or before July 1, 1973."

²⁷ In lieu of the last three sentences of section 4(a) and section 5 prior to its amendment by Pub. L. 93-503, these sections of the Act originally read as follows:

"The remainder of the net project cost shall be provided in cash, from sources other than Federal funds, and no refund or reduction of that portion so provided shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant."

Section 704 of Public Law 90-448 substituted the following three sentences for the original sentence:

"The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds. Not more than 50 per centum of such remainder may be provided from other than public sources, and any public or private transit system funds shall be provided solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, except that in cases of demonstrated fiscal inability of an applicant actively engaged in preparing and effectuating a program for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, such remainder may be provided from other than public sources. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant."

Sections 3(a)(2) and 4(b) of Public Law 91-453 amended these sections to read in their current form. The effect of this change was to delete the requirement (contained in the next to last sentence above) that at least 50 percent of the local share of project cost must come from public sources unless the applicant public body demonstrated its fiscal inability to provide such funds.

and \$300,000,000 for fiscal year 1971.²⁸ Any amount so appropriated shall remain available until expended; and any amount authorized but not appropriated for any fiscal year may be appropriated for any succeeding fiscal year. The Secretary is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes,²⁹ as amended, to make advance or progress payments on account of any grant or contract³⁰ made pursuant to this Act.

(c) To finance grants and loans under sections 3, 7(b),³¹ and 9 of this Act, the Secretary is authorized to incur obligations on behalf of the United States in the form of grant agreements or otherwise in amounts aggregating not to exceed \$10,925,000,000,³² less amounts appropriated pursuant to section 12(d) of this Act and the amount appropriated to the Urban Mass Transportation Fund by Public Law 91-168.³³ This amount (which shall be in addition to any amounts available to finance such activities under subsection (b) of this section) shall become available for obligation upon the effective date of this subsection and shall remain available until obligated.³⁴ There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed \$80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of \$310,000,000 prior to July 1, 1972, not to exceed an aggregate of \$710,000,000 prior to July 1, 1973, not to exceed an aggregate of \$1,260,000,000 prior to July 1, 1974, not to exceed an aggregate of \$1,860,000,000 prior to July 1, 1975, and not to exceed an aggregate of \$6,100,000,000,³⁵ thereafter. The total amounts ap-

²⁸ Section 1(a) of Public Law 89-562 added authorizations of \$150,000,000 for each of fiscal years 1968 and 1969. Section 701 of Public Law 90-448 added the authorization of \$190,000,000 for fiscal year 1970. Section 306(a) of Public Law 91-152 added the authorization of \$300,000,000 for fiscal year 1971. The following appropriations for urban mass transportation grants have been made pursuant to section 4(b):

- a) \$60,000,000 for fiscal year 1965 by Public Law 88-635;
- b) \$130,000,000 for each of fiscal years 1966 and 1967 by Public Law 89-128;
- c) \$55,000,000 for fiscal year 1968 by Public Law 89-555;
- d) \$70,000,000 for fiscal year 1968 by Public Law 89-697;
- e) \$175,000,000 for fiscal year 1969 by Public Law 90-121;
- f) \$175,000,000 for fiscal year 1970 by Public Law 90-464; and
- g) \$214,000,000 for fiscal year 1971 by Public Law 91-168;

²⁹ Section 3648 of the Revised Statutes (60 Stat. 809, 31 U.S.C. 529) contains a general prohibition against the making of advance payments.

³⁰ The words "or contract" were inserted in section 4(b) by section 13(a) of Public Law 91-453.

³¹ See footnote 34.

³² Section 101(a) of Pub. L. 93-503 substituted \$10,925,000,000 for \$6,100,000,000, which amount was substituted for \$3,100,000,000 by section 301(c) of Pub. L. 93-87.

³³ Public Law 91-168 appropriated \$214 million to the Urban Mass Transportation Fund. This amount was made available pursuant to the authorization contained in subsection 4(b) and, pursuant to the savings provision contained in the parenthetical clause in the second sentence of subsection 4(c), remained available for obligation. The net effect of Pub. L. 91-453 was to make available for obligation \$2.886 billion of new funds. Thus a total of \$3.1 billion, plus additional amounts made available by appropriation acts prior to enactment of Public Law 91-168, were authorized to be obligated under the Act in fiscal year 1971 upon enactment of Public Law 91-453, subject to certain restrictions contained in other laws (see footnote 16).

³⁴ The Urban Mass Transportation Assistance Act of 1970 (Pub. L. 91-453) added section 4(c) which modified the financial structure of the program by authorizing obligations in advance of appropriations (contract authority) for sections 3 and 9 of the Act. Funds made available for obligation pursuant to section 4(c) may not be obligated until they have been apportioned by the Director of the Office of Management and Budget pursuant to 31 U.S.C. 665 (see Part III p. 112). In addition, Congress exercised its authority to limit the level at which the program may be conducted within the authorized ceiling in Public Law 91-294 (as amended by Public Laws 91-370, 91-454, 91-645, and 92-7) and in Public Law 92-74, by providing that none of the funds made available in these respective appropriation acts could be used for administrative expenses in connection with commitments for grants in excess of \$600,000,000 and \$900,000,000 for fiscal years 1971 and 1972 respectively. For subsequent fiscal years, these ceilings have been as follows: 1973, \$1,000,000,000 (Pub. L. 92-398), 1974, \$985,550,000 (Pub. L. 93-98); and 1975, \$1,445,250,000 (Pub. L. 93-391).

³⁵ See footnote 32.

appropriated under this subsection and section 12(d) of this Act shall not exceed the limitations in the foregoing schedule.³⁶ Sums so appropriated shall remain available until expended.³⁷ Of the total amount available to finance activities under this Act (other than under section 5) on and after the date of the enactment of the National Mass Transportation Assistance Act of 1974, not to exceed \$500,000,000 shall be available exclusively for assistance in areas other than urbanized areas (as defined in section 5(a)(3)).³⁸

(d) The Secretary shall report annually to the Congress, with respect to outstanding grants or other contractual agreements executed pursuant to subsection (c) of this section.³⁹

Urban Mass Transit Program ⁴⁰

§ 1604

SECTION 5. (a) As used in this section—

(1) the term 'construction' means the supervising, inspecting, actual building, and all expenses incidental to the acquisition, construction, or reconstruction of facilities and equipment for use in mass transportation, including designing, engineering, locating, surveying, mapping, acquisition of rights-of-way, relocation assistance, and acquisition and replacement of housing sites;

(2) the term 'Governor' means the Governor, or his designate, of any one of the fifty States or of Puerto Rico, and the Mayor of the District of Columbia; and

(3) the term 'urbanized area' means an area so designated by the Bureau of the Census, within boundaries which shall be fixed by respon-

³⁶ The following appropriations have been made to the Urban Mass Transportation Fund pursuant to the authority contained in subsections 4(c) and 12(d):

- a) \$9,300,000 for fiscal year 1971 by Public Law 91-645;
- b) \$7,500,000 for fiscal year 1971 by Public Law 92-18; and
- c) \$221,300,000 for fiscal year 1972 by Public Law 92-74.

³⁷ Section 3(b) of Public Law 91-453 added new subsections (c) and (d) to section 4.

³⁸ Added by section 101(b) of Pub. L. 93-503. See also section 147, Federal-Aid Highway Act of 1973: "Rural Highway Public Transportation Demonstration Project," (Part II, p. 50).

³⁹ Section 4(d) was amended by section 21 of Pub. L. 93-608 to delete the following material: "To assure program continuity and orderly planning and project development, the Secretary, after consultation with State and local public agencies, shall submit to the Congress (1) authorization requests for fiscal years 1976 and 1977 not later than February 1, 1972, (2) authorization requests for fiscal years 1978 and 1979 not later than February 1, 1974, (3) authorization requests for fiscal years 1980 and 1981 not later than February 1, 1976, and (4) an authorization request for fiscal year 1982 not later than February 1, 1978. Such authorization requests shall be designed to meet the Federal commitment specified in the first section of the Urban Mass Transportation Assistance Act of 1970. Concurrently with these authorization requests, the Secretary shall also submit his recommendations for any necessary adjustments in the schedule for liquidation of obligations."

⁴⁰ Section 103(a) of Pub. L. 93-503 substituted a new section 5 and heading for the previous section 5, entitled "Emergency Program" which permitted Federal financial assistance to be provided pursuant to section 3 where (1) the program for the development of a unified or officially coordinated urban transportation system required as a condition of assistance by section 4(a) was under active preparation although not yet completed, (2) the facilities and equipment for which the assistance was sought could reasonably be expected to be required for such a system, and (3) there was an urgent need for their preservation or provision (See also footnote 11). The Federal grant for such a project could not exceed one-half of the net project cost, except that where a grant had been made on such basis, and the planning requirements specified in section 4(a) were fully met within a 3-year period following execution of the grant contract, an additional grant could then be made to the applicant equal to one-sixth of the net project cost, to bring the total amount of the Federal contribution up to the statutory maximum (two-thirds of the net project cost) allowable for a capital assistance project prior to the enactment of P.L. 93-87. The local share requirements under section 5 as it formerly read were identical to those specified in section 4(a) (see also footnote 16). As originally enacted, the termination date for the Emergency Program was July 1, 1967; however, the program was extended to permit such grants until July 1, 1972. See Public Laws 90-34, 90-169, 90-448, 91-152, and 91-453.

sible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in the case of any such area, encompass the entire urbanized area within the State as designated by the Bureau of the Census.

(b) (1) The Secretary shall apportion for expenditure in fiscal years 1975 through 1980 the sums authorized by subsection (c). Such sums shall be made available for expenditure in urbanized areas or parts thereof on the basis of a formula under which urbanized areas or parts thereof will be entitled to receive an amount equal to the sum of—

(A) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area or part thereof, as designated by the Bureau of the Census, bears to the total population of all the urbanized areas in all the States as shown by the latest available Federal census; and

(B) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in the preceding sentence, the term 'density' means the number of inhabitants per square mile.

(2) The Governor, responsible local officials and publicly-owned operators of mass transportation services, in accordance with the procedures required under section (g) (1), with the concurrence of the Secretary, shall designate a recipient to receive and dispense the funds apportioned under paragraph (1) that are attributable to urbanized areas of two hundred thousand or more population. In any case in which a statewide or regional agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, such agency or instrumentality shall be the recipient to receive and dispense such funds. The term 'designated recipient' as used in this Act shall refer to the recipient selected according to the procedures required by this paragraph.

(3) Sums apportioned under paragraph (1) not made available for expenditure by designated recipients in accordance with the terms of paragraph (2) shall be made available to the Governor for expenditure in urbanized areas or parts thereof in accordance with the procedures required under subsection (g) (1).

(c) (1) To finance grants under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contracts, agreements, or otherwise in an aggregate amount not to exceed \$3,975,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this paragraph not to exceed \$300,000,000 prior to the close of fiscal year 1975; not to exceed \$500,000,000 prior to the close of fiscal year 1976; not to exceed \$650,000,000 prior to the close of fiscal year 1977; not to exceed \$775,000,000 prior to the close of fiscal year 1978; not to exceed \$850,000,000 prior to the close of fiscal year 1979; and not to exceed \$900,000,000 prior to the close of fiscal year 1980. Sums so appropriated shall remain available until expended.

(2) Sums apportioned under this section shall be available for obligation by the Governor or designated recipient for a period of two years

following the close of the fiscal year for which such sums are apportioned, and any amounts so apportioned remaining unobligated at the end of such period shall lapse and shall be returned to the Treasury for deposit as miscellaneous receipts.

(d) (1) The Secretary may approve as a project under this section, on such terms and conditions as he may prescribe, (A) the acquisition, construction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service, and (B) the payment of operating expenses to improve or to continue such service by operation, lease, contract, or otherwise.

(2) The Secretary shall issue such regulations as he deems necessary to administer this subsection and subsection (e), including regulations regarding maintenance of effort by States, local governments, and local public bodies, the appropriate definition of operating expenses, and requirements for improving the efficiency of transit services.

(e) The Federal grant for any construction project under this section shall not exceed 80 per centum of the cost of the construction project, as determined under section 4(a) of this Act. The Federal grant for any project for the payment of subsidies for operating expenses shall not exceed 50 per centum of the cost of such operating expense project. The remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

(f) Federal funds available for expenditure for mass transportation projects under this section shall be supplementary to and not in substitution for the average amount of State and local government funds and other transit revenues such as advertising, concessions, and property leases, expended on the operation of mass transportation service in the area involved for the two fiscal years preceding the fiscal year for which the funds are made available; but nothing in this sentence shall be construed as preventing State or local tax revenues which are used for the operation of mass transportation service in the area involved from being credited (to the extent necessary) toward the non-Federal share of the cost of the project for purposes of the preceding sentence.

(g) (1) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvement in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an

urbanized area after July 1, 1976, under this section unless he finds that such project is based on a continuing comprehensive transportation planning process carried on in conformance with the objectives stated in this paragraph.

(2) The Governor or designated recipient shall submit to the Secretary for his approval a program of projects for utilization of the funds authorized, which shall be based on the continuing comprehensive planning process of paragraph (1). The Secretary shall act upon programs submitted to him as soon as practicable, and he may approve a program in whole or in part.

(3) An applicant for assistance under this section (other than a Governor) shall submit the program or programs to the Governor of the State affected, concurrently with submission to the Secretary. If within thirty days thereafter the Governor submits comments to the Secretary, the Secretary shall consider such comments before taking final action on the program or programs.

(h) (1) The Governor or the designated recipient of the urbanized area shall submit to the Secretary for his approval such surveys, plans, specifications, and estimates for each proposed project as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and his entering into a grant or contract agreement with respect to any such project shall be a contractual obligation of the Federal Government for the payment of its proportional contribution thereto.

(2) In approving any project under this section, the Secretary shall assure that possible adverse economic, social, and environmental effects relating to the proposed project have been fully considered in developing the 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 conservation of environment and natural resources, and the costs of eliminating or minimizing any such adverse effects, including—

(A) air, noise, and water pollution;

(B) destruction or disruption of manmade and natural resources, esthetic values, community cohesion, and the availability of public facilities and services;

(C) adverse employment effects, and tax and property value losses;

(D) injurious displacement of people, businesses, and farms; and

(E) disruption of desirable community and regional growth.

(i) Upon submission for approval of a proposed project under this section, the Governor or the designated recipient of the urbanized area shall certify to the Secretary that he or it has conducted public hearings (or has afforded the opportunity for such hearings) and that these hearings included (or were scheduled to include) consideration of the economic and social effects of such project, its impact on the environment, including requirements under the Clean Air Act, the Federal Water Pollution Control Act, and other applicable Federal environmental statutes, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Such certification shall be accompanied by (1) a report which indicates the consideration given to the economic, social, environmental, and other effects of the proposed project, including, for construction

projects, the effects of its location or design, and the consideration given to the various alternatives which were raised during the hearing or which were otherwise considered, and (2) upon the Secretary's request, a copy of the transcript of the hearings.

(j) (1) The Secretary may discharge any of his responsibilities under this action*, with respect to a project under this section upon the request of any Governor or designated recipient of the urbanized area by accepting a certification by the Governor or his designee, or by the designated recipient of the urbanized area, if he finds that such project will be carried out in accordance with State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to, this section.

(2) The Secretary shall make a final inspection or review of each such project upon its completion and shall require an adequate report of its estimated and actual cost, as well as such other information as he determines to be necessary.

(3) The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this subsection.

(4) Acceptance by the Secretary of a certification under this section may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so.

(5) Nothing in this section shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),⁴¹ section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)),⁴² title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) et seq.),⁴³ title VIII of the Act of April 11, 1968 (Public Law 90-284, 42 U.S.C. 3601 et seq.),⁴⁴ and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).⁴⁵

(k) (1) As soon as practicable after the plans, specifications, and estimates for a specific project under this section have been approved, the Secretary shall enter into a formal project agreement with the Governor, his designee or the designated recipient of the urbanized area. Such project agreement shall make provision for non-Federal funds required for the State's or designated recipient's pro rata share of the cost of the project.

(2) The Secretary may rely upon representations made by the applicant with respect to the arrangements or agreements made by the Governor or the designated recipient where a part of the project involved is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.

(3) The Secretary is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes, as amended, to make advance or

*So in original; probably should read "Act".

⁴¹ See Part III, p. 81.

⁴² See Part III, p. 80.

⁴³ See Part III, p. 108.

⁴⁴ Section 808(d) of Pub. L. 90-284 (42 U.S.C. 3608(c)) reads as follows:

"(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes."

⁴⁵ See Part III, p. 118.

progress payments on account of any grant or contract made pursuant to this section, on such terms and conditions as he may prescribe.

(l) The Secretary shall not approve any project under this section unless he finds that such project is needed to carry out a program, meeting criteria established by him, for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and is necessary for the sound, economic, and desirable development of such area, and that the applicant or responsible agency has the legal, financial, and technical capacity to carry out the proposed project. A project under this section may not be undertaken unless the responsible public officials of the urbanized area in which the project is located have been consulted and, except for projects solely to pay subsidies for operating expenses, their views considered with respect to the corridor, location, and design of the project.

(m) The Secretary shall not approve any project under this section unless the applicant agrees and gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under this section will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.

(n) (1) The provisions of sections 13(c) and sections 3(e) (4) shall apply in carrying out mass transportation projects under this section.

(2) The provision of assistance under this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

Research, Development, and Demonstration Projects

§ 1605

SECTION 6. The Secretary is authorized to undertake research, development, and demonstration projects in all phases of urban mass transportation (including the development, testing, and demonstration of new facilities, equipment, techniques, and methods) which he determines will assist in the reduction of urban transportation needs, the improvement of mass transportation service, or the contribution of such service toward meeting total urban transportation needs at minimum cost. He may undertake such projects independently or by grant or ⁴⁶ contract (including working agreements with other Federal departments and agencies). In carrying out the provisions of this section, the Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.⁴⁷

⁴⁶ The words "grant or" were inserted in section 6 by section 13(b) of Public Law 91-453.

⁴⁷ Section 6 actually contains four subsections, (a), (b), (c), and (d). The part appearing in the text is subsection (a). The last three subsections have been omitted from the text because they no longer have a significant operative effect. The study called for in (b) has been completed, the limits on authorization

Relocation Requirements and Payments

§ 1606

SECTION 7. (a) No financial assistance shall be extended to any project under section 3 unless the Secretary determines that an adequate relocation program is being carried on for families displaced by the project and that there are being or will be provided (in the same area or in other areas generally not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the displaced families) an equal number of decent, safe and sanitary dwellings available to those displaced families and reasonably accessible to their places of employment.⁴⁸

for appropriations in (c) are no longer applicable, and the saving provision in (d) is unnecessary as section 602 of the Housing Act of 1956 (70 Stat. 1113) simply authorizes the Secretary of Housing and Urban Development to conduct investigations, analysis, and research into the problem of the availability of housing.

Subsections 6(b), (c), and (d) read as follows:

"(b) The Secretary shall, in consultation with the Secretary of Transportation, undertake a project to study and prepare a program of research, development, and demonstration of new systems of urban transportation that will carry people and goods within metropolitan areas speedily, safely, without polluting the air, and in a manner that will contribute to sound city planning. The program shall (1) concern itself with all aspects of new systems of urban transportation for metropolitan areas of various sizes, including technological, financial, economic, governmental, and social aspects; (2) take into account the most advanced available technologies and materials; and (3) provide national leadership to efforts of States, localities, private industry, universities, and foundations. The Secretary shall report his findings and recommendations to the President, for submission to the Congress, as rapidly as possible and in any event not later than eighteen months after the effective date of this subsection.

(c) The Secretary may make available to finance projects under this section not to exceed \$10,000,000 of the mass transportation grant authorization provided in section 4(b), which limit shall be increased to \$20,000,000 on July 1, 1965, to \$30,000,000 on July 1, 1966, to \$40,000,000 on July 1, 1967, and \$56,000,000 on July 1, 1968. On or after July 1, 1969, the Secretary may make available to finance projects under this section such additional sums out of grant authorization provided in section 4(b) as he deems appropriate.

(d) Nothing contained in this section shall limit any authority of the Secretary under section 602 of the Housing Act of 1956 or any other provision of law."

Section 6(b) was added by section 3 of Public Law 89-562, which also redesignated subsections (b) and (c) of section 6 as subsections (c) and (d) respectively.

Section 1(b) of Public Law 89-562 amended subsection 6(c) to authorize annual increases of \$10,000,000 each for fiscal years 1968 and 1969. Section 701 of Public Law 90-448 authorized an additional \$6 million increase for fiscal year 1969. Section 304(b) of Public Law 89-117 repealed the original second sentence of subsection (c), relating to the authorization in section 103(b) of the Housing Act of 1949 (63 Stat. 413) of funds for mass transportation demonstration grants.

The last sentence of subsection 6(c) was added by section 701 of Public Law 90-448.

⁴⁸ Section 7(b) was repealed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646). Section 7(h) prior to its repeal read as follows:

"Notwithstanding any other provision of this Act, financial assistance extended to any project under section 3 may include grants for relocation payments, as herein defined. Such grants may be in addition to other financial assistance for the project under section 3 and no part of the amount of such relocation payments shall be required to be contributed as a local grant. The term 'relocation payment' means payments by the applicant to individuals, families, business concerns, and nonprofit organizations for their reasonable and necessary moving expenses and any actual direct losses of property except goodwill or profit, for which reimbursement or compensation is not otherwise made, resulting from their displacement by the project. Such payments shall be made subject to such rules and regulations as may be prescribed by the Secretary [see footnote 1], and shall not exceed \$200 in the case of an individual or family, or \$3,000 (or if greater, the total certified actual moving expenses) in the case of a business concern or nonprofit organization. Such rules and regulations may include provisions authorizing payment to individuals and families of fixed amounts (not to exceed \$200 in any case) in lieu of their respective reasonable and necessary moving expenses and actual direct losses of property."

The full text of the Uniform Act appears in Part III, commencing at page 118, and is now the primary statutory authority governing relocation and land acquisition pursuant to the urban mass transportation program, in lieu of section 7 of the Act and the other laws indicated below.

Subsection 220(a)(4), (5), and (8) of the Uniform Act repealed subsection 7(b) of the Act, section 114 of the Housing Act of 1949 (63 Stat. 413), and section 404 of Public Law 89-117 respectively. Section 306 of the 1970 Uniform Act repealed sections 401, 402, and 403 of Public Law 89-117.

SECTION 8. [COORDINATION OF FEDERAL ASSISTANCE FOR HIGHWAYS AND FOR MASS TRANSPORTATION FACILITIES] ⁴⁹

Grants for Technical Studies ⁵⁰

SECTION 9. The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof for the planning, engineering, designing and evaluation of urban mass transportation projects, and for other technical studies, to be included, or proposed to be included, in a program (completed or under active preparation) for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area. Activities assisted under this section may include (1) studies relating to management, operations, capital requirements and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities, and equipment. A grant or contract under this section shall be made in accordance with criteria established by the Secretary.⁵¹

Grants for Managerial Training Programs

SECTION 10. (a) The Secretary is authorized to make grants to States, local bodies, and agencies thereof to provide fellowships for training of per-

These six repealed sections contained the authority and requirements for making relocation and other payments to persons and businesses displaced by certain federally-aided projects and the policies to be adhered to in acquiring land for such projects. New provisions covering these and other requirements designed to protect persons displaced by such projects are contained in the Uniform Act. However, Section 221(b) of the Uniform Act provides that the new requirements will not apply to any applicant for grant assistance to the extent it is legally unable to comply with them prior to July 1, 1972. Until that time the repeals by section 220(a) are not applicable to such applicant.

Subsection 7(a) of the Act has not been repealed although the effect of its provisions has been largely superseded by the requirements of the Uniform Act.

⁴⁹ Section 8 has been omitted from the text. When it was established in 1964, the Federal urban mass transportation program was administered by the Housing and Home Finance Administrator, and the Federal highway program was the responsibility of the Secretary of Commerce. Since both programs are now administered by the Secretary of Transportation (see footnote 1), the legal mandate of Section 8 is superfluous. Section 8 reads as follows:

"COORDINATION OF FEDERAL ASSISTANCE FOR HIGHWAYS AND FOR MASS TRANSPORTATION FACILITIES

"SECTION 8. In order to assure coordination of highways and railway and other mass transportation planning and development programs in urban areas, particularly with respect to the provision of mass transportation facilities in connection with federally assisted highways, the Secretary and the Secretary of Transportation shall consult on general urban transportation policies and programs and shall exchange information on proposed projects in urban areas."

Reorganization Plan No. 2 of 1968 (see Part III, p. 55), and section 4(g) of Public Law 89-670 (49 U.S.C. 1653(g)), set forth in footnote 85, state the current requirements for cooperation between the Secretaries of Transportation and of Housing and Urban Development.

Certain provisions of Title 23, U.S.C. (Highways) and the Federal-Aid Highway Act of 1973 (Pub. L. 93-87) relating to highway and non-highway transportation activities have been jointly delegated to the Federal Highway Administrator and the Urban Mass Transportation Administrator (see 49 C.F.R. §§ 1.48 and 1.50, as amended).

⁵⁰ Amended by section 301 of Public Law 93-87.

⁵¹ Section 2(a) of Public Law 89-562 added new sections 9, 10, 11, and redesignated the former sections 9 through 12 as sections 12 through 15, respectively. Section 310(d)(5) of Public Law 93-87 removed a limitation restricting such grants to two-thirds of the cost of the studies being assisted.

sonnel employed in managerial, technical, and professional positions in the urban mass transportation field. Fellowships shall be for not more than one year of advanced training in public or private nonprofit institutions of higher education offering programs of graduate study in business or public administration, or in other fields having application to the urban mass transportation industry. The State, local body, or agency receiving a grant under this section shall select persons for such fellowships on the basis of demonstrated ability and for the contribution which they can reasonably be expected to make to an efficient mass transportation operation. Not more than one hundred fellowships shall be awarded in any year. The grant assistance under this section toward each such fellowship shall not exceed \$12,000, nor 75 per centum of the sum of (1) tuition and other charges to the fellowship recipient, (2) any additional costs incurred by the educational institution in connection with the fellowship and billed to the grant recipient, and (3) the regular salary of the fellowship recipient for the period of the fellowship (to the extent that salary is actually paid or reimbursed by the grant recipient).

(b) Not more than 12½ per centum of the fellowships authorized pursuant to subsection (a) shall be awarded for the training of employees of mass transportation companies in any one State.^{52,53}

Grants for Research and Training in Urban Transportation Problems

§ 1607c

SECTION 11. (a) The Secretary is authorized to make grants to public and private nonprofit institutions of higher learning to assist in establishing or carrying on comprehensive research in the problems of transportation in urban areas. Such grants shall be used to conduct competent and qualified research and investigations into the theoretical or practical problems of urban transportation, or both, and to provide for the training of persons to carry on further research or to obtain employment in private or public organizations which plan, construct, operate, or manage urban transportation systems. Such research and investigations may include, without being limited to, the design and functioning of urban mass transit systems; the design and functioning of urban roads and highways; the interrelationship between various modes of urban and inter-urban transportation; the role of transportation planning in overall urban planning; public preferences in transportation; the economic allocation of transportation resources; and the legal, financial, engineering, and esthetic aspects of urban transportation. In making such grants, the Secretary shall give preference to institutions of higher learning that undertake

⁵² See footnote 51.

⁵³ Subsections 10(c) and 11(b) have been omitted from the text. These subsections impose limitations on the amount of funds appropriated pursuant to Section 4(b) which may be used annually for the activities authorized by Sections 10 and 11 respectively. Although the limitations in subsections 10(c) and 11(b) would be controlling if appropriations for activities under sections 10 and 11 respectively were specifically obtained under subsection 4(b), Public Law 91-453 inserted a new subsection 4(c) and amended subsection 12(d) (see footnote 31), so funds for use under sections 10 and 11 will normally be obtained pursuant to subsection 12(d) rather than subsection 4(b).

Subsection 10(c) reads as follows:

"(c) The Secretary may make available to finance grants under this section not to exceed \$1,500,000 per annum of the grant funds appropriated pursuant to section 4(b)."

Subsection 11(b) reads as follows:

"(b) The Secretary may make available to finance grants under this section not to exceed \$3,000,000 per annum of the grant funds appropriated pursuant to section 4(b)."

such research and training by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban transportation problems.^{54,55}

General Provisions

§ 1608 SECTION 12. (a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this Act, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402, except subsections (c) (2) and (f), of the Housing Act of 1950.⁵⁶ Funds obtained or held by the Secretary in connection with the performance of his functions under this Act shall be available for the administrative expenses of the Secretary in connection with the performance of such functions.

(b) All contracts for construction, reconstruction, or improvement of facilities and equipment in furtherance of the purposes for which a loan or grant is made under this Act, entered into by applicants under other than competitive bidding procedures as defined by the Secretary, shall provide that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the contracting parties that are pertinent to the operations or activities under such contracts.⁵⁷

(c)⁵⁸ As used in this Act—

(1) the term “States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States;

(2) the term “local public bodies” includes municipalities and other political subdivisions of States; public agencies and instrumentalities of one or more States, municipalities, and political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State;

(3) the term “Secretary” means the Secretary of Transportation; ⁵⁹

(4) the term “urban area” means any area that includes a municipality or other built-up place which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others in the locality taking into consideration the local patterns and trends of urban growth; and

(5) the term “mass transportation” means transportation by bus, or rail or other conveyance, either publicly or privately owned, which provides to

⁵⁴ See footnote 51.

⁵⁵ See footnote 53.

⁵⁶ See Part III, p. 116.

⁵⁷ A disappointed bidder on a contract awarded by a grantee has no standing to sue the Secretary to enjoin concurrence in the award, and the Secretary's action in concurring therein is not judicially reviewable. *Pullman, Incorporated v. Volpe et al.*, 337 F. Supp. 432 (U.S.D.C., E.D. Pa. (1971)).

⁵⁸ Section 1109 of Public Law 89-117 deleted the original subsection (c) of section 12 and redesignated the remaining subsections accordingly.

Subsection (c) originally read as follows:

“(c) All contracts for construction, reconstruction, or improvement of facilities and equipment in furtherance of the purposes for which a loan or grant is made under this Act shall provide that in the performance of the work, the contractor shall use only such manufactured articles as have been manufactured in the United States.”

⁵⁹ See footnote 1.

the public general or special service (but not including school buses or charter⁶⁰ or sightseeing service) on a regular and continuing basis.⁶¹

(d) There are hereby authorized to be appropriated, without fiscal year limitation out of any money in the Treasury not otherwise appropriated, the funds necessary to carry out the functions under this Act.⁶²

(e) None of the provisions of this Act shall be construed to authorize the Secretary to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 3 or, after such grant is made, to regulate the rates, fares, tolls, rentals, or other charges fixed or prescribed for such system by any local public or private transit agency; but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to require compliance by the agency or agencies involved with any undertaking furnished by such agency or agencies in connection with the application for the grant.⁶³

(f) 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 Act or carried on under this Act. 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.⁶⁴

Labor Standards

§ 1609

SECTION 13. (a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.⁶⁵

⁶⁰ Equipment purchased under the Act as it read prior to August 13, 1973, must be needed for the provision of urban mass transportation service, but such equipment may also be used in incidental charter service which does not interfere with its regularly scheduled service to the public. Opinion of the Comptroller General of the United States, B-169204, December 7, 1966. *But see also* the provisions of sections 3 (f) and (g).

⁶¹ Section 702 of Public Law 90-448 amended subsection 12(c) (5) by inserting "which provides to the public general or special service" in lieu of "serving the general public," and inserting "on a regular and continuing basis" in lieu of "and moving over prescribed routes."

⁶² Section 5 of Public Law 91-453 amended subsection 12(d) by inserting the words "without fiscal year limitation" after the first clause, substituting the word "the" for the word "all" before the word "functions", and deleting "except loans under Section 3. All funds appropriated under this Act for other than administrative expenses shall remain available until expended." at the end of the subsection.

⁶³ See footnote 51.

⁶⁴ Section 301(f) of Pub L. 93-87.

⁶⁵ UMTA grantees, with UMTA concurrence, may select, from the construction wage rate schedules published by the Secretary of Labor in the Federal Register for the metropolitan area where the construction is to be done in the UMTA-assisted project, but if any question or dispute arises as to which published wage rate schedule is appropriate, the matter must be referred to the Secretary of Labor for decision. *North Georgia Building and Construction Trades Council v. U.S. Department of Transportation, et al.*, Civil No. C75-955A (U.S.D.C., N.D. Ga., Atlanta Div.).

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

(c) It shall be a condition of any assistance under section 3⁶⁶ of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or returning programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.^{66a} The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.^{67, 68}

Environmental Protection⁶⁹

§ 1610

SECTION 14. (a) It is hereby declared to be the national policy that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and im-

⁶⁶ Section 2(b)(2) of Public Law 89-562 amended section 13(c) by substituting the words "under section 3 of this Act" for the words "under this Act." Subsequently, Chairmen of the Committees on Banking and Currency of the House and of the Senate inserted in the Congressional Record statements indicating that there was no intent to exclude the urban mass transportation demonstration program under section 6(a) from the labor-protective requirements of section 13(c). See Congressional Record, October 20, 1966, p. 28344, and October 22, 1966, p. 28826 (89th Congress, 2d Session).

^{66a} This is a reference to section 5(2)(f) of the Interstate Commerce Act, Title 49, U.S.C., which reads as follows: (f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

⁶⁷ See footnote 51.

⁶⁸ The determination of the Secretary of Labor under section 13(c) as to what arrangements are "fair and equitable" in any case involves administrative judgment, discretion, and expertise, and is therefore not judicially reviewable in the absence of express or implied statutory provision for review. *Kendler et al. v. Wirts et al.*, 388 F. 2d. 381 (C.A. 3, 1968).

⁶⁹ Additional statutory requirements with regard to the environment are contained in the National Environmental Policy Act of 1969 (see Part III, p. 118), and Section 4(f) of the Department of Transportation Act (see Part III, p. 80).

portant historical and cultural assets, in the planning, designing, and construction of urban mass transportation projects for which Federal assistance is provided pursuant to section 3 of this Act. In implementing this policy the Secretary shall cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior, and with the Council on Environmental Quality with regard to each project that may have a substantial impact on the environment.⁷⁰

(b) The Secretary shall review each transcript of hearing submitted pursuant to section 3(d) to assure that an adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest, and that the project application includes a detailed statement on—

- (1) the environmental impact of the proposed project,
- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (3) alternatives to the proposed project, and
- (4) any irreversible and irretrievable impact on the environment which may be involved in the proposed project should it be implemented.

(c) The Secretary shall not approve any application for assistance under section 3 unless he finds in writing, after a full and complete review of the application and of any hearings held before the State or local public agency pursuant to section 3(d), that (1) adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest, and fair consideration has been given to the preservation and enhancement of the environment and to the interest of the community in which the project is located, and (2) either no adverse environmental effect is likely to result from such project, or there exists no feasible and prudent alternative to such effect and all reasonable steps have been taken to minimize such effect. In any case in which a hearing has not been held before the State or local agency pursuant to section 3(d), or in which the Secretary determines that the record of hearings before the State or local agency is inadequate to permit him to make the findings required under the preceding sentence, he shall conduct hearings, after giving adequate notice to interested persons, on any environmental issues raised by such application. Findings of the Secretary under this subsection shall be made a matter of public record.^{71, 72}

Reporting System

§ 1611 SECTION 15. (a) The Secretary shall by January 10, 1977, develop, test, and prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories and a uni-

⁷⁰ See footnote 10.

⁷¹ See footnote 14.

⁷² Section 6 of Public Law 91-453 deleted section 14 in its entirety and inserted the new section 14. The former section 14 (originally section 11, but redesignated by section 2(a) of Public Law 89-562) read as follows:

"AIR POLLUTION CONTROL"

"SECTION 14. In providing financial assistance to any project under section 3, the Secretary shall take into consideration whether the facilities and equipment to be acquired, constructed, reconstructed, or improved will be designed and equipped to prevent and control air pollution in accordance with any criteria established for this purpose by the Secretary of Health, Education, and Welfare."

form system of accounts and records. Such systems shall be designed to assist in meeting the need of individual public mass transportation systems, Federal, State, and local governments, and the public for information on which to base planning for public transportation services, and shall contain information appropriate to assist in the making of public sector investment decisions at all levels of government. The Secretary is authorized to develop and test these systems in consultation with interested persons and organizations. The Secretary is authorized to carry out this subsection independently, or by grant or contract (including arrangements with other Federal, State, or local government agencies). The Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.

(b) After July 1, 1978, the Secretary shall not make any grant under section 5 unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records prescribed under subsection (a) of this section.⁷³

Planning and Design of Mass Transportation Facilities To Meet Special Needs of the Elderly and the Handicapped⁷⁴

§ 1612 SECTION 16. (a) It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to

⁷³ Section 15 was amended by section 111 of Pub. L. 93-503 which deleted provisions relating to limitations upon the number of projects fundable in any one State. The text of section 15 as it read prior to amendment is as follows:

State Limitation

SECTION 15. Grants made under section 3 on or after July 1, 1970, for projects in any one State may not exceed in the aggregate 12½ per centum of the aggregate amount of grant funds authorized to be obligated under subsection 4(c), except that 15 per centum of the aggregate amount of grant funds authorized to be obligated under subsection 4(c) may be used by the Secretary, without regard to this limitation, for grants in States where more than two-thirds of the maximum amounts permitted under this section, has been obligated. In computing State limitations under this section, grants for relocation payments shall be excluded. Any grant made under section 3 to a local public body or agency in a major metropolitan area which is used in whole or in part to provide or improve urban mass transportation service, pursuant to an interstate compact approved by the Congress, in a neighboring State having within its boundaries population centers within normal commuting distance from such major metropolitan area, shall, for purposes of computing State limitations under this section, be allocated on an equitable basis, in accordance with regulations prescribed by the Secretary, between the State in which such public body or agency is situated and such neighboring State.

The language of the above-quoted provision, originally section 12 of the Act, but redesignated by section 2(a) of P.L. 89-562, omits the first sentence, which expired by its own terms and applied only to grants made prior to July 1, 1970. Section 7 of P.L. 91-453 had amended this section by inserting the limiting date and by amending the remainder of the section.

⁷⁴ Other statutes affecting transit services for the elderly and handicapped include section 165(b) of the Federal-Aid Highway Act of 1973 (see Part II, p. 52). Reference is also made to section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 29 U.S.C. 794), which reads as follows:

Nondiscrimination under Federal grants

No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 315 of the Department of Transportation and Related Agencies Appropriation Act, 1975 (Pub. L. 93-391, Aug. 28, 1974) reads as follows:

None of the funds provided under this Act shall be available for the purchase of passenger rail or subway cars, for the purchase of motor buses or for the construction of related facilities unless such cars, buses and facilities are designed to meet the mass transportation needs of the elderly and the handicapped.

utilize mass transportation facilities and services; that special efforts shall be made in the planning and design 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 in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.^{74a}

(b) In addition to the grants and loans otherwise provided for under this Act, the Secretary is authorized to make grants and loans—

(1) to States and local public bodies and agencies thereof for the specific purpose of assisting them in providing mass transportation services which are planned, designed, and carried out so as to meet the special needs of elderly and handicapped persons, with such grants and loans being subject to all of the terms, conditions, requirements, and provisions applicable to grants and loans made under section 3(a) and being considered for the purposes of all other laws to have been made under such section; and

(2) to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and handicapped persons for whom mass transportation services are planned, designed, and carried out under paragraph (1) are unavailable, insufficient, or inappropriate, with such grants and loans being subject to such terms, conditions, requirements, and provisions (similar insofar as may be appropriate to those applicable to grants and loans under paragraph (1)), as the Secretary may determine to be necessary or appropriate for purposes of this paragraph.

Of the total amount of the obligations which the Secretary is authorized to incur on behalf of the United States under the first sentence of section 4(c), 2 per centum may be set aside and used exclusively to finance the programs and activities authorized by this subsection (including administrative costs).⁷⁵

(c) Of any amounts made available to finance research, development, and demonstration projects under section 6 after the date of the enactment of this section, 1½ per centum may be set aside and used exclusively to increase the information and technology which is available to provide improved transportation facilities and services planned and designed to meet the special needs of elderly and handicapped persons.

(d) For purposes of this Act, the term "handicapped person" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected.⁷⁶

^{74a} This section requires only that special efforts be made to provide to elderly and physically handicapped persons mass transportation service which they can effectively use. It does not require that all transit buses purchased with Federal assistance under this Act be specially equipped to transport passengers confined to wheelchairs. *Snowden v. Birmingham-Jefferson County Transit Authority*, — F. Supp. —. (U.S.D.C. N.D. Ala. 1975.)

⁷⁵ Section 301(g) of P.L. 93-87.

⁷⁶ Section 16 was added by section 8 of Public Law 91-453.

EMERGENCY OPERATING ASSISTANCE ^{76a}

SECTION 17. (a) The Secretary shall provide financial assistance for the purpose of reimbursing—

(1) the Consolidated Rail Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) for the costs of rail passenger service operations conducted at a loss during the 180-day mandatory operation period, as required under section 304(e) of such Act (45 U.S.C. 744(e)).^{76b} Such reimbursement shall cover all costs not otherwise paid by a State or a local or regional transportation authority which would have been payable by such State or authority, pursuant to regulations issued by the Office under section 205(d) (5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) if such regulations had been in effect on the date of conveyance of rail properties under section 303(b) (1) of such Act; and

(2) States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies with respect to rail passenger service required by section 304(e) (4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744(e) (4)).

(b) Finance assistance under subsection (a) of this section shall not apply to intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation which was in effect immediately prior to such date of conveyance.

(c) Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate with such reasonable exceptions to requirements and provisions otherwise applicable under this Act as the Secretary may deem required by the emergency nature of the assistance authorized by this section. Nothing in this section shall authorize the Secretary to waive the provisions of section 13(c) of this Act.

(d) The Federal share of the costs of any rail passenger service required by subsections (c) and (e) of section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744 (c) and (e)) shall be as follows:

(1) 100 percent of the costs eligible under subsections (a) (1) or (a) (2) of this section for the 180-day mandatory operation period required by section 304(e) of such Act;

(2) 100 percent for the 180-day period following the 180-day mandatory operation period;

(3) 90 percent for the 12-month period succeeding the period specified in subparagraph (2) of this subsection; and

(4) 50 percent for the 180-day period succeeding the period specified in subparagraph (3) of this subsection.

No assistance may be provided beyond the time specified in subsection (d) (3) of this section, unless the applicant for such assistance provides satis-

^{76a} Section 17 was added by section 808 of the Rail Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210, Feb. 5, 1976).

^{76b} See part III, p. 87.

factory assurances to the Secretary that the service for which such assistance is sought will be continued after the termination of the assistance authorized by this section.

(e) The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as is practicable, with the terms and provisions which are applicable to operating assistance under section 5 of this Act.

(f) To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed \$125,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed \$40,000,000 by September 30, 1976, \$95,000,000 by September 30, 1977, and \$125,000,000 by September 30, 1978, such sums to remain available until expended.

Important Note

The Federal-Aid Highway Act of 1973 (Public Law 93-87) made substantial changes in UMTA's capital grant and program authority. Because certain requirements of UMTA grantees which are contained in that Act were not initially incorporated into the amendments to the Urban Mass Transportation Act of 1964, the reader's attention is directed to the following provisions of the Highway Act which are incorporated either in the relevant footnotes to specific provisions of the Act, or in the appendices.

Recipients of grants authorized by sections 3, 9, and 16 of the UMT Act are subject to the provisions of section 301(d) of the Highway Act, relating to exemption of certain nonsupervisory employees from the provisions of the Hatch Act. The text of section 301(d) is found in footnote 4, *supra*.

ADDITIONAL PROVISIONS OF THE NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974⁷⁷

(P.L. 93-503, 88 Stat. 1565)

An Act

To amend the Urban Mass Transportation Act of 1964 to provide increased assistance for mass transportation systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Mass Transportation Assistance Act of 1974".

FINDINGS

SEC. 2. The Congress finds that—

(1) over 70 per centum of the Nation's population lives in urban areas;

⁷⁷ The primary provisions of Public Law 93-503, the National Mass Transportation Assistance Act of 1974, amended the Urban Mass Transportation Act of 1964, and the resulting changes have been made in the text of the 1964 Act, and are indicated by footnotes. This section sets forth the provisions of the 1974 Act which do not amend the 1964 Act, but which supplement that Act.

(2) transportation is the lifeblood of an urbanized society and the health and welfare of that society depends upon the provision of efficient economical and convenient transportation within and between its urban area;

(3) for many years the mass transportation industry satisfied the transportation needs of the urban areas of the country capably and profitably;

(4) in recent years the maintenance of even minimal mass transportation service in urban areas has become so financially burdensome as to threaten the continuation of this essential public service;

(5) the termination of such service or the continued increase in its cost to the user is undesirable, and may have a particularly serious adverse effect upon the welfare of a substantial number of lower income persons;

(6) some urban areas are now engaged in developing preliminary plans for, or are actually carrying out, comprehensive projects to revitalize their mass transportation operations; and

(7) immediate substantial Federal assistance is needed to enable many mass transportation systems to continue to provide vital service.

TITLE I—INCREASED MASS TRANSPORTATION ASSISTANCE

* * * * *

INVESTIGATION OF SAFETY HAZARDS IN URBAN MASS TRANSPORTATION SYSTEMS ⁷⁸

49 U.S.C. § 1604a SEC. 107. The Secretary of Transportation shall investigate unsafe conditions in any facility, equipment, or manner or operation financed under this Act which creates a serious hazard of death or injury for the purpose of determining its nature and extent and the means which might best be employed to eliminate or correct it. If the Secretary determines that such facility, equipment, or manner of operation is unsafe, he shall require the State or local public body or agency to submit to the Secretary a plan for correcting the unsafe facility, equipment, or manner of operation, and the Secretary may withhold further financial assistance to the applicant until such plan is approved or implemented.

FARES FOR ELDERLY AND HANDICAPPED PERSONS

SEC. 108. Nothing contained in this title shall require the charging of fares to elderly and handicapped persons.

* * * * *

TITLE II—FARE-FREE MASS TRANSPORTATION

Demonstrations

49 U.S.C. § 1604b SEC. 201. The Secretary of Transportation (hereinafter referred to as the "Secretary") shall enter into such contracts or other arrangements as

⁷⁸ See also, Federal Railroad Safety Act of 1970 (Part III, p. 94); and section 304, Interstate Commerce Act (Part III, p. 104).

may be necessary for research and the development, establishment, and operation of demonstration projects to determine the feasibility of fare-free urban mass transportation systems.

SEC. 202. Federal grants or payments for the purpose of assisting such projects shall cover not to exceed 80 per centum of the cost of the project involved, including operating costs and the amortization of capital costs for any fiscal year for which such contract or other arrangement is in effect.

SEC. 203. The Secretary shall select cities or metropolitan areas for such projects in accordance with the following:

(1) to the extent practicable, such cities or metropolitan areas shall have a failing or nonexistent or marginally profitable transit system, a decaying central city, automobile-caused air pollution problems, and immobile central city population;

(2) several projects should be selected from cities or metropolitan areas of differing sizes and populations;

(3) a high level of innovative service must be provided including the provision of crosstown and other transportation service to the extent necessary for central city residents and others to reach employment, shopping, and recreation; and

(4) to the extent practicable, projects utilizing different modes of mass transportation shall be approved.

SEC. 204. The Secretary shall study fare-free systems assisted pursuant to this title, and other financially assisted urban mass transportation systems providing reduced fares for the purpose of determining the following:

(1) the effects of such systems on (i) vehicle traffic and attendant air pollution, congestion, and noise, (ii) the mobility of urban residents, and (iii) the economic viability of central city business;

(2) the mode of mass transportation that can best meet the desired objectives;

(3) the extent to which frivolous ridership increases as a result of reduced fare or fare-free systems;

(4) the extent to which the need for urban highways might be reduced as a result of reduced fare or fare-free systems; and

(5) the best means of financing reduced fare or fare-free transportation on a continuing basis.

SEC. 205. The Secretary shall make annual reports to the Congress on the information gathered pursuant to section 204 of this title and shall make a final report of his findings, including any recommendations he might have to implement such findings, not later than June 30, 1975.

SEC. 206. In carrying out the provisions of this title, the Secretary shall provide advisory participation by interested State and local government authorities, mass transportation systems management personnel, employee representatives, mass transportation riders, and any other persons that he may deem necessary or appropriate.

SEC. 207. There are hereby authorized to be appropriated not to exceed \$20,000,000 for each of the fiscal years ending on June 30, 1975, and June 30, 1976, respectively, to carry out the provisions of this title.

* * * * *

ADDITIONAL PROVISIONS OF THE URBAN MASS TRANSPORTATION ASSISTANCE ACT OF 1970 ⁷⁹

(P.L. 91-453, 84 Stat. 962)

An Act

To provide long-term financing for expanded urban mass transportation programs, and for other purposes.

19 U.S.C.
§ 1601a

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at a reasonable cost an urgent national problem; that it is imperative, if efficient, safe, and convenient transportation compatible with soundly planned urban areas is to be achieved, to continue and expand the Urban Mass Transportation Act of 1964; and the success will require a Federal commitment for the expenditure of at least \$10,000,000,000 over a twelve-year period, to permit confident and continuing local planning and greater flexibility in program administration. It is the purpose of this Act to create a partnership which permits the local community, through Federal financial assistance, to exercise the initiative necessary to satisfy its urban mass transportation requirements.

SECTION 9. The Secretary of Transportation shall conduct a study of the feasibility of providing Federal assistance to help defray the operating costs of mass transportation companies in urban areas and of any changes in the Urban Mass Transportation Act of 1964 which would be necessary in order to provide such assistance, and shall report his findings and recommendations to the Congress within one year after the date of the enactment of this Act.

SECTION 10. The Secretary of Transportation shall in all ways (including the provision of technical assistance) encourage industries adversely affected by reductions in Federal Government spending on space, military, and other Federal projects to compete for the contracts provided for under sections 3 and 6 of the Urban Mass Transportation Act of 1964, as amended by this Act.

SECTION 11. Nothing in this Act shall affect the authority of the Secretary of Housing and Urban Development to make grants, under the authority of sections 6(a), 9, and 11 of the Urban Mass Transportation Act of 1964, as amended and Reorganization Plan Number 2 of 1968,⁸⁰ for projects or activities primarily concerned with the relationship of urban transportation systems to the comprehensively planned development of urban areas, of the role of transportation planning in overall urban planning, out of funds appropriated to him for that purpose.

⁷⁹ The primary provisions of Public Law 91-453, the Urban Mass Transportation Assistance Act of 1970, amended the Urban Mass Transportation Act of 1964, and the resulting changes have been made in the text of the 1964 Act and are indicated by the footnotes. This section sets forth the provisions of the 1970 Act which do not amend the 1964 Act, but which provisions supplement that Act.

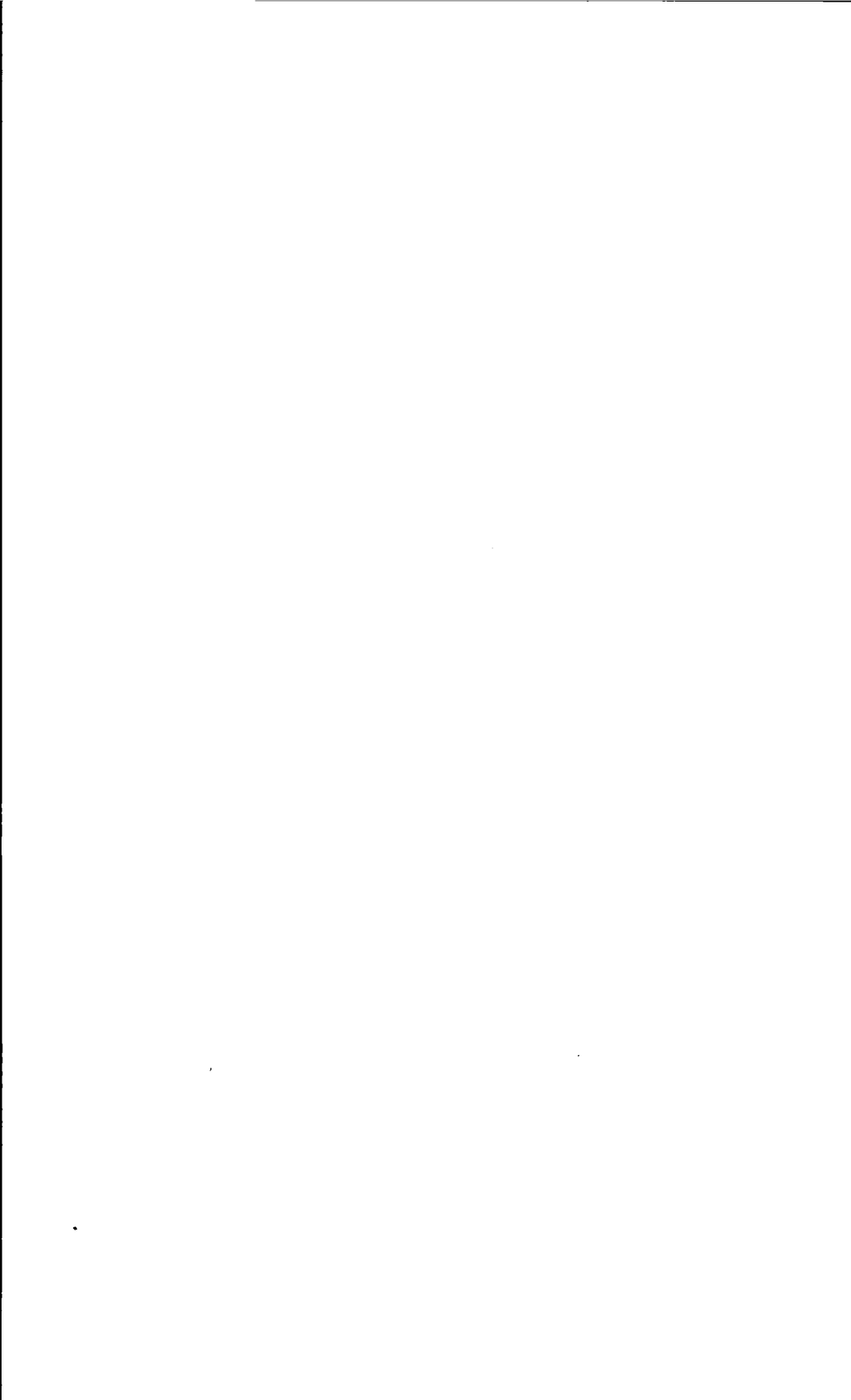
⁸⁰ Reorganization Plan No. 2 of 1968 is set forth in Part III, p. 55.

SECTION 12. Section 5316 of title 5, United States Code, is amended by inserting the following after paragraph (129): “(130) Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation.”

SECTION 14. This Act may be cited as the “Urban Mass Transportation Assistance Act of 1970.”

**PART II—FEDERAL-AID HIGHWAY LAWS RELATING TO MASS
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PART II—FEDERAL-AID HIGHWAY LAWS RELATING TO MASS TRANSPORTATION

TITLE 23, U.S.C. (HIGHWAYS)

Chapter 1.—FEDERAL-AID HIGHWAYS

§ 103. Federal-aid systems

(a) For the purposes of this title, the four Federal-aid systems, the primary system, the urban system, the secondary system, and the Interstate System, are established and continued pursuant to the provisions of this section.

(b) (1) The Federal-aid primary system shall consist of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary as provided by subsection (f) of this section. This system shall not exceed 7 per centum of the total highway mileage of such State, exclusive of mileage within national forests, Indian, or other Federal reservations and within urban areas, as shown by the records of the State highway department on November 9, 1921. Whenever provision has been made by any State for the completion and maintenance of 90 per centum of its Federal-aid primary system, as originally designated, said State through its State highway department by and with the approval of the Secretary is authorized to increase the mileage of its Federal-aid primary system by additional mileage equal to not more than 1 per centum of the total mileage of said State as shown by the records on November 9, 1921. Thereafter, it may make like 1 per centum increases in the mileage of its Federal-aid primary system whenever provision has been made for the completion and maintenance of 90 per centum of the entire system, including the additional mileage previously authorized. This system may be located both in rural and urban areas. The mileage limitations in this paragraph shall not apply to the District of Columbia, Hawaii, Alaska, or Puerto Rico.

(2) After June 30, 1976, the Federal-aid primary system shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas. The Federal-aid primary system shall be designated by each State acting through its State highway department and where appropriate, shall be in accordance with the planning process pursuant to section 134 of this title, subject to the approval of the Secretary as provided by subsection (f) of this section.

(c) (1) The Federal-aid secondary system shall be selected by the State highway departments and the appropriate local road officials in cooperation

with each other, subject to approval by the Secretary as provided in subsection (f) of this section. In making such selections, farm-to-market roads, rural mail routes, public school bus routes, local rural roads, access roads to airports, county roads, township roads, and roads of the county road class may be included, so long as they are not on the Federal-aid primary system or the Interstate System. This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area.

(2) After June 30, 1976, the Federal-aid secondary system shall consist of rural major collector routes. The Federal-aid secondary system shall be designated by each State through its State highway department and appropriate local officials in cooperation with each other, subject to the approval of the Secretary as provided in subsection (f) of this section.

(d)(1) The Federal-aid urban system shall be established in each urbanized area, and in such other urban areas as the State highway department may designate. The system shall be so located as to serve the major centers of activity, and shall include high traffic volume arterial and collector routes, including access roads to airports and other transportation terminals. No route on the Federal-aid urban system shall also be a route on any other Federal-aid system. Each route of the system to the extent feasible shall connect with another route on a Federal-aid system. Routes on the Federal-aid urban system shall be selected by the appropriate local officials so as to serve the goals and objectives of the community, with the concurrence of the State highway departments, and, in urbanized areas, also in accordance with the planning process under section 134 of this title. Designation of the Federal-aid urban system shall be subject to the approval of the Secretary as provided in subsection (f) of this section. The provisions of chapters 1, 3, and 5 of this title that are applicable to Federal-aid primary highways shall apply to the Federal-aid urban system except as determined by the Secretary to be inconsistent with this subsection.

(2) After June 30, 1976, the Federal-aid urban system shall be located in each urbanized area and such other urban areas as the State highway departments may designate and shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system. The routes on the Federal-aid urban system shall be designated by appropriate local officials, with the concurrence of the State highway departments, subject to the approval of the Secretary as provided in subsection (f) of this section, and in the case of urbanized areas shall also be in accordance with the planning process required pursuant to the provisions of section 134 of this title.

(e)(1) The Interstate System shall be designated within the United States, including the District of Columbia, and, except as provided in paragraphs (2) and (3) of this subsection, it shall not exceed forty-one thousand miles in total extent. It shall be so located as to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers, to serve the national defense, and to the greatest extent possible, to connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico. The routes of this system, to the

greatest extent possible, shall be selected by joint action of the State highway departments of each State and the adjoining States, subject to the approval by the Secretary as provided in subsection (f) of this section. All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section. This system may be located both in rural and urban areas.

(2) In addition to the mileage authorized by the first sentence of paragraph (1) of this subsection, there is hereby authorized additional mileage for the Interstate System of five hundred miles, to be used in making modifications or revisions in the Interstate System as provided in this paragraph. Upon the request of a State highway department the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System (including urban routes necessary for metropolitan transportation) and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. After the Secretary has withdrawn his approval of any such route or portion thereof the mileage of such route or portion thereof and the additional mileage authorized by the first sentence of this paragraph shall be available for the designation of interstate routes or portions thereof as provided in this subsection. The provisions of this title applicable to the Interstate System shall apply to all mileage designated under the third sentence of this paragraph except that the cost to the United States of the aggregate of all mileage designated under the third sentence of this paragraph shall not exceed the cost to the United States of the aggregate of all mileage approval for which is withdrawn under the second sentence of this paragraph, as such cost is included in the 1972 Interstate System cost estimate set forth in House Public Works Committee Print Numbered 92-29, as revised in House Report Numbered 92-1443, increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal or approval under this paragraph and in accordance with that design of such route or portion thereof which is the basis of such 1972 cost estimate. In considering routes or portions thereof to be added to the Interstate System under the third sentence of this paragraph, the Secretary shall, in consultation with the States and local governments concerned, give preference, along with due regard for interstate highway type needs on a nationwide basis, to (A) routes or portions thereof in States in which the Secretary has heretofore or hereafter withdrawn his approval of other routes or portions thereof, and (B) the extension of routes which terminate within municipalities served by a single interstate route, so as to provide traffic service entirely through such municipalities.

(3) In addition to the mileage authorized by paragraphs (1) and (2) of this subsection, there is hereby authorized additional mileage of not to exceed 1,500 miles for the designation of routes in the same manner as set forth in paragraph (1), in order to improve the efficiency and service of the Interstate System to better accomplish the purposes of that System.

(4) Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw his approval of any route or portion thereof on the Interstate System within any urbanized area in that State selected and approved in accordance with this title prior to the enactment of this paragraph, if he determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System or will no longer be essential by reason of the application of this paragraph and will not be constructed as a part of the Interstate System, and if he receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by such route or portion thereof. The mileage of the route or portion thereof approval of which is withdrawn under this paragraph shall be available for designation on the Interstate System in any other State in accordance with paragraph (1) of this subsection. After the Secretary has withdrawn his approval of any such route or portion thereof, whenever responsible local officials of such urbanized area notify the State highway department that, in lieu of a route or portion thereof approval for which is withdrawn under this paragraph, 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 in the Treasury of its proportional share of the cost of such project in an amount equal to the Federal share which would be paid for such a project under the Urban Mass Transportation Act of 1964, except that the total Federal cost of all such projects under this paragraph with respect to such route or portion thereof approval of which is withdrawn under this paragraph, shall not exceed the Federal share of the cost which would have been paid for such route or portion thereof, as such cost is included in the 1972 Interstate System cost estimate set forth in table 5 of House Public Works Committee Print Numbered 92-29, as revised in House Report Numbered 92-1443, increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion thereof which is the basis of such 1972 cost estimate. Funds

apportioned to such State for the Interstate System, which apportionment is based upon an Interstate System cost estimate that includes a route or portion thereof approval of which is withdrawn under this paragraph, shall be reduced by an amount equal to the Federal share of such project as such share becomes a contractual obligation of the United States. No general funds shall be obligated under authority of this paragraph after June 30, 1981. No nonhighway public mass transit project shall be approved under this paragraph unless the Secretary has received assurances satisfactory to him from the State that public mass transportation systems will fully utilize the proposed project. The provision of assistance under this paragraph shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable. Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended. The provisions of section 3(e) (4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

§ 104. Apportionment

* * * * *

(f) (1) On or before January 1, next preceding the commencement of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed one-half per centum of the remaining funds authorized to be appropriated for expenditure upon the Federal-aid systems, for the purpose of carrying out the requirements of section 134 of this title.

(2) These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations designated by the State as being responsible for carrying out the provisions of section 134 of this title. These funds shall be matched in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(4) The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, and metropolitan area transportation needs.

* * * * *

§ 105. Programs

* * * * *

(d) In approving programs for projects on the Federal-aid urban system, the Secretary shall require that such 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.

* * * * *

§ 109. Standards

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system 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.

(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 highway departments. 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. 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) 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.

(d) 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 highway department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safe and efficient utilization of the highways.

(e) 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.

(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, 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) The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970 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 the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended.

(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.

§ 120. Federal share payable

(a) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system shall either (A) not exceed 70 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area, or (B) not exceed 70 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area, except that the Federal share payable on any project in a State shall not exceed 95 per centum of the total cost of any such project. In any case where a State elects to have the Federal share provided in clause (B) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring such State to use solely for highway construction purposes (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in clause (B) and what its share would be if it elected to pay the share provided in clause (A) for all projects subject to such agreement.

* * * * *

(c) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project on the Interstate System provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to 90 per centum of the total cost thereof, plus a percentage of the remaining 10 per centum of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area, except that such Federal share payable on any project in any State shall not exceed 95 per centum of the total cost of such project.

§ 134. Transportation planning in certain urban areas

(a) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section. No highway project may be constructed in any urban area of fifty thousand population or more unless the responsible public officials of such urban area in which the project is located have been consulted and their views considered with respect to the corridor, the location and design of the project.

(b) The Secretary may define those contiguous interstate areas of the Nation in which the movement of persons and goods between principal metropolitan areas, cities, and industrial centers has reached, or is expected to reach, a critical volume in relation to the capacity of existing and planned transportation systems to efficiently accommodate present transportation demands and future growth. After consultation with the Governors and responsible local officials of affected States, the Secretary may by regulation designate, for administrative and planning purposes, as a critical transportation region or a critical transportation corridor each of those areas which he determines most urgently require the accelerated development of transportation systems embracing various modes of transport, in accordance with purposes of this section. The Secretary shall immediately notify such Governors and local officials of such designation. The Secretary may, after consultation with the Governors and responsible local officials of the affected States, provide by regulation for the establishment of planning bodies to assist in the development of coordinated transportation planning, including highway planning, to meet the needs of such regions or corridors, composed of representatives of the affected States and metropolitan areas, and may provide assistance including financial assistance to such bodies. There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed \$500,000 to carry out this subsection.

§ 135. Urban area traffic operations improvement programs

(a) The Congress hereby finds and declares it to be in the national interest that each State should have a continuing program within the designated boundaries of urban areas of the State designed to reduce traffic congestion and to facilitate the flow of traffic in the urban areas.

(b) The Secretary may approve under this section 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.

(c) The Secretary shall report annually on projects approved under this section with any recommendations he may have for further improvement of traffic operations in accordance with this section.

§ 137. Fringe and corridor parking facilities

(a) The Secretary may approve as a project on the Federal-aid urban system the acquisition of land adjacent to the right-of-way outside a central business district, as defined by the Secretary, and the construction of publicly owned parking facilities thereon or within such right-of-way, including the use of the air space above and below the established grade line of the highway pavement, to serve an urban area of fifty thousand population or more. Such parking facility shall be located and designed in conjunction with existing or planned public transportation facilities. In the event fees are charged for the use of any such facility, the rate thereof shall not be in excess of that required for maintenance and operation (including compensation to any person for operating such facility).

(b) The Secretary shall not approve any project under this section until—

(1) he has determined that the State, or the political subdivision thereof, where such 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;

(2) he has entered into an agreement governing the financing, maintenance, and operation of the parking facility with such State, political subdivision, agency, or instrumentality, including necessary requirements to insure that adequate public transportation services will be available to persons using such facility; and

(3) he has approved design standards for constructing such facility developed in cooperation with the State highway department.

(c) The term “parking facilities” for purposes of this section shall include access roads, buildings, structures, equipment, improvements, and interests in lands.

(d) Nothing in this section, or in any rule or regulation issued under this section, or in any agreement required by this section, shall prohibit (1) any State, political subdivision, or agency or instrumentality thereof, from contracting with any person to operate any parking facility constructed under this section, or (2) any such person from so operating such facility.

(e) The Secretary shall not approve any project under this section unless he determines that it is based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

§ 142. Public transportation

(a) (1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail)

on Federal-aid highways for the transportation of passengers (hereafter in this section referred to as "buses"), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential bus lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve bus and other 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.

(2) In addition to the projects under paragraph (1), the Secretary may, beginning with the fiscal year ending June 30, 1975, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 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.

(b) Sums apportioned in accordance with paragraph (5) of subsection (b) of section 104 of this title shall be available to finance the Federal share of projects for exclusive or preferential bus, 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) 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.

(d) 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.

(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) 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 shall be subject to, and governed in accordance with, all provisions of this title applicable to projects on the Federal-aid urban system, 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 section.

(f) No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that public mass transportation systems will fully utilize the proposed project.

(g) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway to accommodate needed rail or nonhighway 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.

(h) The provision of assistance under subsection (a) (2) or subsection (c) of this section shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(i) Funds available for expenditure to carry out the purposes of subsection (a) (2) and subsection (c) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

(j) The provisions of section 3(e) (4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out subsection (a) (2) and subsection (c) of this section.

(k) 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.

§ 147. Priority primary routes

(a) High traffic sections of highways on the Federal-aid primary system which connect to the Interstate System shall be selected by each State highway department, in consultation with appropriate local officials, subject to approval by the Secretary, for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities. For the purpose of this section

such highways shall hereafter in this section be referred to as "priority primary routes".

(b) The Federal share of any project on a priority primary route shall be that provided in section 120(a) of this title. All provisions of this title applicable to the Federal-aid primary system shall be applicable to priority primary routes selected under this section except that one-half of such funds shall be apportioned among the States in accordance with section 104(b)(1) of this title, and one-half shall be apportioned among the States in accordance with section 104(b)(3) of this title. Funds authorized to carry out this section shall be deemed to be apportioned on January 1 next preceding the commencement of the fiscal year for which authorized.

(c) The initial selection of the priority primary routes and the estimated cost of completing such routes shall be reported to Congress on or before July 1, 1974.

(d) There is authorized to be appropriated out of the Highway Trust Fund to carry out this section not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, \$200,000,000 for the fiscal year ending June 30, 1975, and \$300,000,000 for the fiscal year ending June 30, 1976.

§ 150. Allocation of urban system funds

The funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title that are attributable to urbanized areas of 200,000 population or more shall be made available for expenditure in such urbanized areas for projects in programs approved under subsection (d) of section 105 of this title in accordance with a fair and equitable formula developed by the State which formula has been approved by the Secretary. Such formula shall provide for fair and equitable treatment of incorporated municipalities of 200,000 or more population. Whenever such a formula has not been developed and approved for a State, the funds apportioned to any State under paragraph (6) of subsection (b) of section 104 of this title which are attributable to urbanized areas having a population of 200,000 or more shall be allocated among such urbanized areas within such State for projects in programs approved under subsection (d) of section 105 of this title in the ratio that the population within each such urbanized area bears to the population of all such urbanized areas, or parts thereof, within such State. In the expenditure of funds allocated under the preceding sentence, fair and equitable treatment shall be accorded incorporated municipalities of 200,000 or more population.

Chapter 3.—GENERAL PROVISIONS

§ 301. Freedom from tolls

Except as provided in section 129 of this title with respect to certain toll bridges and toll tunnels, all highways constructed under the provisions of this title shall be free from tolls of all kinds.

§ 302. State highway department

(a) Any State desiring to avail itself of the provisions of this title shall have a State highway department which shall have adequate powers, and

be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title. Among other things, the organization shall include a secondary road unit. In meeting the provisions of this subsection, a State may engage to the extent necessary or desirable, the services of private engineering firms.

(b) The State highway department may arrange with a county or group of counties for competent highway engineering personnel suitably organized and equipped to the satisfaction of the State highway department, to supervise construction and maintenance on a county-unit or group-unit basis, for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof.

§ 303. Administration organization

(a) (1) In addition to the Administrator of the Federal Highway Administration authorized by section 3(e) of the Department of Transportation Act, there shall be a Deputy Federal Highway Administrator appointed by the Secretary of Transportation, with the approval of the President. The Deputy Federal Highway Administrator shall perform such duties as the Federal Highway Administrator shall prescribe. There shall also be an Assistant Federal Highway Administrator who shall be the chief engineer of the Administration and shall be appointed, with the approval of the President, by the Secretary of Transportation under the classified civil service and who shall perform such functions, powers, and duties as the Federal Highway Administrator shall prescribe.

(2) The Administrator of the Federal Highway Administration shall be compensated at the annual rate of basic pay of level II of the Executive Schedule in section 5313 of title 5, United States Code. The Deputy Federal Highway Administrator shall be compensated at the annual rate of basic pay of level IV of the Executive Schedule in section 5315 of title 5, United States Code. The Assistant Federal Highway Administrator shall be compensated at the annual rate of basic pay of level V of the Executive Schedule in section 5316 of title 5, United States Code.

(b) The Secretary is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service Commission, to rent buildings outside of the city of Washington, to purchase such supplies, material, equipment, office fixtures and apparatus, to advertise in the city of Washington for work to be performed in areas adjacent thereto, and to incur, and authorize the incurring of, such travel and other expenses as he may deem necessary for carrying out the functions under this title.

(c) The Secretary is authorized to procure temporary services in accordance with the provisions of section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates for individuals not in excess of \$100 per diem.

§ 304. Participation by small business enterprises

It is declared to be in the national interest to encourage and develop the actual and potential capacity of small business and to utilize this important segment of our economy to the fullest practicable extent in construction of the Federal-aid highway systems, including the Interstate System.

In order to carry out that intent and encourage full and free competition, the Secretary should assist, insofar as feasible, small business enterprises in obtaining contracts in connection with the prosecution of the highway program.

§ 307. Research and planning

(a) The Secretary is authorized in his discretion to engage in research on all phases of highway construction, modernization, development, design, maintenance, safety, financing, and traffic conditions, including the effect thereon of State laws and is authorized to test, develop, or assist in the testing and developing of any material, invention, patented article, or process. The Secretary may publish the results of such research. The Secretary may carry out the authority granted hereby, either independently, or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other organization, or person. The Secretary is also authorized, acting independently or in cooperation with other Federal departments, agencies, or instrumentalities, to make grants for research fellowships for any purpose for which research is otherwise authorized by this section. The funds required to carry out the provisions of this subsection shall be taken out of the administrative and research funds authorized by section 104 of this title, funds authorized to carry out section 403 of this title, and such funds as may be deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating organization or person. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts or agreements made under the authority of this subsection.

(b) The Secretary shall include in the highway research program herein authorized studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and of the feasibility of uniformity in State regulations with respect to such standards and he shall report from time to time to the Committees on Public Works of the Senate and of the House of Representatives on the progress and findings with respect to such studies. The highway research program herein authorized shall also include studies to identify and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects.

(c) (1) Not to exceed $1\frac{1}{2}$ per centum of the sums apportioned for each fiscal year beginning with fiscal year 1974 to any State under section 104 of this title shall be available for expenditure upon request of the State highway department, with the approval of the Secretary, with or without State funds, for engineering and economic surveys and investigations; for the planning of future highway programs and local public transportation systems and for planning for the financing thereof; for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof; and for research and development, necessary in connection with the planning, design, construction, and maintenance of highways and highway systems, and the regulation and taxation of their use.

(2) One and one-half per centum of the sums apportioned for each fiscal year beginning with the fiscal year 1964 to any State under section

104 of this title shall be available for expenditure by the State highway department only for the purposes enumerated in paragraph (1) of this subsection.

(3) In addition to the percentage provided in paragraph (2) of this subsection, not to exceed one-half of one per centum of sums apportioned for each fiscal year beginning with the fiscal year 1964 under paragraphs (1), (2), and (3) of section 104(b) of this title shall be available for expenditure upon request of the State highway department for the purposes enumerated in paragraph (1) of this subsection, including demonstration projects in connection with such purposes.

(4) Sums made available under paragraphs (2) and (3) of this subsection shall be matched by the State in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(d) As used in this section the term "safety" includes, but is not limited to, highway safety systems, research, and development relating to vehicle, highway, and driver characteristics, accident investigations, communications, emergency medical care, and transportation of the injured.

§ 308. Cooperation with Federal and State agencies and foreign countries

(a) The Secretary is authorized to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies, and reimbursement for such services, which may include depreciation on engineering and roadbuilding equipment used, shall be credited to the appropriation concerned.

(b) Appropriations for the work of the Federal Highway Administration shall be available for expenses of warehouse maintenance and the procurement, care, and handling of supplies, materials, and equipment for distribution of projects under the supervision of the Federal Highway Administration, or for sale or distribution to other Government agencies, cooperating foreign countries, and State cooperating agencies, and the cost of such supplies and materials or the value of such equipment, including the cost of transportation and handling, may be reimbursed to current applicable appropriations.

EXCERPTS FROM FEDERAL-AID HIGHWAY ACT OF 1973 (PUB. L. 93-87) NOT CODIFIED IN TITLE 23, U.S.C.

Public Mass Transportation Studies

SECTION 138. (a) The Secretary shall, in cooperation with the Governor of each State and appropriate local officials, make an evaluation of that portion of the 1972 National Transportation Report, pertaining to public mass transportation. Such evaluation shall include all urban areas. The evaluation shall include but not be limited to the following:

(1) Refining the public mass transportation needs contained in such report.

(2) Developing a program to accomplish the needs of each urban area for public mass transportation.

(3) Analyzing the existing funding capabilities of Federal, State, and local governments for meeting such needs.

(4) Analyzing other funding capabilities of Federal, State, and local governments for meeting such needs.

(5) Determining the operating and maintenance costs relating to the public mass transportation system.

(6) Determining and comparing fare structures of all public mass transportation systems.

The Secretary shall, not later than July 1, 1974, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

(b) The Secretary shall conduct a study of revenue mechanisms, including a tax on fuels used in the provision of urban mass transportation service, and an additional gasoline tax imposed in urban areas, which could be used now or in the future to finance transportation activities receiving financial assistance from the Highway Trust Fund. Such study shall include an analysis of the magnitude of the various potential sources of user tax revenues, the rates at which such taxes could be levied (including possible differential rates), the mechanisms for collection of such taxes, the incidence of such taxes, and the potential impact on transit usage caused by such taxes. The Secretary shall report to the Congress the findings of his study by no later than the 180th day after the date of enactment of this section.

(c) There is hereby authorized not to exceed \$10,000,000 to carry out this section.

Metro Accessibility to the Handicapped

SECTION 140. The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance 80 per centum of the cost of providing such facilities for the subway and rapid rail transit system authorized in the National Capital Transportation Act of 1969 (83 Stat. 320) as may be necessary to make such subway and system accessible by the handicapped through implementation of Public Laws 90-480 and 91-205. There is authorized to be appropriated, to carry out this section, not to exceed \$65,000,000.

High-Speed Transportation Demonstration

SECTION 146. The Secretary is authorized to undertake a study and demonstration program for high-speed bus service from collection points in the Washington, District of Columbia area to Dulles International Airport, Virginia. Such study and demonstration shall utilize exclusive bus transportation lanes between points of origin and termination of such service, and include, where necessary, the construction of such exclusive bus transportation lanes as well as terminal and parking facilities. Such study and demon-

station shall also include the purchase of high-speed buses. As necessary to implement this section, the Secretary shall undertake research into the development of buses designed to maintain high-speed, safe transportation. Not to exceed \$10,000,000 of the amount authorized to be apportioned under section 104(b) (6) of title 23, United States Code, for the fiscal year ending June 30, 1975, shall be available to the Secretary to carry out this section and such sum shall be set aside for such purpose prior to the apportionment of such amount for such fiscal year.

Rural Highway Public Transportation Demonstration Program

SECTION 147. (a) To encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas and small urban areas, and between such areas and urbanized areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services, there are authorized to be appropriated \$15,000,000 for the fiscal year ending June 30, 1975, and \$60,000,000 for the fiscal year ending June 30, 1976, of which \$50,000,000 shall be out of the Highway Trust Fund, to the Secretary of Transportation to carry out demonstration projects for public mass transportation on highways in rural areas and small urban areas. Projects eligible for Federal funds under this section shall include highway traffic control devices, the construction of passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers, the purchase of passenger equipment other than rolling stock for fixed rail, and the payment from the General Fund for operating expenses incurred as a result of providing such service. To the extent intercity bus service is provided under the program, preference shall be given to private bus operators who lawfully have provided rural highway passenger transportation over the routes or within the general area of the demonstration project.

(b) Prior to the obligation of any funds for a demonstration project under this section, the Secretary shall provide for public notice of any application for funds under this section which notice shall include the name of the applicant and the area to be served. Within sixty days thereafter, a public hearing on the project shall be held within the proposed service area.⁸¹

⁸¹ As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, § 103, January 4, 1975). The text of section 147 as it read prior to amendment is as follows:

Sec. 147. To encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services, there are authorized to be appropriated \$30,000,000 for the two-fiscal-year period ending June 30, 1976, of which \$20,000,000 shall be out of the Highway Trust Fund, to the Secretary of Transportation to carry out demonstration projects for public mass transportation on highways in rural areas. Projects eligible for Federal funds under this section shall include highway traffic control devices, the construction of passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers, and the purchase of passenger equipment other than rolling stock for fixed rail.

Research and Planning

SECTION 151. Subsection (c)(1) of section 307 of title 23, United States Code, is amended to read as follows:

“(c) (1) Not to exceed $1\frac{1}{2}$ per centum of the sums apportioned for each fiscal year beginning with fiscal year 1974 to any State under section 104 of this title shall be available for expenditure upon request of the State highway department, with the approval of the Secretary, with or without State funds, for engineering and economic surveys and investigations; for the planning of future highway programs and local public transportation systems and for planning for the financing thereof; for studies of the economy, safety, and convenience of highway usage and the desirable regulation and equitable taxation thereof; and for research and development, necessary in connection with the planning, design, construction, and maintenance of highways and highway systems, and the regulation and taxation of their use.”

Financial Assistance Agreements

49 U.S.C.
§ 1602a

SECTION 164(a). No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, or (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in charter bus operations outside of the urban area (or areas) within which it provides regularly scheduled mass transportation service, except as provided in an agreement authorized and required by section 3(f) of the Urban Mass Transportation Act of 1964, which section shall apply to Federal financial assistance for the purchase of buses under the provisions of title 23, United States Code, referred to in clauses (1) and (2) of this sentence.⁸²

(b) No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, (2) para-

⁸² Section 164(a) of the Federal-Aid Highway Act of 1973 was amended by section 813(b) of the Housing and Community Development Act of 1974, August 22, 1974 (Pub. L. 93-383, 88 Stat. 633). Prior to its amendment, section 164(a) read as follows:

“SECTION 164(a) No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) the Urban Mass Transportation Act of 1964, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in charter bus operations in competition with private bus operators outside of the area within which such applicant provides regularly scheduled mass transportation service. A violation of such agreement shall bar such applicant from receiving any other Federal financial assistance under those provisions of law referred to in clauses (1), (2), and (3) of this subsection.”

Section 813(c) of the act requires the Secretary of Transportation to amend any agreements entered into pursuant to section 164(a) to conform to the requirements of the amendments made by that section, and it states that “(t)he effective date of such conformed agreements shall be the effective date of the original agreements entered into pursuant to such section 164(a)”.

graph (4) of subsection (e) of section 103, title 23, United States Code, or (3) the Urban Mass Transportation Act of 1964, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators. This subsection shall not apply to an applicant with respect to operation of a school bus program if the applicant operates a school system in the area to be served and operates a separate and exclusive school bus program for this school system. This subsection shall not apply unless private school bus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards, and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting school children and personnel along with facilities to be used therefor) was so engaged in school bus operations any time during the twelve-month period immediately prior to the date of the enactment of this subsection. A violation of an agreement under this subsection shall bar such applicant from receiving any other Federal financial assistance under those provisions of law referred to in clauses (1), (2), and (3) of this subsection.

Bus and Other Project Standards

SECTION 165. (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 subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid Highway Act of 1973 meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act, and under section 6 of the Noise Control Act of 1972, and shall authorize the acquisition, whenever practicable, of buses which meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act, and for low-noise-emission products set forth in section 15 of the Noise Control Act of 1972.

(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 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 sub-

section requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped persons.⁸³

⁸³ As amended by Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, § 105, January 4, 1975). Introductory language to this amendment reads as follows:

SEC. 105. TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

(a) 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) effectively implement this policy.

The text of subsection (b) of section 165 as it read prior to amendment is as follows:

(h) The Secretary of Transportation shall assure 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 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 and designed so that mass transportation facilities and services can effectively be utilized by elderly and handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability are unable without special facilities or special planning or design to utilize such facilities and services as effectively as persons not so affected.

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PART III—OTHER MATERIALS RELEVANT TO UMTA OR MASS TRANSPORTATION IN GENERAL

TRANSFER OF FUNCTIONS FROM HUD TO DOT

Reorganization Plan No. 2 of 1968

(33 Federal Register 6965, 82 Stat. 1369) ⁸⁴

Urban Mass Transportation

SECTION 1. Transfer of Functions.—

(a) There are hereby transferred to the Secretary of Transportation:

(1) The functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964, except that there is reserved to the Secretary of Housing and Urban Development (i) the authority to make grants for or undertake such projects or activities under sections 6(a), 9, and 11 of that Act as primarily concern the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, and (ii) so much of the functions under sections 3, 4, and 5 of the Act as will enable the Secretary of Housing and Urban Development (A) to advise and assist the Secretary of Transportation in making findings and determinations under clause (1) of section 3(e), the first sentence of section 4(a), and clause (1) of section 5 of the Act, and (B) to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 4(a) of the Act.⁸⁵

⁸⁴ Reorganization Plan No. 2 of 1968 was prepared by the President and transmitted to the Senate and House of Representatives February 26, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

⁸⁵ In addition to the functions reserved to the Secretary of Housing and Urban Development by the provisions of Reorganization Plan No. 2 of 1968, he and the Secretary of Transportation are required to perform the following joint functions set forth in section 4(g) of Public Law 89-670 (49 U.S.C. § 1653(g)):

“(g) The Secretary and the Secretary of Housing and Urban Development shall consult and exchange information regarding their respective transportation policies and activities, carry out joint planning, research and other activities; and coordinate assistance for local transportation projects. They shall jointly study how Federal policies and programs can assure that urban transportation systems most effectively serve both national transportation needs and the comprehensively planned development of urban areas. They shall, within one year after the effective date of this Act, and annually thereafter, report to the President, for submission to the Congress, on their studies and other activities under this subsection, including any legislative recommendations which they determine to be desirable. The Secretary and the Secretary of Housing and Urban Development shall study and report within one year after the effective date of this Act to the President and the Congress on the logical and efficient organization and location of urban mass transportation functions in the Executive Branch.”

(2) Other functions of the Secretary of Housing and Urban Development, and functions of the Department of Housing and Urban Development or of any agency or officer thereof, all to the extent that they are incidental to or necessary for the performance of the functions transferred by section 1(a)(1) of this reorganization plan, including, to such extent, the functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under (i) title II of the Housing Amendments of 1955 (69 Stat. 635),⁸⁶ insofar as functions thereunder involve assistance specifically authorized for mass transportation facilities or equipment, and (ii) title IV of the Housing and Urban Development Act of 1965 (P.L. 89-117).⁸⁷

(3) The functions of the Department of Housing and Urban Development under section 3(b) of the Act of November 6, 1966 (P.L. 89-774).⁸⁸

(b) Any reference in this reorganization plan to any provision of law shall be deemed to include, as may be appropriate, reference thereto as amended.

SECTION 2. Delegation.—The Secretary of Transportation may delegate any of the functions transferred to him by this reorganization plan to such officers and employees of the Department of Transportation as he designates, and may authorize successive redelegations of such functions.

SECTION 3. Urban Mass Transportation Administration.—

(a) There is hereby established within the Department of Transportation an Urban Mass Transportation Administration.

(b) The Urban Mass Transportation Administration shall be headed by an Urban Mass Transportation Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Administrator shall perform such duties as the Secretary of Transportation shall prescribe and shall report directly to the Secretary.

SECTION 4. Interim Administrator.—The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the executive branch of the government to act as Urban Mass Transportation Administrator until the office of Administrator is for the first time filled pursuant to the provision of section 3(b) of this reorganization plan or by recess appointment, as the case may be. The person so designated shall be entitled to the compensation attached to the position he regularly holds.

SECTION 5. Incidental Transfers.—

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, avail-

⁸⁶ Title II of the Housing Amendments of 1955 (69 Stat. 635, 642), as amended primarily by title V of the Housing Act of 1961 (Pub. L. 87-70, 75 Stat. 149, 173, June 30, 1961), authorized loans to public bodies to assist in financing urban mass transportation capital improvement projects. However, pursuant to the terms of section 202(d) of the 1955 Act the authority to make new commitments expired on July 1, 1963, so the only powers under this statute actually transferred to the Secretary by Reorganization Plan No. 2 of 1968 were those necessary to administer loans which had been made previously.

⁸⁷ Title IV of Public Law 89-117 dealt with the authority to provide financial assistance for relocation payments to persons displaced by certain Federally assisted projects. Its pertinent provisions have been repeated (*see* footnote 34).

⁸⁸ Section 3(b) of Public Law 89-774 (80 Stat. 1352, November 6, 1966) authorized the Secretary of Housing and Urban Development to receive appropriations for the purpose of making the Federal payments authorized to the Washington Metropolitan Area Transit Authority.

able, or to be made available in connection with the functions transferred to the Secretary of Transportation by this reorganization plan as the Director of the Office of Management and Budget ⁸⁹ shall determine shall be transferred from the Department of Housing and Urban Development to the Department of Transportation as at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SECTION 6. Effective Date.—The provisions of this reorganization plan shall take effect at the close of June 30, 1968, or at the time determined under the provisions of section 906(a) of title 5 of the United States Code, whichever is later.

⁸⁹ See footnote 97.

OFFICE OF MANAGEMENT AND BUDGET

[Circular No. A-95 Revised]

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects

JANUARY 2, 1976.

1. *Purpose.* This Circular furnishes guidance to Federal agencies for cooperation with State and local governments in the evaluation, review, and coordination of Federal and federally assisted programs and projects. The Circular promulgates regulations (Attachment A) which provide, in part, for:

a. Encouraging the establishment of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 (Attachment B).

b. Coordination and direct Federal development programs and projects with State, areawide, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

c. Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Attachment (C)) and regulations of the Council on Environmental Quality.

d. Furthering the objectives of Title VI of the Civil Rights Act of 1964. This Circular supersedes Circular No. A-95 (Revised), dated November 13, 1973 (Part II, FEDERAL REGISTER, Vol. 38, No. 228, pp. 32874-32881, November 28, 1973). It will become effective February 27, 1976.

2. *Basis.* This Circular has been prepared pursuant to:

a. Section 401(a) of the Intergovernmental Cooperation Act of 1968 which provides, in part, that:

"The President shall * * * establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development * * *"

and the President's Memorandum of November 8, 1968, to the Director of the Bureau of the Budget ("FEDERAL REGISTER, Vol. 33, No. 221, November 13, 1968) which provides:

"By virtue of the authority vested in me by section 301 of title 3 of the United States Code and section 401(a) of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), I hereby delegate

to you the authority vested in the President to establish the rules and regulations provided for in that section governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.

"In addition, I expect the Bureau of the Budget to generally coordinate the actions of the departments and agencies in exercising the new authorizations provided by the Intergovernmental Cooperation Act, with the objective of consistent and uniform action by the Federal Government."

b. Title IV, section 403, of the Intergovernmental Cooperation Act of 1968 which provides that:

"The Bureau of the Budget or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this Title."

c. Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966 which provides that:

"The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this section," and

d. Reorganization Plan No. 2 of 1970 and Executive Order No. 11541 of July 1, 1970, which vest all functions of the Bureau of the Budget or the Director of the Bureau of the Budget in the Director of the Office of Management and Budget.

3. *Coverage.* The regulations promulgated by this Circular (Attachment A) will have applicability:

a. Under Part I, to all projects and activities (or significant substantive changes thereto) for which Federal assistance is being sought under the programs listed in Attachment D or Appendix I of the *Catalog of Federal Domestic Assistance* whichever bears the later date. Limitations and provisions for exceptions are noted therein or under paragraph 8 of Part I.

b. Under Part II, to all direct Federal development activities, including the acquisition, use, and disposal of Federal real property; in addition, agencies responsible for granting licenses and permits for developments or activities significantly affecting area and community development or the physical environment are strongly urged to consult with clearinghouses on applications for such licenses or permits.

c. Under Part III, to all Federal programs as listed in Appendix II of the *Catalog of Federal Domestic Assistance*, requiring, by statute or administrative regulation, a State plan as a condition of assistance.

d. Under Part IV, to all Federal programs providing assistance to State, areawide, or local agencies or organizations for multijurisdictional or areawide planning.

4. "*A-95: What It Is—How It Works.*" A fuller discussion of the background, purposes, and objectives of the Circular and of the requirements promulgated thereunder may be found in the brochure, "*A-95: What It Is—How It Works,*" obtainable from the Office of Management and Budget or from Federal Regional Councils.

5. "A-95 Administrative Notes." From time to time OMB will issue "A-95 Administrative Notes" providing interim determinations or interpretations on matters of national scope relating to administration of the Circular.

6. *Federal Regional Councils.* Federal Regional Councils are responsible for coordinating the implementation of the requirements of this Circular at the Federal regional level. The Office of Management and Budget is responsible for policy oversight of the Circular and liaison with departmental and agency liaison officers on matters of national scale related to the requirements of the Circular.

7. *Federal agency implementing procedures and regulations.* Agencies will develop interim procedures and regulations implementing the requirements of this Circular revision which will become effective on February 27, 1976. The interim procedures and regulations will be published in the FEDERAL REGISTER no later than February 27, 1976. Agencies will promulgate final implementing procedures and regulations no later than April 29, 1976. OMB will assist and cooperate with agencies in developing such procedures and regulations.

8. *Inquiries.* Inquiries concerning this Circular may be addressed to the Regional A-95 Coordinator for the appropriate Federal Regional Council or to the Office of Management and Budget, Washington, D.C. 20503, telephone (202)-395-3031.

JAMES T. LYNN, *Director.*

ATTACHMENT A—CIRCULAR NO. A-95 REVISED

Regulations Under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and Section 102(2)(C) of the National Environmental Policy Act of 1969

PART I: PROJECT NOTIFICATION AND REVIEW SYSTEM

1. *Purpose.* The purpose of this Part is to:

a. Further the policies and directives of Title IV of the Intergovernmental Cooperation Act of 1968 by encouraging the establishment of a network of State and areawide planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

b. Implement the requirements or section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 for metropolitan areas within that network.

c. Implement, in part, requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, which require that State, areawide, and local agencies which are authorized to develop and enforce environmental standards be given an opportunity to comment on the environmental impact of Federal or federally assisted projects.

d. Provide public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to participate in the review process established under this Part.

e. Encourage, by means of early contact between applicants of Federal assistance and State and local governments and agencies, an expeditious process of intergovernmental coordination and review of proposed projects.

2. Notification of intent.

a. Any agency of State or local government or any organization or individual undertaking to apply for assistance to a project or major substantive modification thereto under a Federal program covered by this Part will be required to notify both the State and areawide planning and development clearinghouse in the jurisdiction of which the project is to be located of its intent to apply for assistance at such time as it determines it will develop an application.

In the case of applications for projects involving land or water use and development or construction in the National Capital Region (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification will be sent to the National Capital Planning Commission (NCPC) in addition to the areawide clearinghouse and the appropriate State clearinghouse. NCPC is the official planning agency for the Federal Government in the National Capital Region.

In the case of an application in any State for an activity that is State-wide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses in the review in such cases will be at the initiative of the State clearinghouse.

Notifications will include a summary description of the project for which assistance will be sought. The summary description will contain the following information, as appropriate and to the extent available:

- (1) Identity of the applicant agency, organization, or individual.
- (2) The geographic location of the project to be assisted. A map should be provided, if appropriate.
- (3) A brief description of the proposed project to be assisted. A map should be scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed projects.
- (4) A statement as to whether or not the applicant has been advised by the funding agency from which assistance is being sought that he will be required to submit environmental impact information in connection with the proposed project.
- (5) The Federal program title and number and agency under which assistance will be sought as indicated in Attachment D or the latest *Catalog of Federal Domestic Assistance*. (The *Catalog* is issued annually in the spring and is updated during the year.) In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation.
- (6) The estimated date the applicant expects to formally file an application.

Many clearinghouses have developed notification forms and instructions.

Applicants are urged to contact their clearinghouses for such information in order to expedite clearinghouse review.

b. In order to assure maximum time for effective coordination and so as not to delay the timely submission of the completed application to the funding agency, notifications containing the preliminary information indicated above should be sent at the earliest feasible time.

c. Applications from federally recognized Indian tribes are not subject to the requirements of this Part. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. Federal agencies will notify the appropriate State and areawide clearinghouses of any applications from federally recognized Indian tribes upon their receipt. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, Federal agencies will, upon request of such Tribal Government transmitted through the Office of Management and Budget, require that applications for assistance under programs covered by this Part from such Tribal departments, divisions, enterprises, and entities be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse.

3. *Clearinghouse functions.* Clearinghouse functions include:

a. Evaluating the significance of proposed Federal or federally assisted projects to State, areawide, or local plans and programs.

b. Receiving and disseminating project notifications to appropriate State and multistate agencies in the case of the State clearinghouse and to appropriate local governments and agencies and regional organizations in the case of areawide clearinghouses; and providing liaison, as may be necessary, between such agencies or bodies and the applicant. In the case of units of general local government, notifications of all projects affecting his jurisdiction will, if requested, be sent to the chief executive of such unit by the areawide clearinghouse or to such central agency as he may designate for review and reference to appropriate agencies of such unit.

c. In the case of projects under programs covered by this Part located in the coastal zone, as defined in the Coastal Zone Management Act of 1972, assuring that the State agency, if other than the State clearinghouse, responsible for administration of the approved program for the management of the coastal zone, is given opportunity to review the project for its relationship to such program and its consistency therewith.

d. Assuring, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, that appropriate State, multistate, areawide, or local agencies which are authorized to develop and enforce environmental standards are informed of and are given opportunity to review and comment on the environment significance of proposed projects for which Federal assistance is sought.

e. Providing public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

f. Providing, pursuant to Part II of these regulations, liaison between Federal agencies contemplating direct Federal development projects and

the State or areawide agencies or local governments having plans or programs that might be affected by the proposed project.

g. In the case of a project for which Federal assistance is sought by a special purpose unit of local government, clearinghouses will assure that any unit of general local government having jurisdiction over the area in which the project is to be located has opportunity to confer, consult, and comment upon the project and the application.

h. Where areawide clearinghouse jurisdictions are contiguous, coordinative arrangements should be established between the clearinghouses in such areas to assure that projects in one area which may have an impact on the development of a contiguous area are jointly studied. Any comments and recommendations made by or through a clearinghouse in one area on a project in a contiguous area will accompany the application for assistance to that project.

4. *Consultation and review.* a. State and areawide clearinghouses may have a period of 30 days after receipt of a project notification in which to inform State and multistate agencies and local or regional governments or agencies (including agencies referred to in subparagraphs c, d, and e, above) that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon. The review may be completed in this period and comments may be submitted to the applicant.

b. If the review is not completed during this period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed.

c. In cases where no project notification has been submitted and the clearinghouse receives only a completed application, it may have 60 days to review the completed application. If a completed application is submitted during the first 30 days after a notification has been submitted, the clearinghouse may have 30 days plus the number of days remaining in the initial 30 day notification period to complete its review. In all other cases, the clearinghouse may have 30 days to review a completed application. Where clearinghouses have not completed their reviews during the 30 day notification period, they are strongly urged to give the applicant formal notice to that effect. Where reviews have been completed prior to completion of an application, an information copy will be supplied to the clearinghouse, upon request, when the application is submitted to the funding agency.

d. Written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties will be included as attachments to the comments of areawide clearinghouses, when they are at variance with the clearinghouse comments; and others from whom comments were solicited and received should be listed.

e. Under some programs, applicants—primarily nongovernmental—are required to submit confidential information to the funding agency. Such information may relate to the applicant's financial status or structure (e.g., overall investment program or holdings); to personnel (e.g., personal histories of project officers) or may involve proprietary information (e.g., industrial processes, research ideas). Such confidential information need not be included with applications submitted to clearinghouses for review.

f. Applicants will include with the completed application as submitted to the Federal agency (or to the State agency in the case of projects for which the State, under certain programs, has final project approval) :

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) Where no comments have been received from a clearinghouse, a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

g. Applications for renewal or continuation grants or applications not submitted to or acted on by the funding agency within one year after completion of clearinghouse review will be subject to re-review upon request of the clearinghouse.

5. *Subject matter of comments and recommendations.* Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such project with State, areawide, and local comprehensive plans. They are also intended to assist the Federal agency (or State agency, in the case of projects for which the State under certain Federal grants has final project approval) administering such a program in determining whether the project is in accord with applicable Federal law, particularly those requiring consistency with State, areawide, or local plans. Comments or recommendations may include, but need not be limited to, information about:

a. The extent to which the project is consistent with or contributes to the fulfillment of comprehensive planning for the State, area, or locality.

b. The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

c. The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in section 401 of the Intergovernmental Cooperation Act of 1968, including:

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

d. As provided under section 102(2)(C) of the National Environmental Policy Act of 1969, the extent to which the project significantly affects the environment including consideration of:

- (1) The environmental impact of the proposed project;
- (2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;
- (3) Alternatives to the proposed project;
- (4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and
- (5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

e. Effects on energy resource supply and demand.

f. The extent to which people or businesses will be displaced and the availability of relocation resources.

g. As provided under section 307(d) of the Coastal Zone Management Act of 1972, in the case of a project located in the coastal zone, the relationship of the project to the approved State program for the management of the coastal zone and its consistency therewith.

h. The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

i. In the case of a project for which assistance is being sought by a special purpose unit of local government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied, or plans to apply, for assistance for the same or a similar type project. This information is necessary to enable the Federal (or State) agency to make the judgments required under section 402 of the Intergovernmental Cooperation Act of 1968.

6. *Federal agency procedures.* Federal agencies having programs covered under this Part will develop appropriate procedures for:

a. Informing potential applicants for assistance under such programs of the requirements of this Part (1) in program information materials, (2) in response to inquiries respecting application procedures, (3) in pre-application conferences, or (4) by other means which will assure earliest contact between applicant and clearinghouses.

b. Assuring that all applications for assistance under programs covered by this part have been submitted to appropriate clearinghouses for review prior to their submission to the funding agency. Applications that do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instructions to fulfill the requirements of this Part. Agencies will insure that all applications contain a State Application Identifier (SAI) number. (This is mandatory for use in notifying clearinghouses of action taken on the application.)

c. Notifying such clearinghouses within seven working days of any major action taken on such applications that have been reviewed by said clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals or withdrawals. The standard multipurpose form,

SF 424, promulgated by Federal Management Circular 74-7, will be used for this purpose unless a waiver has been granted by OMB. (See Attachment E.)

d. Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse, along with the action notice, an explanation therefor.

e. Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced projects prior to acting, if it plans to approve the application.

f. Assuring, in the case of an application submitted by a special purpose unit of local government, where accompanying comments indicate that the unit of general local government having jurisdiction over the area in which the project is to be located has submitted or plans to submit an application for assistance for the same or a similar type project, that appropriate considerations and preferences as specified in section 402 of the Intergovernmental Cooperation Act of 1968, are accorded the unit of general local government. Where such preference cannot be so accorded, the agency shall supply, in writing, to the unit of general local government and the Office of Management and Budget its reasons therefor.

7. *Housing programs.* For housing programs of the Department of Housing and Urban Development, the Veterans Administration, and the Farmers Home Administration of the Department of Agriculture the following procedures will be followed, except as provided in subparagraph d below:

a. The appropriate HUD, VA, or USDA/FHA office will transmit to the appropriate State and areawide clearinghouses a copy of the initial application for project approval.

b. Clearinghouses will have 30 days from receipt to review the applications and to forward to the HUD, VA, or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with State and areawide development plans, the extent to which the proposed project will provide housing opportunities for all segments of the community, and identification of major environmental concerns including impact on energy resource supply and demand. Processing of applications in the HUD, VA, or USDA/FHA office will proceed concurrently with the clearinghouse review.

c. This procedure will include only applications involving new construction or substantial rehabilitation and will apply to applications for loans, loan guarantees, mortgage insurance, or other housing assistance:

(1) In Urbanized Areas, as defined by the U.S. Bureau of the Census (see Appendix A, 1970 Census of Population, Characteristics of the Population or Characteristics of Housing), to:

- (a) Subdivisions having 25 or more lots.
- (b) Multifamily projects having 50 or more dwelling units.
- (c) Mobile home courts with 50 or more spaces.
- (d) College housing provided under the debt service or direct loan programs for 200 or more students.

(2) In all other areas, to:

(a) Subdivisions having 10 or more lots.

(b) Multifamily projects having 25 or more dwelling units.

(c) Mobile home courts with 25 or more spaces.

(d) College housing provided under the debt service or direct loan programs for 100 or more students.

d. As an alternative to the above procedure, the developer may submit his application directly to the appropriate clearinghouses prior to submitting it to the Federal agency. In such cases, the application, when submitted to the Federal agency, will be accompanied by the comments of the clearinghouses.

e. Exemption: Applications for additional units in a subdivision substantially completed (i.e., with streets, water and sewer facilities, culverts, etc.) are exempted from this requirement when:

(1) The subdivision was approved and/or recorded by the appropriate unit of local government within three years of the application submittal; and

(2) In cases of subdivisions approved more than three years prior, the clearinghouses waive the requirement.

This exemption does not apply to applications for housing in an undeveloped subdivision or in proposed extensions of existing subdivisions.

8. *Coverage, exceptions, and variations.* a. Generally, this Part of this Circular and the laws on which it is based are concerned with programs providing financial assistance to projects and activities which have an impact on State, areawide, and local development, including development of natural, economic, and human resources. This Part is concerned with achieving the most effective and efficient utilization of Federal assistance programs through coordination among and between Federal, multistate, State, areawide, and local plans and programs and the elimination of conflict, overlap, and duplication of projects and activities under such programs. Coverage under this Part includes, or will be extended from time to time as deemed necessary and practicable to include programs bearing upon these concerns and objectives.

b. Programs not considered appropriate to this Part are programs of the following types:

(1) Direct financial assistance to individuals or families for housing, welfare, health care services, education, training, economic improvement, and other direct assistance for individual and family enhancement.

(2) Incentive payments or insurance for private sector activities not involving real property development or land use and development.

(3) Agricultural crop supports or payments.

(4) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(5) Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or

pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(6) Assistance to educational, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(7) Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

(8) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

c. OMB will consider Federal agency requests for exemption of certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the above characteristics of programs inappropriate for coverage under this Part ;

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

d. OMB will consider Federal agency requests for procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of start up requirements or other unusual circumstances beyond the control of the funding agency. (Note: Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available.)

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

e. All requests from Federal agencies for exemptions or procedural variations should be addressed to the Associate Director for Management and Operations, Office of Management and Budget.

f. Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

g. Applicants should be made aware that in various States, State law requires review of applications for Federal assistance under various programs not covered by this Part. Implementation of such laws is enforced through State rules and regulations, and applicants are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

9. *Joint Funding.* Applications for assistance to activities under the Joint Funding Simplification Act (P.L. 93-510) or any other joint funding authority, which involve activities funded under one or more of the programs covered under this Part, will be subject to the requirements of this Part.

10. *Agency procedures and regulations.* a. Proposed agency procedures and regulations for implementing the requirements of this Part will be published in the FEDERAL REGISTER as specified in paragraph 7 of this Circular. Programs to which the procedures and regulations will apply will be cited by

their numbers in the *Catalog of Federal Domestic Assistance*. Where such numbers have not yet been assigned, programs will be referenced by Public Law and section or by U.S. Code citation. Subsequent amendments to such procedures and regulations will also be published pursuant to paragraph 7 of the Circular.

b. As a part of such proposed procedures and regulations published in the FEDERAL REGISTER, agencies may identify specific types of projects which they believe should be exempt from coverage under programs for which proposed procedures and regulations are being published. Such publication will constitute a formal request for exemption to the Office of Management and Budget, to which it will respond in its review of the proposed procedures and regulations.

c. OMB will assist and cooperate with agencies in developing such procedures and regulations.

d. A copy of agency internal procedures for implementation of this Part, if not contained in the above procedures and regulations, will be sent to the Associate Director of the Office of Management and Budget for Management and Operations.

11. *Reports and directories.* a. The Director of the Office of Management and Budget may require reports, from time to time, on the implementation of this Part.

b. The Office of Management and Budget will maintain and distribute to appropriate Federal agencies a directory of State and areawide clearinghouses.

c. The Office of Management and Budget will notify Federal Regional Councils, clearinghouses, and Federal agencies of any excepted categories of projects under covered programs.

PART II: DIRECT FEDERAL DEVELOPMENT

1. *Purpose.* The purpose of this Part is to:

a. Provide State and local government with information on projected Federal development so as to facilitate coordination with State, areawide, and local plans and programs.

b. Provide Federal agencies with information on the relationship of proposed direct Federal development projects and activities to State, areawide, and local plans and programs; and to assure maximum feasible consistency of Federal developments with State, areawide, and local plans and programs.

c. Provide Federal agencies with information on the possible impact on the environment of proposed Federal development.

2. *Coordination of direct Federal development projects with State, areawide, and local development.* a. Federal agencies having responsibility for the planning and construction of Federal buildings and installations or other Federal public works or development or for the acquisition, use, and disposal of Federal land and real property will establish procedures for:

(1) Consulting with Governors, State and areawide clearinghouses, and local elected officials at the earliest practicable stage in project or development planning on the relationship of any plan or project to the development plans and programs of the State, area, or locality in which the project

is to be located. In the case of projects in the National Capital Region, such consultation should be undertaken in cooperation with the National Capital Planning Commission.

(2) Assuring that any such Federal plan or project is consistent or compatible with State, areawide, and local development plans and programs identified in the course of such consultations. Exceptions will be made only where there is clear justification. Explanation of any necessary inconsistency or incompatibility will be provided, in writing, to the appropriate clearinghouses.

(3) Providing State, areawide, and local agencies which are authorized to develop and enforce environmental standards with adequate opportunity to review such Federal plans and projects pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969. Any comments of such agencies will accompany the environmental impact statement submitted by the Federal agency.

(4) Providing, in the case of projects located in the coastal zone, the State agency responsible for administration of the approved program for the management of the coastal zone with opportunity to review the relationship of the proposed project to such program and its consistency therewith.

(5) Providing, through the appropriate clearinghouses, Health Systems Agencies and State Health Planning and Development Agencies designated pursuant to the National Health Planning and Resources Development Act of 1974 with adequate opportunity to review Federal projects for construction and/or equipment involving capital expenditures exceeding \$200,000 for modernization, conversion, and expansion of Federal inpatient care facilities, which alter the bed capacity or modify the primary function of the facility, as well as plans for provision of major new medical care services. (Excluded are projects to renovate or install mechanical systems, air conditioning systems, or other similar internal system modifications.) The agencies are expected to evaluate proposed Federal projects for consistency with areawide and local health delivery plans and health supply-demand situations, as well as considering clearinghouse comments on such specific points as those listed in paragraph 5 of Part I. The comments of such agencies and any clearinghouse comments will accompany the plan and budget requests submitted by the Federal agency to the Office of Management and Budget or a certification that the agencies and clearinghouses had been provided a reasonable time to comment and had failed to do so.

3. *Use of clearinghouses.* The State and areawide planning and development clearinghouses established pursuant to Part I will be utilized to the greatest extent practicable to effectuate the requirements of this Part. Agencies are urged to establish early contact with clearinghouses to work out arrangements for carrying out the consultation and review required under this Part, including identification of types of projects considered appropriate for consultation and review. Clearinghouses may utilize criteria set forth in paragraph 5 of Part I in evaluating direct Federal development projects.

4. *Federal licenses and permits.* Agencies responsible for granting Federal licenses and permits for development projects and activities which would have

a significant impact on State, interstate, areawide, or local development plans or programs or on the environment are strongly urged to consult with State and areawide clearinghouses and to seek their evaluations of such impacts prior to granting such licenses or permits.

5. *Agency procedures and regulations.* a. To the greatest extent possible, agencies engaged in direct Federal development activities will follow the general procedures outlined under Part I of Attachment A in affording State and areawide clearinghouses opportunities to review and comment on plans and developments.

b. Where legislative or executive constraints or related circumstances do not permit following such procedures, agency procedures and regulations will set forth for each program, at a minimum:

(1) The point in project planning at which clearinghouses will be contacted;

(2) The minimum time clearinghouses will be afforded to review the proposed project;

(3) The minimum information to be provided to the clearinghouses; and

(4) Procedures for notifying clearinghouses on actions taken on such project (implementation, timing, postponement, abandonment) and explaining actions taken contrary to clearinghouse recommendations.

c. The Office of Management and Budget will consider other procedures such as memoranda of agreement between Federal installations and clearinghouses for coordinating Federal and civilian planning that are designed to achieve the objectives of this Part.

d. All proposed agency procedures and regulations to implement this Part will be published in the Federal Register pursuant to paragraph 7 of the Circular. OMB will assist and cooperate with agencies in developing such procedures and regulations.

PART III: STATE PLANS

1. *Purpose.* The purpose of this Part is to provide Federal agencies with information about the relationship to State or areawide comprehensive planning of State plans which are required or form the basis for funding under various Federal programs.

2. *State plans.* To the extent not presently required by statute or administrative regulation, Federal agencies administering programs requiring by statute or regulation a State plan as a condition of assistance under such programs will require that the Governor, or his delegated agency, be given the opportunity to comment on the relationship of such State plan to comprehensive and other State plans and programs and to those of affected areawide or local jurisdictions. The Governor is urged to involve areawide clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

a. The Governor will be afforded a period of 45 days in which to make such comments, and any such comments will be transmitted with the plan.

b. A "State plan" under this Part is defined to include any required supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such re-

ports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform review under this Part.

c. Programs requiring State plans are listed in Appendix II of the *Catalog of Federal Domestic Assistance*.

PART IV: COORDINATION OF PLANNING IN MULTIJURISDICTIONAL AREAS

1. *Policies and objectives.* The purposes of this Part are:

a. To encourage and facilitate State and local initiative and responsibility in developing organizational and procedural arrangements for coordinating comprehensive and functional planning activities.

b. To eliminate overlap, duplication, and competition in areawide planning activities assisted or required under Federal programs and to encourage the most effective use of State and local resources available for planning.

c. To minimize inconsistency among Federal administrative and approval requirements placed on areawide planning activities.

d. To encourage the States to exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

e. To encourage Federal agencies administering programs assisting or requiring areawide planning to utilize agencies that have been designated to perform areawide comprehensive planning in planning and development districts or regions established pursuant to subparagraph d above (generally, areawide clearinghouses designated pursuant to Part I of Attachment A of this Circular) to carry out or coordinate planning under such programs. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate Federally assisted or required areawide planning.

2. *Common or consistent planning and development districts or regions.*

a. Prior to the designation or redesignation (or approval thereof) of any planning and development district or region under any Federal program, Federal agency procedures will provide a period of 30 days for the Governor(s) of the State(s) in which the district or region will be located to review the boundaries thereof and comment upon its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under Federal programs will conform to them unless there is clear justification for not doing so.

b. Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council in such areas will also be consulted prior to designation of the area to assure consistency with districts established under inter-local agreement and under related Federal programs.

c. The Office of Management and Budget will be notified through the appropriate Federal Regional Council by Federal agencies of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under subparagraph a above.

3. *Common and consistent planning bases and coordination of related activities in multijurisdictional areas.* Each agency will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with related planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of this Circular in the multijurisdictional area.

Such procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency referred to in paragraph 1e of this Part, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

a. Identification of relationships between the planning proposed by the applicant and that of the areawide agency and of similar or related activities that will require coordination;

b. The organizational and procedural arrangements for coordinating such activities, such as: overlapping board membership procedures for joint reviews of projected activities and policies, information exchange, etc.;

c. Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services);

d. Agreed upon base data, statistics, and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

Where an applicant has been unable to effectuate such an agreement, he will submit a statement indicating the efforts he has made to secure agreement and the issues that have prevented it. In such case, the funding agency, in consultation with the Federal Regional Council and the State clearinghouse designated under Part I, will undertake, within a 30 days period after receipt of the application, resolution of the issues before approving the application, if it is otherwise in good order.

4. *Joint funding.* Where it will enhance the quality, comprehensive scope, and coordination of planning in multijurisdictional areas, Federal agencies will, to the extent practicable, provide for joint funding of planning activities being carried on therein.

5. *Coordination of agency procedures and regulations.* With respect to the steps called for in paragraphs 2 and 3 of this Part, departments and agencies will develop for relevant programs appropriate draft procedures and regulations which will be published in the FEDERAL REGISTER pursuant to paragraph 7 of this Circular. Copies of such drafts will be furnished to the Director of the Office of Management and Budget and to the heads of departments and agencies administering related programs. The Office, in consultation with

the agencies, will review the draft procedures and regulations to assure the maximum obtainable consistency among them.

PART V: DEFINITIONS

Term used in this Circular will have following meanings:

1. *Federal agency*—any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

2. *State*—any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

3. *Unit of general local government*—any city, county, town, parish, village, or other general purpose political subdivision of a State.

4. *Special purpose unit of local government*—any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State, but shall not include a school district.

5. *Federal assistance, Federal financial assistance, Federal assistance program, or federally assisted programs*—programs that provide assistance through grant or contractual arrangements. They include technical assistance programs, or programs providing assistance in the form of loans, loan guarantees, or insurance. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

6. *Funding agency*. The Federal agency or, in the case of certain formula grant programs, the State agency which is responsible for final approval of applications for assistance.

7. *Comprehensive planning*, to the extent directly related to area needs or needs of a unit of general local government, including the following:

a. Preparation, as a guide for governmental policies and action, of general plans with respect to:

(1) Pattern and intensity of land use,

(2) Provision of public facilities (including transportation facilities) and other government services.

(3) Effective development and utilization of human and natural resources.

b. Preparation of long range physical and fiscal plans for such action.

c. Programming of capital improvements and other major expenditures, based on a determination of related urgency, together with definitive financing plans for such expenditures in the earlier years of the program.

d. Coordination of all related plans and activities of the State and local governments and agencies concerned.

e. Preparation of regulatory and administrative measures in support of the foregoing.

8. *Metropolitan area*—a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may

determine to be appropriate for the purposes of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and these Regulations.

9. *Areawide*—Comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in nonmetropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a substate district designated pursuant to paragraph 1d, Part IV, Attachment A of this Circular.

10. *Planning and development clearinghouse or clearinghouse* includes:

a. “*State clearinghouse*”—an agency of the State Government designated by the Governor or by State law to carry out the requirements of Part I of Attachment A of this Circular.

b. “*Areawide clearinghouse*”—(1) In nonmetropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of this Circular; or

(2) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and this Circular.

11. *Multijurisdictional area*—any geographical area comprising, encompassing, or extending into more than one unit of general local government.

12. *Planning and development district or region*—a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

13. *Direct Federal development*—planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

ATTACHMENT B—CIRCULAR NO. A-95 REVISED

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as amended (80 Stat. 1263, 82 Stat. 208)

“Sec. 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open space land projects or for planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

“(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible

to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

“(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

“(b) (1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

“(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph b(1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

“(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

“(c) The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.”

TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 (82
STAT. 1103)

*“Title IV—Coordinated Intergovernmental Policy and Administration of
of Development Assistance Programs”*

“Declaration of development assistance policy”

“Sec. 401. (a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time

of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of small communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

“(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

“(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

“(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

“(4) Adequate outdoor recreation and open space;

“(5) Protection of areas of unique natural beauty, historical and scientific interest;

“(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

“(7) Concern for high standards of design.

“(b) All viewpoints—national, regional, State and local—shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation evaluation, and review.

“(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

“(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

“(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning.”

“Favoring units of general local government”

“Sec. 402. Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans or grants-in-aid to units of general local government rather than to special-purpose units of local government.”

“Rules and regulations”

“SEC. 403. The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title.”

* * * * *

ATTACHMENT D—CIRCULAR No. A—95 REVISED

Coverage of Programs Under Attachment A, Part I

1. Programs listed below are referenced several ways, due to transitional phases in program development, funding status, etc. Generally, citations are to programs as they are listed in the June, 1975 *Catalog of Federal Domestic Assistance*. For certain new legislation, *Catalog* citations have not yet been developed. In such cases, references are to Public Law number and section. When no funding is available for a program, it is not generally listed in the *Catalog* or this Attachment; but if funding becomes available for a program previously covered, it continues to be covered unless specifically exempted by OMB. The *Catalog* is issued annually and revised periodically during the year. Every effort will be made to keep Appendix I and Attachment D current. Reference should always be made to the one bearing the latest issue date. (However, the update to the 1975 *Catalog* will not reflect all the changes herein. Therefore, this list should be referenced until issuance of the 1976 *Catalog*.)

Asterisks indicate certain State formula grant programs requiring State plans which are also covered under Part III. When listed under Part I, reference is to applications for subgrants under the State allocation, not to the State's application for its allocation under the formula grant which is reviewable under Part III.

2. Heads of Federal departments and agencies may, with the concurrence of the Office of Management and Budget, exclude certain categories of projects or activities under listed programs from the requirements of Attachment A, Part I. (Also see Part I, paragraph 8.)

3. *Covered programs:*

* * * * *

Department of Transportation

- 20.102 Airport Development Aid Program.
- 20.103 Airport Planning Grant Program.
- 20.205 Highway Research, Planning, and Construction.

- 20.214 Highway Beautification—Control of Outdoor Advertising, Control of Junkyards, Landscaping and Scenic Enhancement.
- 20.500 Urban Mass Transportation Capital Improvement Grants. (Planning and construction only.)
- 20.501 Urban Mass Transportation Capital Improvement Loans. (Planning and construction only.)
- 20.505 Urban Mass Transportation Technical Studies Grants. (Planning and construction only.)
- 20.506 Urban Mass Transportation Demonstration Grants.
- 20.507 Urban Mass Transportation Capital and Operating Assistance Formula Grants.

* * * * *

PROTECTION OF PUBLIC LANDS

Excerpt from the Department of Transportation Act

(P.L. 89-670, 80 Stat. 931, 49 U.S.C. 1653)

SECTION 4(f) It is hereby 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 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 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.⁹⁰

⁹⁰ This provision was interpreted and applied by the Supreme Court in *Citizens to Preserve Overton Park, Inc., et al v. Volpe et al*, 401 U.S. 402. The Court held that the action of the Secretary approving a project covered by this section is subject to judicial review to determine whether the Secretary's determination was arbitrary and capricious.

NATIONAL ENVIRONMENTAL POLICY ACT

42 U.S.C. § 4321 et seq.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Pub.L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.

Subchapter I.—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Pub.L. 91-190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality

and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action.

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

Pub. L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and poli-

cies into conformity with the intent, purposes, and procedures set forth in this chapter.

Pub. L. 91-190, Title I, § 103, Jan. 1, 1970, 83 Stat. 854.

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Pub. L. 91-190, Title I, § 104, Jan. 1, 1970, 83 Stat. 854.

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

Pub. L. 91-190, Title I, § 105, Jan. 1, 1970, 83 Stat. 854.

Subchapter II.—COUNCIL ON ENVIRONMENTAL QUALITY

§ 4341. Reports to Congress; recommendations for legislation

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Pub. L. 91-190, Title II, § 201, Jan. 1, 1970, 83 Stat. 854.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and inter-

pret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Pub. L. 91-190, Title II, § 202, Jan. 1, 1970, 83 Stat. 854.

§ 4343. Employment of personnel, experts and consultants

The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof).

Pub. L. 91-190, Title II, § 203, Jan. 1, 1970, 83 Stat. 855.

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Pub. L. 91-190, Title II, § 204, Jan. 1, 1970, 83 Stat. 855.

§ 4345. Consultation with the Citizen's Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizen's Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Pub. L. 91-190, Title II, § 205, Jan. 1, 1970, 83 Stat. 855.

* * * * *

COMMUTER RAIL CONTINUATION PROVISION

Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) as amended by section 804 of the Rail Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210, Feb. 5, 1976).

TERMINATION AND CONTINUATION OF RAIL SERVICES

SEC. 304. (a) DISCONTINUANCE.—(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail services on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b)(2) of this title, if—

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or the date of any conveyance ordered by the special court pursuant to section 303(b)(1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2) (A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of rail properties (under section 206(g) of this Act) or as part of a coordination project (under sections 206(c) and (g) of this Act), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 303(b)(1), if the Commission determines that such rail service on such rail properties is not compensatory and if—

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the

effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 303(b)(2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) ABANDONMENT.—(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of the Interstate Commerce Act, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

(c) CONTINUATION OF RAIL SERVICES.—No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

(1) in the case of service and properties referred to in subsections (a)(1) and (b)(1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers—

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2) (A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) RAIL FREIGHT SERVICE.—(1) If a rail service continuation payment is offered, pursuant to subsection (c) (2) (A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement, (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on the value of such properties, as determined in accordance with the standards developed pursuant to section 205 (d) (6) of this Act.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b) (1) of this title, the Commission—

(A) shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection; and

(B) shall have authority, in accordance with the provisions of section 1(16) (b) of the Interstate Commerce Act (49 U.S.C. 1(16) (b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d) (6) of this Act. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(e) RAIL PASSENGER SERVICE.—(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 303(b) (1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased, operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of conveyance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 303(b) (1)), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was providing financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

(A) such financial assistance is not provided;

(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c) (2) (A) of this section;

(C) an applicable rail service continuation payment pursuant to such subsection (c) (2) (A) is not paid when it is due; or

(D) a payment required under a lease or agreement, pursuant to section 303(b) (2) of this title or subsection (c) (2) (B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 303(b) (2) of this title or subsection (c) (2) (B) of this section.

(4) If a State (or a local or regional transportation authority)—

“(A) offers a rail service continuation payment, pursuant to subsection (c) (2) (A) of this section and under regulations issued by the Office pursuant to section 205(d) (5) of this Act, for the operation of rail passenger service after the 180-day mandatory operation period, and

(B) provides compensation pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period.

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5) (A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a) (1) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d) (5) of this Act.

(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger service pursuant to section 17(a) (2) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d) (5) of this Act.

(C) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))).

(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

(f) PURCHASE.—If an offer to purchase is made under subsection (c) (2) (C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical conditions of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

(g) ABANDONMENT BY CORPORATION.—After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority) is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act.

(h) INTERIM ABANDONMENT.—After the date of enactment of this section and prior to the date of conveyance (pursuant to section 303(b) (1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless (1) it is authorized to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

(i) DISPOSITION OF DESIGNATED RAIL PROPERTIES.—No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or

conveyance to a profitable railroad in the final system plan, except pursuant to section 303(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

(1) as to which the Association generally or specifically consents in writing;

(2) which, prior to enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); or

(3) following certification to the special court, pursuant to section 209 (c) of the Regional Rail Reorganization Act of 1973, of any such rail properties not previously so certified.

(j) EXEMPTION.—(1) No local public body which provides mass transportation services and which is otherwise subject to the Interstate Commerce Act shall, with respect to the provision of such services, be subject to the Interstate Commerce Act or to rules, regulations and orders promulgated under such Act, except that any such local public body shall continue to be subject to applicable Federal laws pertaining to (A) safety, (B) the representation of employees for purposes of collective bargaining, and (C) employment retirement, annuity, and unemployment systems or any other provision pertaining to dealings between employees and employers.

(2) For purposes of this subsection, the term—

(A) 'local public body' has the meaning prescribed for such term in section 12(c)(2) of the Urban Mass Transportation Act (49 U.S.C. 1608 (c)(2)) and includes any person or entity which contracts with a local public body to provide transportation services; and

(B) 'mass transportation' has the meaning prescribed for such term in section 12(c)(5) of the Urban Mass Transportation Act (49 U.S.C. 1608 (c)(5)).

FEDERAL RAILROAD SAFETY ACT (Pub. L. 91-458)

45 U.S.C. § 421 et seq.⁹¹

Subchapter I.—GENERAL PROVISIONS

§ 421. Congressional declaration of purpose

The Congress declares that the purpose of this Act is to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials.

Pub. L. 91-458, Title I, § 101, Oct. 16, 1970, 84 Stat. 971.

Subchapter II.—RULES, REGULATIONS, ORDERS, AND STANDARDS

§ 431. Promulgation of rules, regulations, orders, and standards—Authority of Secretary; collective bargaining agreements under Railway Labor Act as consistent with rules, etc.

(a) The Secretary of Transportation (hereafter in this subchapter referred to as the “Secretary”) shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on October 16, 1970, and (2) conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. However, nothing in this subchapter shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act, including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this subchapter. Nothing in this subchapter shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

Hearings

(b) Hearings shall be conducted in accordance with the provisions of section 553 of Title 5 for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving com-

⁹¹ This Act was held applicable to rapid rail transit in *United States v. Massachusetts Bay Transportation Authority*, 360 F. Supp. 698 (D.C. Mass., 1973). Where mass transportation activities are involved, the provisions of this Act will be jointly administered by UMTA and The Federal Railroad Administration (FRA) pursuant to Delegation by the Secretary of Transportation (see 40 F.R. 6656, Feb. 13, 1975). For other material on safety, see also sec. 107, National Mass Transportation Assistance Act of 1974 (part I, p. 27); and sec. 304, Interstate Commerce Act (part III, p. 104).

pliance with a railroad safety rule, regulation, order, or standard under this subchapter, and an opportunity shall be provided for oral presentations.

Waiver of compliance; authority of Secretary

(c) The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this subchapter, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

Consideration by Secretary of relevant existing safety data and standards

(d) In prescribing rules, regulations, orders, and standards under this section the Secretary shall consider relevant existing safety data and standards.

Time for issuance; review and revision by Secretary

(e) The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this subchapter based upon existing safety data and standards, not later than one year after October 16, 1970. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.

Judicial review

(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of Title 5.

Pub. L. 91-458, Title II, § 202, Oct. 16, 1970, 84 Stat. 791.

§ 432. Emergency hazardous situations; determination by Secretary of unsafe condition of facility or piece of equipment; issuance of order prohibiting usage; review of order

If through testing, inspection, investigation, or research carried out pursuant to this subchapter, the Secretary determines that any facility or piece of equipment is in unsafe condition and thereby creates an emergency situation involving a hazard of death or injury to persons affected by it, the Secretary may immediately issue an order, without regard to the provisions of section 431(b) of this title, prohibiting the further use of such facility or equipment until the unsafe condition is corrected. Subsequent to the issuance of such order, opportunity for review shall be provided in accordance with section 554 of Title 5.

Pub. L. 91-458, Title II, § 203, Oct. 16, 1970, 84 Stat. 972.

§ 433. Grade crossings and railroad rights-of-way; comprehensive study and recommendations of means of elimination and protection

(a) The Secretary shall submit to the President for transmittal to the Congress, within one year after October 16, 1970, a comprehensive study of the problem of eliminating and protecting railroad grade crossings, including a study of measures to protect pedestrians in densely populated areas along railroad rights-of-way, together with his recommendations for appropriate action including, if relevant, a recommendation for equitable

allocation of the economic costs of any program proposed as a result of such study.

(b) In addition the Secretary shall, insofar as practicable, under the authority provided by this subchapter and pursuant to his authority over highway, traffic, and motor vehicle safety, and highway construction, undertake a coordinated effort toward the objective of developing and implementing solutions to the grade crossing problem, as well as measures to protect pedestrians in densely populated areas along railroad rights-of-way.

Pub. L. 91-458, Title II, § 204, Oct. 16, 1970, 84 Stat. 972.

§ 434. National uniformity of laws, rules, regulations, orders, and standards relating to railroad safety; State regulation

The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

Pub. L. 91-458, Title II, § 205, Oct. 16, 1970, 84 Stat. 972.

§ 435. Investigative and surveillance activities by State—Preconditions to State participation; annual certification by State agency to Secretary of activities; authority of Secretary to assess and compromise penalties, request injunctive relief, and recommend appropriate action

(a) A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order, or standard prescribed by the Secretary under this subchapter if the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order, and standard, applicable to any such railroad facility, equipment, rolling stock, or operation, established under this subchapter as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 436 of this title) to request injunctive relief for the violation of rules, regulations, orders, and

standards prescribed by the Secretary under section 431(a) of this title and to recommend appropriate action as provided by sections 438 and 439 of this title.

Report in annual certification; contents; determination by Secretary of compliance of State agency with prescribed activities; procedure for rejection of certification or enforcement action

(g) Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing—

(1) the name and address of each railroad subject to the safety jurisdiction of the State agency;

(2) all accidents or incidents reported during the preceding twelve months by each such railroad involving personal injury requiring hospitalization, fatality, or property damage exceeding \$750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident.

(3) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders, and standards prescribed by him under section 431(a) of this title, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(4) such other information as the Secretary may require.

The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily complying with the investigative and surveillance activities prescribed by him with respect to such safety rules, regulations, orders, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification, in whole or in part, or take such other action as he deems appropriate to achieve adequate enforcement. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily complying with the investigative and surveillance activities prescribed by the Secretary with respect to such safety rules, regulations, orders, and standards.

Agreements with noncertifying States for State agency action; procedure for termination of agreements

(c) With respect to any railroad facility, equipment, rolling stock, or operation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the investigative and surveillance activities prescribed by the Secretary as necessary to obtain compliance with any Federal safety rule, regulation, order, or standard applicable to any such railroad facility, equipment, rolling stock, or operation. An agreement entered into under this subsection, or any provision thereof, may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to provide all or any part of the investigative and surveillance activities to

which the agreement relates. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

Expenditures by Federal government for State programs; maximum amount; preconditions

(d) Upon application by any State agency which has submitted a certification under subsection (a) of this section, or entered into an agreement under subsection (c) of this section, the Secretary shall pay, out of funds appropriated pursuant to this subchapter or otherwise made available, up to 50 per centum of the cost of the personnel, equipment, and activities of such State agency reasonably required, during the ensuing fiscal year, to carry out a safety program under such certification or agreement. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding October 16, 1970.

Monitoring by Secretary of State investigative and surveillance practices

(e) The Secretary is authorized to conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this subchapter.

Applicability of certification to new or amended rule, regulation, order, or standard

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for railroads established under this subchapter after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection.

Pub. L. 91-458, Title II, § 206, Oct. 16, 1970, 84 Stat. 972.

§ 436. Enforcement of rule, regulation, order, or standard by State agency engaged in investigative and surveillance activities; preconditions; jurisdiction and power of court; exceptions

In any case in which the Secretary has failed to assess the civil penalty applicable under section 438 of this title, or no civil action has been commenced to obtain injunctive relief under section 439 of this title, with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this subchapter, within 90 days after the date on which such violation occurred, a State Agency participating in investigative and surveillance activities under the provisions of section 435 of this title within the State where the violation occurred, may apply to the district court of the

United States within the jurisdiction of which the violation occurred for the enforcement of such rule, regulation, order, or standard. The court shall have jurisdiction to enforce compliance with such rule, regulation, order, or standard by injunction or other proper process to restrain further violation thereof, or to enjoin compliance therewith, or to assess and collect the civil penalty included in or made applicable to such rule, regulation, order, or standard. The provisions of this section shall not apply in any case in which the Secretary has affirmatively determined, in writing, that no violation has occurred.

Pub. L. 91-458, Title II, § 207, Oct. 16, 1970, 84 Stat. 974.

§ 437. General powers—Authority of Secretary

(a) In carrying out his functions under this subchapter, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this subchapter. The Secretary is further authorized to issue orders directing compliance with this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

Authority of National Transportation Safety Board; delegation

(b) The National Transportation Safety Board shall have the authority to determine the cause or probable cause and report the facts, conditions and circumstances relating to accidents investigated under subsection (a) of this section, but may delegate such authority to any office or official of the Board or to any office or official of the Department of Transportation with the approval of the Secretary, as it may determine appropriate.

Inspection and examination by officers, employees, or agents of Secretary or Board of rail facilities, equipment, rolling stock, operations, and pertinent records; display of credentials

(c) To carry out the Secretary's and the Board's responsibilities under this subchapter, officers, employees, or agents of the Secretary or the Board, as the case may be, are authorized to enter upon, inspect, and examine rail facilities, equipment, rolling stock, operations, and pertinent records at reasonable times and in a reasonable manner. Such officers, employees, or agents shall display proper credentials when requested.

Force and effect of orders, rules, regulations, standards, and requirements for purposes of determining liability of common carriers by railroad for injuries to employees

(d) All orders, rules, regulations, standards, and requirements in force, or prescribed or issued by the Secretary under this subchapter, or by any

State agency which is participating in investigative and surveillance activities pursuant to section 435 of this title, shall have the same force and effect as a statute for purposes of the application of sections 53 and 54 of this title, relating to the liability of common carriers by railroad for injuries to their employees.

Pub. L. 91-458, Title II, § 208, Oct. 16, 1970, 84 Stat. 974; Pub. L. 93-633, Title II, § 206, Jan. 3, 1975, 88 Stat. 2166.

§ 438. Civil penalties—Unlawful acts

(a) It shall be unlawful for any railroad to disobey, disregard, or fail to adhere to any rule, regulation, order, or standard prescribed by the Secretary under this subchapter.

Amount

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this subchapter a civil penalty for violation thereof or for violation of section 39 of this title in such amount, not less than \$250 nor more than \$2,500, as he deems reasonable.

Assessment by Secretary; separate offense; procedure for recovery; compromise by Secretary; amount as deductible from any sums owed by United States to violator; payment into Treasury

(c) Any railroad violating any rule, regulation, order, or standard referred to in subsection (b) of this section shall be assessed by the Secretary the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where such violation occurred. Civil penalties may, however, be compromised by the Secretary for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section, prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged. All penalties collected under this subchapter, including penalties collected pursuant to section 436 of this title, shall be covered into the Treasury as miscellaneous receipts.

Subpenas for witnesses

(d) In any action brought under this subchapter, subpenas for witnesses who are required to attend a United States district court may run into any other district.

Pub. L. 91-458, Title II, § 209, Oct. 16, 1970, 84 Stat. 975; Pub. L. 93-633, Title II, § 204, Jan. 3, 1975, 88 Stat. 2165.

§ 439. Injunctive relief; procedures; jurisdiction; criminal contempt proceedings for violations of injunction or restraining order

(a) The United States district court shall, at the request of the Secretary and upon petition by the Attorney General on behalf of the United States, or

upon application by a State agency pursuant to section 436 of this title, have jurisdiction, subject to the provisions of rules 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter or to enforce rules, regulations, orders, or standards established under this subchapter.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section or under section 436 of this title, which violation also constitutes a violation of this subchapter, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

Pub. L. 91-458, Title II, § 210, Oct. 16, 1970, 84 Stat. 975.

§ 440. Annual report by Secretary; contents; recommendations for additional legislation

(a) The Secretary shall prepare and submit to the President for transmittal to Congress on or before May 1 of each year a comprehensive report on the administration of this subchapter for the preceding calendar year. Such report shall include, but not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties by cause occurring in such year;

(2) a list of Federal railroad safety rules, regulations, orders, and standards issued under this subchapter in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 431(c) of this title during such year;

(4) an evaluation of the degree of observance of applicable railroad safety rules, regulations, orders, and standards issued under this subchapter;

(5) a summary of outstanding problems confronting the administration of Federal railroad safety rules, regulations, orders, and standards issued under this subchapter in order of priority;

(6) an analysis and evaluation of research and related activities completed (including the policy implications thereof) and technological progress achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions for the enforcement of any Federal railroad safety rule, regulation, order, or standard issued under this subchapter;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies under section 435(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 435(a) of this title which were rejected, in whole or in part, by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies under section 435 (c) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 435(c) of this title which were terminated by the Secretary, in whole or in part, during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to strengthen the national railroad safety program.

(c) The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 433 of this title;

(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

(A) State program development;

(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

(E) the sources from which the State expects to draw the funds to finance such programs; and

(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment.

(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program;

(10) contains a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

(11) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.

Pub. L. 91-458, Title II, § 211, Oct. 16, 1970, 84 Stat. 976; Pub. L. 93-633, Title II, § 203, Jan. 3, 1975, 88 Stat. 2164; Pub. L. 94-56, § 2, July 19, 1975, 89 Stat. 263.

* * * * *

INTERSTATE COMMERCE ACT, Part II; Motor Carriers
49 U.S.C. § 304

§ 304. Powers and duties of Commission—Powers and duties generally

(a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.⁹²

* * * * *

⁹² Pursuant to the Department of Transportation Act (49 U.S.C. § 1655), the powers and duties of the Interstate Commerce Commission under § 304 have been transferred to the Secretary of Transportation. See also NMTA Act of 1974, § 107, p. 27; and Federal Railroad Safety Act of 1970, p. 94.

DAVIS-BACON ACT (40 U.S.C. § 276a et seq.)

§ 276a. Rate of wages for laborers and mechanics

(a) The advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, or the District of Columbia, 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 Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State, in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, 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 advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in sections 276a to 276a—5 of this title the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—

- (1) the basic hourly rate of pay; and
- (2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics

pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a-5 of this title and other Acts incorporating sections 276a to 276a-5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2) (A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2) (B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a-5 of this title, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

Mar. 3, 1931, c. 411, § 1, 46 Stat. 1494; Aug. 30, 1935, c. 825, 49 Stat. 1011; June 15, 1940, c. 373, § 1, 54 Stat. 399; July 12, 1960, Pub. L. 86-624, § 26, 74 Stat. 418; July 2, 1964, Pub. L. 88-349, § 1, 78 Stat. 238.

§ 276a-1. Termination of work on failure to pay agreed wages; completion of work by Government

Every contract within the scope of sections 276a to 276a-5 of this title shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the

contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

Mar. 3, 1931, c. 411, § 2, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a-2. Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts

(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a-5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list of all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics, with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a-5 of this title, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Mar. 3, 1931, c. 411, § 3, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a-3. Effect on other Federal laws

Sections 276a to 276a-5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

Mar. 3, 1931, c. 411, § 4, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a-4. Effective date of sections 276a to 276a-5

Sections 276a to 276a-5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.

Mar. 3, 1931, c. 411, § 5, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

§ 276a-5. Suspension of sections 276a to 276a-5 during emergency

In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a-5 of this title.

Mar. 3, 1931, c. 411, § 6, as added Aug. 30, 1935, c. 825, 49 Stat. 1011.

* * * * *

NON-DISCRIMINATION PROVISIONS
EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972⁹³
(P.L. 92-261, 42 U.S.C. § 2000e-16 and 17)

Sec. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e-16) is amended by adding at the end thereof the following new section:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"Sec. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

"(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

"(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

⁹³ See also, Executive Order 11478, August 8, 1969, 34 F.R. 12985, as amended by Executive Order 11590, April 23, 1971, 36 F.R. 7831 regarding equal employment opportunity in Federal Government.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

“(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

“(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

“(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

“(d) The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder.

“(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.”

* * * * *

Sec. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is further amended by adding at the end thereof the following new section:

“SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

“Sec. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer

of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.”

EXCERPTS FROM CIVIL RIGHTS ACT OF 1964, AS AMENDED

(P.L. 88-352, 78 Stat. 241, 42 U.S.C. 2000d)

TITLE VI—Nondiscrimination in Federally Assisted Programs⁹⁴

SECTION 601. 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.

SECTION 602. 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 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with the 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 non-compliance 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

⁹⁴ See also Executive Order 11246 of September 24, 1965, as amended (30 F.R. 12319, 32 F.R. 14303, 34 F.R. 12986) dealing with equal employment opportunity in work done for, or with financial assistance provided by the Federal Government.

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.

SECTION 603. Any department or agency action taken pursuant to section 602 shall be subject to such 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 602, 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 section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SECTION 604. Nothing contained in this title shall be construed to authorize action under this title 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.

SECTION 605. Nothing in this title 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 of guaranty.

EXCERPTS FROM THE FEDERAL-AID HIGHWAY ACT OF 1973

(P.L. 93-87, 87 Stat. 250, 23 U.S.C. 324)

Prohibition of Discrimination on the Basis of Sex

SECTION 162. (a) Chapter 3 of title 23, United States Code is amended by adding at the end thereof the following new section:

“§ 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.”

APPORTIONMENT OF BUDGET AUTHORITIES

Excerpts from Section 3679 of the Revised Statutes
(31 U.S.C. 665)

(c) (1)—All appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. As used hereafter in this section, the term “appropriation” means appropriations, funds, and authorizations to create obligations by contract in advance of appropriations.

(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974.⁹⁵

(3) Any appropriation subject to apportionment shall be distributed by months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof, as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments. Except as otherwise specified by the officer making the apportionment, amounts, so apportioned shall remain available for obligation, in accordance with the terms of the appropriation, on a cumulative basis unless reapportioned.

(4) Apportionments shall be reviewed at least four times each year by the officers designated in subsection (d) of this section to make apportionments and reapportionments, and such reapportionments made or such reserves established, modified, or released as may be necessary to further

⁹⁵ Subsection (c) (2) of this section was amended by Pub. L. 93-344, July 12, 1974, 88 Stat. 332. The text prior to the amendment read as follows:

(2) In apportioning an appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the purposes of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations.

the effective use of the appropriation concerned, in accordance with the purposes stated in paragraph (1) of this subsection.

* * * * *

(d) (2) Any appropriation available to an agency, which is required to be apportioned under subsection (c) of this section, shall be apportioned or reapportioned in writing by the Director of the Office of Management and Budget.⁹⁶ The head of each agency to which any such appropriation is available shall submit to the Office of Management and Budget information, in such form and manner and at such time or times as the Director may prescribe, as may be required for the apportionment of such appropriation. Such information shall be submitted not later than forty days before the beginning of any fiscal year for which the appropriation is available, or not more than fifteen days after approval of the Act by which such appropriation is made available whichever is later. The Director of the Office of Management and Budget shall apportion each such appropriation and shall notify the agency concerned of his action not later than twenty days before the beginning of the fiscal year for which the appropriation is available, or not more than thirty days after the approval of the Act by which such appropriation is made available, whichever is later. When used in this section, the term "agency" means any executive department, agency, commission, authority, administration, board, or other independent establishment in the executive branch of the Government. . . .

⁹⁶ The Bureau of the Budget was redesignated as the Office of Management and Budget by Part I of Reorganization Plan No. 2 of 1970 (35 F.R. 7959).

AREAWIDE PROJECT REVIEW

Excerpts from the Demonstration Cities and Metropolitan Development Act of 1966
(P.L. 89-754, 80 Stat. 1261, 42 U.S.C. 3334)

Coordination of Federal Aid in Metropolitan Areas

SECTION 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

(b) (1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph (1) of this subsection if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such appli-

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tion, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

(c) The Office of Management and Budget⁹⁷ or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section.

⁹⁷ See footnote 94.

EXCERPT FROM HOUSING ACT OF 1950

(12 U.S.C. 1749a)

§ 1749a. Powers and duties of Secretary—Preparation and submission of budget; maintenance of accounts

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act,⁹⁸ as amended; and

(2) maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950: *Provided*, That such financial transactions of the Administrator as the making of loans and vouchers approved by the Administrator in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

Disposition of funds; administrative expenses

(b) Funds made available to the Secretary pursuant to the provisions of this subchapter shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Secretary in connection with the performance of his functions under this subchapter, and all funds available for carrying out the functions of the Secretary under this subchapter (including appropriations therefor, which are authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with the performance of such functions.

General functions of Secretary

(c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, may—

(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this subchapter;

(2) * * *

(3) sue and be sued;

(4) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other

⁹⁸ The Government Corporation Control Act (P.L. 79-248, 59 Stat. 597) is codified at 31 U.S.C. 841 et seq.

agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which he has made a loan pursuant to this subchapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property: *Provided*, That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(5) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned;

(6) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(7) obtain insurance against loss in connection with property and other assets held;

(8) subject to the specific limitations in this subchapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which he is a party or which has been transferred to him pursuant to this subchapter; and

(9) include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions as he may deem necessary to assure that the purposes of this subchapter will be achieved.

* * * * *

Applicability of other laws

(e) The provisions of section 870 of Title 31,⁹⁹ which are applicable to corporations or agencies subject to the Government Corporation Control Act, shall also be applicable to the activities of the Secretary under this subchapter.

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Apr. 20, 1950, c. 94, Title IV, § 402, 64 Stat. 78; 1953, Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 23, 1959, Pub. L. 86-372, Title VI, § 602, 73 Stat. 681; May 25, 1967, Pub. L. 90-19, § 8 (a), (b), 81 Stat. 22; Jan. 2, 1975, Pub. L. 93-604, Title VII, § 705(b), 88 Stat. 1964

⁹⁹ 31 U.S.C. 870 (63 Stat. 662) reads as follows:

"CONSOLIDATION OF BANKING AND CHECKING ACCOUNTS OF CORPORATIONS AND AGENCIES"

"After June 30, 1949, the corporations or agencies subject to this chapter, are authorized, with the approval of the Comptroller General, to consolidate, notwithstanding the provisions of any other law, into one or more accounts for banking and checking purposes all cash, including amounts appropriated from whatever source derived: *Provided*, That such cash, including amounts appropriated, of such corporations or agencies shall be expended in accordance with the applicable terms of their respective enabling acts and other acts applicable to their transactions."

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

(P.L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601 et seq.)

An Act

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That: this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

TITLE I—GENERAL PROVISIONS

SECTION 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), and 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.

(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 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.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, 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 202 (a) and (b) and 205 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.

(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 202(a) 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.

Effect Upon Property Acquisition

SECTION 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act 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 the date of enactment of this Act.

TITLE II—UNIFORM RELOCATION ASSISTANCE

Declaration of Policy

SECTION 201. The purpose of this title 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.

Moving and Related Expenses

SECTION 202. (a) 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 the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(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; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(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 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.

(c) 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.

Replacement Housing for Homeowner

SECTION 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to 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 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.

(B) 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.

(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 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.

(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.

Placement Housing for Tenants and Certain Others

SECTION 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under

section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if such amount exceeds \$2,000, such person must equally match any such amount in excess of \$2,000, in making the downpayment.

Relocation Assistance Advisory Services

SECTION 205. (a) 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 the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their

places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Housing Replacement by Federal Agency as Last Resort

SECTION 206. (a) 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.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c) (3), is available to such person.

State Required to Furnish Real Property Incident to Federal Assistance (Local Cooperation)

SECTION 207. 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 210 and 305 of this Act. 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.

State Acting as Agent for Federal Program

SECTION 208. 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 Act, be deemed an acquisition by the Federal agency having authority over such program or project.

Public Works Programs and Projects of the Government of the District of Columbia and of the Washington Metropolitan Area Transit Authority

SECTION 209. 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 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner 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 Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by Title III of this Act.

Requirements for Relocation Payments and Assistance of Federally Assisted Program; Assurance of Availability of Housing

SECTION 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State 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 the effective date of this title, unless he receives satisfactory assurances from such State 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 202, 203, and 204 of this title;
- (2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;
- (3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

Federal Share of Costs

SECTION 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, 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 206, 210, 215, and 305, 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.

(b) No payment or assistance under sections 210 or 305 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.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, 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 the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. 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 206, 210, 215, and 305.

Administration—Relocation Assistance in Programs Receiving Federal Financial Assistance

SECTION 212. 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 206, 210, and 215 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 title 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 206, 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.

Regulations and Procedures

SECTION 213. (a) 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.

(b) The head of each Federal agency is authorized to established such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act 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 title 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 Act, 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.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

Annual Report

SECTION 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

Planning and Other Preliminary Expenses for Additional Housing

SECTION 215. 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 commitments 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.

Payments Not To Be Considered as Income

SECTION 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Displacement by Code Enforcement, Rehabilitation, and Demolition Programs Receiving Federal Assistance

SECTION 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, 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 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

Transfers of Surplus Property

SECTION 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. 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 considerations, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

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TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

Uniform Policy on Real Property Acquisition Practices

SECTION 301. 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.

(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 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), 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 title 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 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.

Buildings, Structures, and Improvements

SECTION 302. (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.

Expenses Incidental to Transfer of Title To United States

SECTION 303. 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.

Litigation Expenses

SECTION 304. (a) 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) 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) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, 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.

Requirements for Uniform Land Acquisition Policies; Payments of Expenses Incidental to Transfer of Real Property to State; Payment of Litigation Expenses in Certain Cases

SECTION 305. 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, a State 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 the effective date of this title, unless he receives satisfactory assurances from such State 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 301 and the provisions of section 302, and
- (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

HISTORIC PRESERVATION

Excerpts from the National Historic Preservation Act of 1966
(P.L. 89-665, 80 Stat. 915, 16 U.S.C. 470)

SECTION 106. 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 the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

