



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
WASHINGTON, D.C. 20591

100-127423

OFFICE OF THE ADMINISTRATOR

Testimony of  
F. C. Turner  
Federal Highway Administrator  
on  
Federal-Aid Highway Program Procedures

Prepared for delivery before the  
Subcommittee on Investigations and Oversight of  
The House of Representatives Committee on Public Works

June 15, 1971

I am pleased to appear before this Subcommittee to discuss Federal-aid highway program procedures.

As you know, the Federal-Aid Road Act of 1916 provided for a strong Federal-State partnership. Despite drastic changes in and expansions of the program since the 1916 Act, this joint Federal-State relationship has remained in effect.

The success of the highway program has been largely due to the separation of functions between the partners. State and local authorities have always participated to an unusual degree in program decisions. They choose the systems of routes for development, select and plan the individual projects, acquire right-of-way, and award and supervise construction contracts. The Federal Highway Administration's function is that of guidance, control, and approval at each step of the

process, and, of course, reimbursement to the States for the Federal share of the cost of construction of the projects. This arrangement has resulted in construction of the Interstate System and construction or improvement of primary and secondary highways at a total Federal outlay of approximately \$55.7 billion.

A public works program of such magnitude has created tremendous workloads on State highway departments and FHWA. One of the most far-reaching provisions of the Federal-Aid Road Act of 1916 was the requirement that States must have an adequate highway department in order to participate in the Federal-aid highway program. With vast sums of Federal money involved, the Federal interest necessitates that there be coordinated planning, uniformity of design and construction standards, and accountability for Federal funds spent. Whereas in past years there has been a concern for close Federal control, the trend is now moving in the opposite direction. There is nearly total support at all levels of government for some reduction in Federal control and involvement, ranging from suggestions for specific reductions in processing requirements all the way to the revenue sharing concept.

In 1950, there were ten basic requirements that the State highway departments had to fulfill to get a Federal-aid highway project from its beginning stage to completion. Today, there are twenty-three. Since 1950, the Interstate and other programs have been added and many additional requirements have

been imposed on highway builders and administrators. I would now like to discuss some of the steps we have taken to minimize the concurrent increase in "red tape."

#### Delegation of Authority

In the mid-1950's, the greatly increased highway program required that decision-making authority be delegated to the field offices. In 1956, Federal Highway Administrator John A. Volpe delegated authority for all normal project-level Federal-aid decisions to the State-level (division) offices of FHWA. The experience of the succeeding 15 years has demonstrated the wisdom of this move. Annual workloads of up to 9,000 new projects, totalling as much as \$5 billion, have been processed by an FHWA staff now only 34 percent larger than in 1956, when the annual Federal-aid program amounted to \$875 million.

More important, such decisions are now being made closer to the people affected by the highway projects. FHWA made a survey to determine the number of Federal-aid highway project approvals made by the Washington office during the first half of calendar year 1970. Of a total of 5,515 project approvals, 217 were referred to Washington for a decision. Out of the 217 projects referred to Washington, only 154 required Washington office approval, the other 63 projects were sent to Washington for advice. In other words, 97 percent of highway project decisions are made in the field offices.

## Joint FHWA-AASHO Red Tape Activities

In early 1969, President Nixon directed all Federal agencies to review their procedures for possible areas of improvements. The Federal Highway Administration undertook this task enthusiastically and joined with the American Association of State Highway Officials (AASHO) in furthering this objective. FHWA and AASHO have a special joint committee which is called the Committee for Directives Review, more popularly known as the "Red Tape Committee." It is made up of high level State officials and key people from FHWA. Five joint FHWA-AASHO task forces were established to identify specific areas in which unnecessary program procedures could be eliminated or simplified.

As a result of this joint effort, we have taken the following steps:

1. FHWA has established a Directives Clearinghouse to coordinate, review, and clear significant new and revised program directives. This ensures that such directives are effectively coordinated within FHWA and provides AASHO an opportunity to review and comment on them prior to issue. The Clearinghouse has also prepared a topical index of FHWA directives and distributed it to all State highway departments and FHWA offices.

2. We have eliminated the Administrative and Circular Memorandum series and have stressed to our staff offices that new or revised directives should be carefully scrutinized before issuance to ensure simple procedures.

3. With respect to TOPICS projects, a program of minor improvements aimed at facilitation of movements in cities, and our Spot Safety program, aimed at early elimination of high accident locations, we have authorized division engineers to waive certain procedures established for regular construction projects. We have also directed our division engineers to evaluate the applicability of existing directives to TOPICS projects on a project-by-project basis. Abbreviated plans, force account, and so forth may be readily justified in certain instances.

These are only a few of the major improvements we have made as a result of this cooperative effort.

#### FHWA Review and Approval Time

We have found that it takes approximately four years from the time when a State submits a project for programming until it is reported completed. Considering the planning involved before the project is submitted to FHWA, total project time is probably close to six years. However, our survey in early 1970 disclosed that Federal reviews consumed only about

fifty-five days of that time. Even so, we made suggestions to our division offices which have resulted in reducing Federal review time to approximately forty-five days. This time saving is significant, but the real payoff from procedural reform would result from simplifying project clearance and approval action during the pre-construction stage.

#### Secondary System Procedures

The procedures used for secondary highway system projects differ from those used in other programs. In its Secondary Road Plan, as authorized by the 1954 Federal-Aid Highway Act, a State highway department outlines the procedures and standards it will use to administer Federal-aid secondary system projects. When approved by the Federal Highway Administrator, the State's proposed procedures and standards are set forth in an agreement between the State and the FHWA, and the State is expected to handle all FAS projects in accordance with the agreement. FHWA actions generally are limited to approving the project at the program stage (which authorizes the State to proceed with the project to completion), executing a project agreement with the State, and inspecting and accepting the completed construction. While FHWA personnel are available for consultation on unusual features or situations, the State normally approves project plans, awards contracts,

inspects and supervises construction, and approves construction changes. This simplified procedure is modified in a limited number of cases requiring Secretarial review of the use of parklands. It is important to note, however, that secondary projects go through the same processes and reviews as any other Federal-aid project. Only the intermediate FHWA checks are removed. Extending Secondary Road Plan procedures to other programs could do no more than reduce some of the 45-day average FHWA review time. The major preconstruction processing time requirements would still remain.

#### Highway Project Development Process

During the 1950's, the highway project development process was primarily a planning, right-of-way acquisition and engineering effort. Today, the process is much more complex. Relocation assistance, location and design public hearings, and environmental review at various levels are examples of new considerations which are now integral parts of the Federal-aid highway program. The flow chart contained in Appendix I traces a typical Federal-aid project from inception to completion. I will generally go through this process for you in my oral presentation; however, I will cover only the twenty-three steps required for most projects.

I would now like to discuss three factors which have contributed heavily to the increased complexity of the highway project development process. These are environmental concerns, public participation, and relocation assistance, all resulting from congressional actions within the last five years.

#### Environmental Concerns

The first of these was the enactment in 1966 of section 4(f) of the Department of Transportation Act, which was amended in 1968. Section 4(f) provides in part that the Secretary shall not approve any project or program which requires the use of public parkland or other protected area unless there is no feasible and prudent alternative and the program includes all possible planning to minimize harm to the protected area. Section 138 of title 23, United States Code, is identical to this section.

The Secretary of Transportation has delegated authority to administer laws relating to highways generally to the Federal Highway Administrator; however, he has reserved the authority to issue final approvals under section 4(f) with respect to the above provision and has not delegated authority to the Federal Highway Administrator to administer

23 U.S.C. 138. These reservations reflect the Secretary's interest in environmental matters.

The Department of Transportation has implemented section 4(f) by the issuance of DOT Order 5610.1 (Appendix II). This order also implements section 102(2)(C) of the National Environmental Policy Act of 1969; therefore, our procedures for both sections closely follow the procedures set out in the Council of Environmental Quality's Guidelines for preparation of section 102(2)(C) statements (Appendix III). In fact, the DOT order specifically states that any matter falling under section 4(f) "significantly affects" the environment and also requires a 102(2)(C) statement. The environmental statement is the vehicle for insuring consideration of all environmental matters.

When a State is faced with a 4(f) situation, it contacts the Federal and State agencies it knows to be interested. Appropriate consultation with the Departments of Agriculture, Interior, and Housing and Urban Development are specifically required by section 4(f). Using input from its own sources and from these agencies, the State prepares a draft statement and circulates it to appropriate Federal, State, and local agencies for comments. States normally allow about 45 days for comments. The Environmental Protection Agency is also requested to comment within the same 45-day period. The

State also submits its draft environmental statement to FHWA with copies to CEQ and the Office of the Secretary.

After the State receives comments from interested agencies, it makes appropriate adjustments to the project, revises the draft to account for the comments, and submits a final statement to FHWA for approval. If no public hearings have been held where the draft and comments were discussed, the draft and comments received thereon must be made public. If FHWA approves of the final statement, it is forwarded to the Office of the Secretary for final approval.

In section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), Congress has determined that there should be a very detailed and complex statement with respect to "major Federal actions significantly affecting the quality of the human environment." It has been initially determined administratively that a majority of Federal-aid highway projects are "major Federal actions." We are currently working with the Office of the Secretary to develop instructions for implementing this Act in a manner that will define those highway projects which require such a statement and those which do not.

As I mentioned, section 102(2)(C) was implemented by CEQ's Guidelines and DOT Order 5610.1. The DOT order defines "major"

as any Federal action significantly affecting the environment; "Federal action" as "the entire range of activity undertaken by the DOT;" "significantly affecting" as "any action that is likely to be highly controversial on environmental grounds" or "any matter falling under section 4(f) of the DOT Act or section 16(c)(3), 16(c)(4), 16(d), or 16(e) of the Airport Act." Operating administrations prepare their detailed procedures within this framework. The Federal Highway Administration, on November 24, 1970, issued as Instructional Memorandum (Appendix IV) implementing DOT Order 5610.1. The DOT order specifically reserved authority to approve agency 102(2)(C) procedures.

The steps involved in the preparation of a section 102(2)(C) statement are essentially the same as those for a section 4(f) statement, except that approval by the Secretary is not required for a 102(2)(C) statement. The State consults interested agencies, prepares a draft statement and circulates it for comments, revises the draft to account for agency comments, and submits the final statement to FHWA for approval.

We have delegated authority to approve section 102(2)(C) statements to our Regional Federal Highway Administrators in an effort to move the decisionmaking closer to the people affected. The final statement, which must be approved by the Regional Administrator, is then submitted to the Office of the Secretary for concurrence. Our approval

is subject to review by the Assistant Secretary of DOT for Environment and Urban Systems for 14 days. The final statement, including all comments received in response to the draft statement, must be submitted to CEQ for review. CEQ requires that no agency actions can be taken on the matter until after 90 days from the date the draft statement is circulated for comments and until 30 days after the final statement is made public and submitted to CEQ. A minimum processing time of about 6 months is introduced into the overall processing of a project by this procedure. This may or may not add to the total time required to progress a project to completion.

#### Public Participation

Section 128 of title 23, United States Code, requires States to hold public hearings on certain highway projects. We have implemented this section by issuance of our Policy and Procedure Memorandum 20-8. In fact, we have made our public hearing procedures applicable to a broader range of projects than contemplated by the statute.

The latest revision of PPM 20-8 instituted the requirement of a design public hearing in addition to the corridor location hearing previously held on major projects. First notice of public hearing must be published 30 to 40 days before the hearing and the hearing transcript must be kept open at least 10 days after the hearing for additional statements. It therefore takes a minimum of about 6 weeks

to advertise for and conduct a public hearing. In addition, PPM 20-8 requires that the State request and obtain both location and design approval from the Federal Highway Administration (the Division Engineer) before the project can be advanced. This, of course, can only be done after the respective public hearings are held. The right-of-way acquisition phase of the project cannot be undertaken until design approval is given by FHWA. It should be emphasized, however, that many projects require one or no public hearings and suffer less delay as a consequence.

The requirements of the National Environmental Policy Act mesh with the public hearing process. The draft environmental impact statement must be made available to the public prior to the hearing. Location approval and design approval by FHWA cannot be given, and therefore the project cannot be advanced, until the final environmental statement is approved. A minimum of 90 days is required between the time a public hearing is advertised and the time approval of location or design can be given by FHWA, in order to allow for processing of the environmental statement.

Reviews of proposed Federal-aid projects must be made by State, region, or metropolitan clearing houses in accordance with OMB Circular A-95. These clearing houses have 30 days to comment after receipt of a project.

I should point out that the time periods which I have been mentioning, as well as those concerned in the preparation of 4(f) and 102(2)(C) statements, are not necessarily cumulative. Some of them run concurrently.

#### Relocation Assistance

We are now in a period of transition in the administration of our relocation assistance program. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 has required certain changes in the procedures we followed under chapter 5 of title 23. I will give you a general picture of our procedures and point out some of the changes necessitated by the new Act and the Office of Management and Budget's implementing guidelines.

A State is required to have an estimate of the number of persons to be relocated by each of the alternative highway locations, and the supporting data for such estimates, available at the location public hearing. A quite detailed relocation plan is required prior to the initiation of negotiations for the acquisition of right-of-way; however, most of the data required for the detailed plan must be available at the time of the design public hearing. Finally, a State cannot proceed with any phase of a project which will displace any persons until there is adequate replacement housing available. I should

point out that this was required by DOT order for some time before the Uniform Act was passed and OMB's guidelines issued.

A State must also maintain a comprehensive relocation advisory assistance program. Brochures must be prepared and distributed at public hearings and the State must make an effort to contact all relocatees personally. If a person cannot be contacted, the State must document its efforts.

The Uniform Act and OMB's Guidelines have added additional complexities. Computations of relocation payments are very complicated depending on the classification of the relocatee, whether tenant or owner, options, interest differential, and so forth. The OMB Guidelines require that the relocatee be reimbursed according to how much he actually pays for his new housing, rather than according to how much comparable housing should cost. This requires checking actual records, closing statements, and so forth. The guidelines also require that any payment in excess of \$500 to a tenant be paid in annual installments over a four-year period, rather than in a lump sum. This means keeping accounting records on many tenants for at least four years.

I think that you can see from my brief description that these procedures are complicated, have many time frames and levels of approval and review built into them, and affect many highway projects. This affords a fertile breeding ground for litigation. The number of suits challenging

Federal-aid for the construction of highways has doubled every year for the past five years, and by the end of the year, we can expect at least one new major Federal suit a week (see Appendix V).

The Federal courts have expanded the concept of "standing to sue" and broadened the class of persons who can sue to stop public betterments. Previously, only those who could show a direct substantial loss to themselves had standing as contrasted to other citizens or taxpayers. Now, as the result of court decisions over the past four years, anyone who claims he is more directly affected by the project than the general public can sue to halt the program.

The delay caused by the threat of litigation on all controversial projects becomes clear when you consider the necessity for check and recheck and legal review of these projects. Further, as courts review our actions within **ever-changing** requirements, even on projects planned prior to the time the new requirements were thought about, and determine whether or not we acted reasonably in such a later-developed context, it is necessary to more formally maintain our records, record each paper or item considered and to consider all items that might conceivably be made relevant to a decision under not yet evolved law. All this requires, in essence, a formal administrative record to be maintained on each project and each approval.

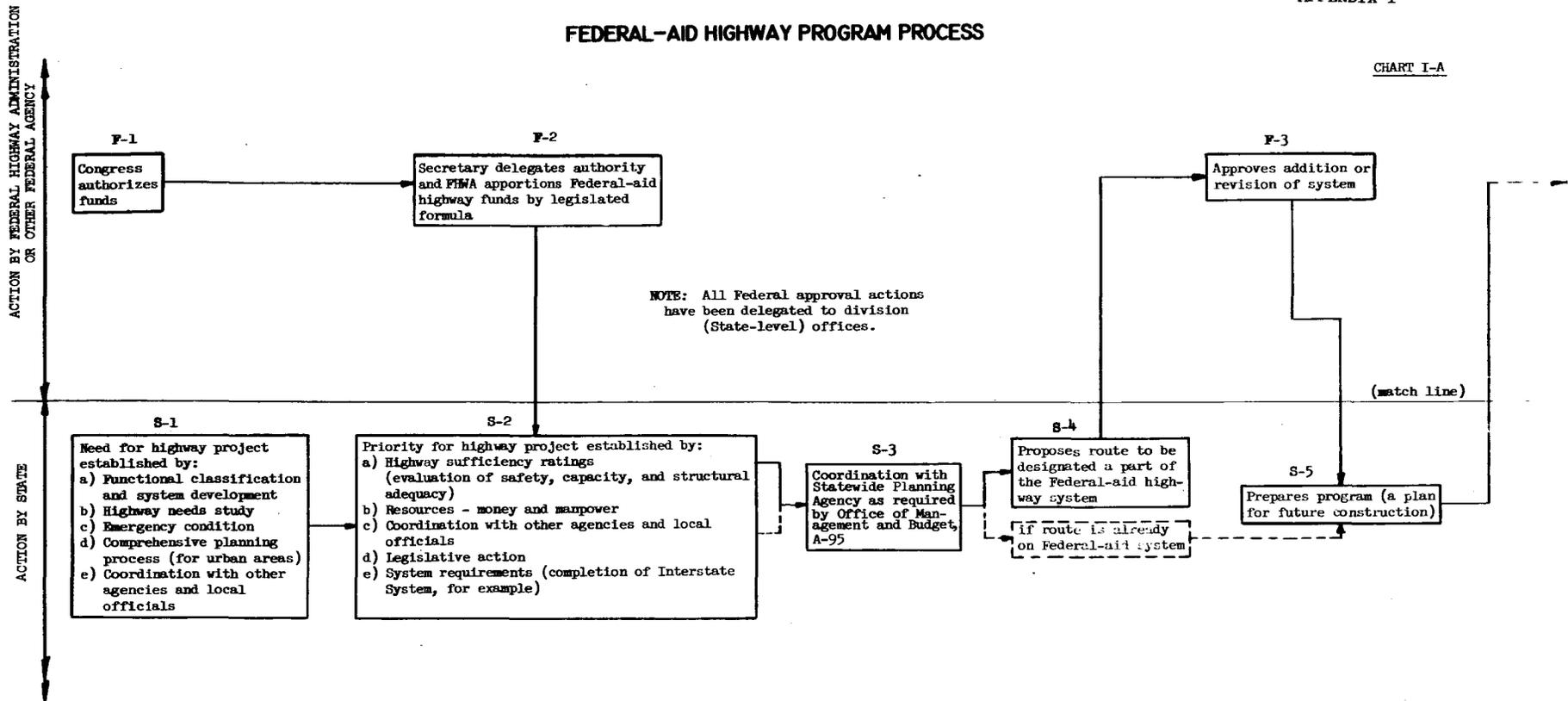
On March 2, 1971, the Supreme Court handed down Citizens to Preserve Overton Park, Inc., et al. v. Volpe, wherein the Court outlined the judicial review test for cases involving section 4(f) and environmental matters. In that case, the Supreme Court required that Federal District Courts review agency actions on the basis of a formal administrative record rather than affidavits by the agency officials. Thus, we are now required to maintain administrative records on our projects which are suitable for use in litigation attacking a project, should it arise. This landmark decision and the manner in which it is interpreted may affect our future operations.

I do not want you to think that the Federal Highway Administration does not value environmental protection; does not believe in citizen participation; and does not see the need for relocation assistance. On the contrary, for many years we have taken environmental factors into account and have assessed these factors on a cost-benefit basis; we have instituted public hearing requirements more stringent than those required by statute; and we have actually proposed relocation legislation and administered a relocation assistance program more successfully than has any other Federal agency. What I do want to stress to this Subcommittee is that new

legislation necessarily introduces new complexities into highway administration and adds to the "red tape." I want to assure this Subcommittee that the Federal Highway Administration is doing, and will continue to do, its utmost to simplify existing procedures and to prevent the proliferation of additional "red tape."

FEDERAL-AID HIGHWAY PROGRAM PROCESS

CHART I-A



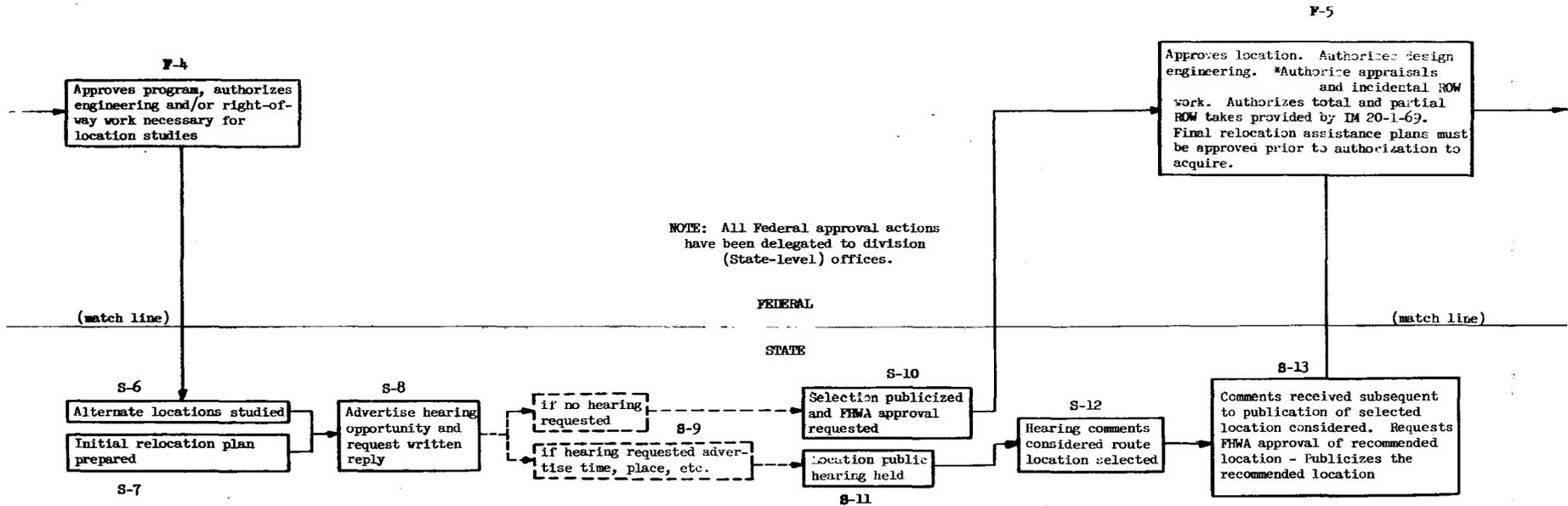
NOTE: All Federal approval actions have been delegated to division (State-level) offices.

NOTE: Approval and authorization actions by FHWA are made after a determination is made that State highway department proposals are in conformity with Federal-aid policy and procedures.

U.S. Department of Transportation  
Federal Highway Administration  
Chart of Federal-Aid  
Highway Grant Program Process

# FEDERAL-AID HIGHWAY PROGRAM PROCESS

CHART I-3



**NOTE:** Following S-6, the environmental impact is evaluated and if determined significant, State conducts Environmental Impact Study. Results are disseminated to other State agencies, Federal agencies, and the public and final approval is made by the Environmental Protection Agency.

**NOTE:** From the inception of a project, the development is coordinated with local, State and Federal agencies concerned with:

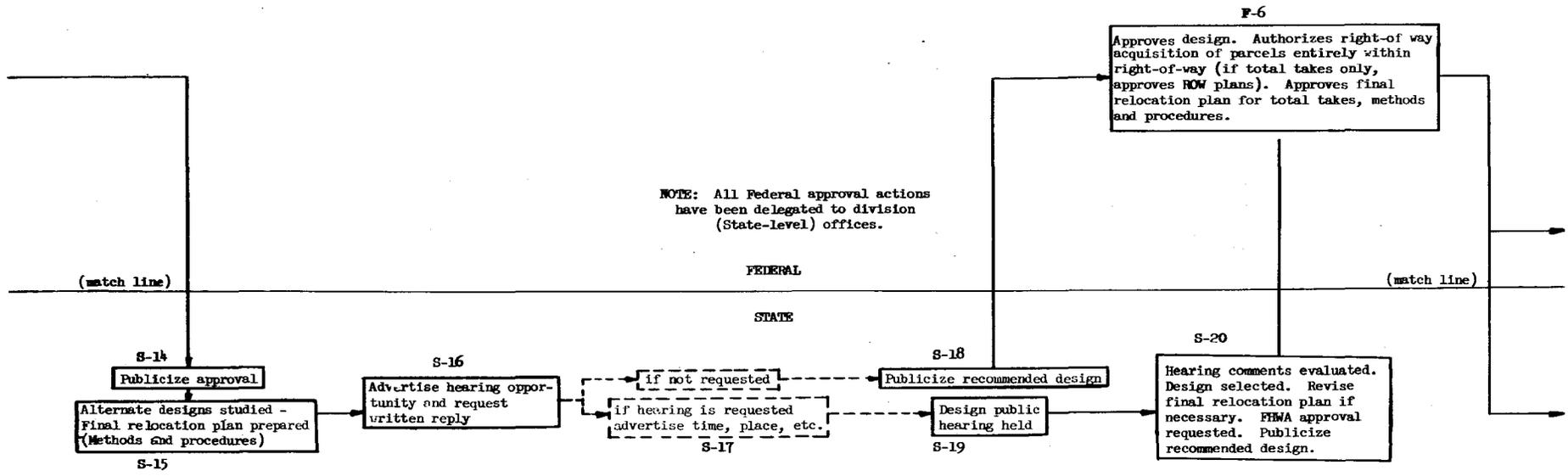
- Archeological and paleontological salvage
- Urban transportation planning
- housing and urban development
- Park and recreation lands, wildlife refuges, historic sites, natural beauty
- Civil and national defense
- Soil erosion
- Water pollution
- Flood hazards
- Water projects (dam and reservoirs)
- Agricultural and rural area development
- Bridge clearances
- Airports
- Urban Renewal
- Model Cities

\*Some States do not request Federal-aid for right-of-way and preliminary engineering so there may not be any Federal Highway Administration approval at this stage.

U.S. Department of Transportation  
Federal Highway Administration  
Chart of Federal-Aid  
Highway Grant Program Process

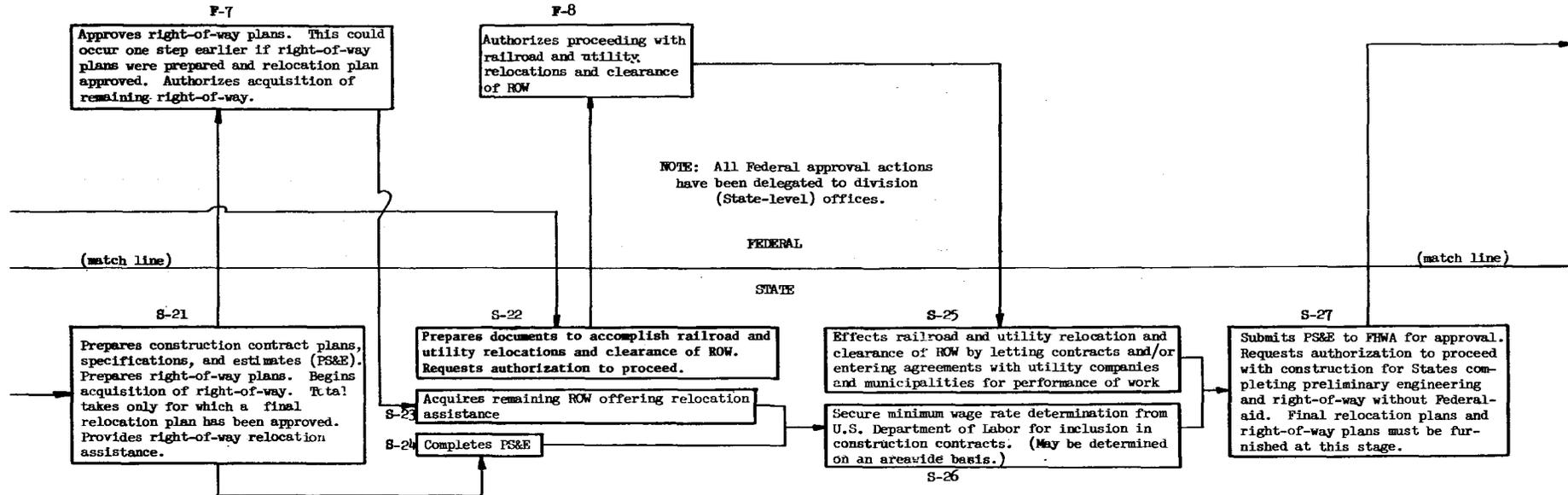
# FEDERAL-AID HIGHWAY PROGRAM PROCESS

CHART I-C



# FEDERAL-AID HIGHWAY PROGRAM PROCESS

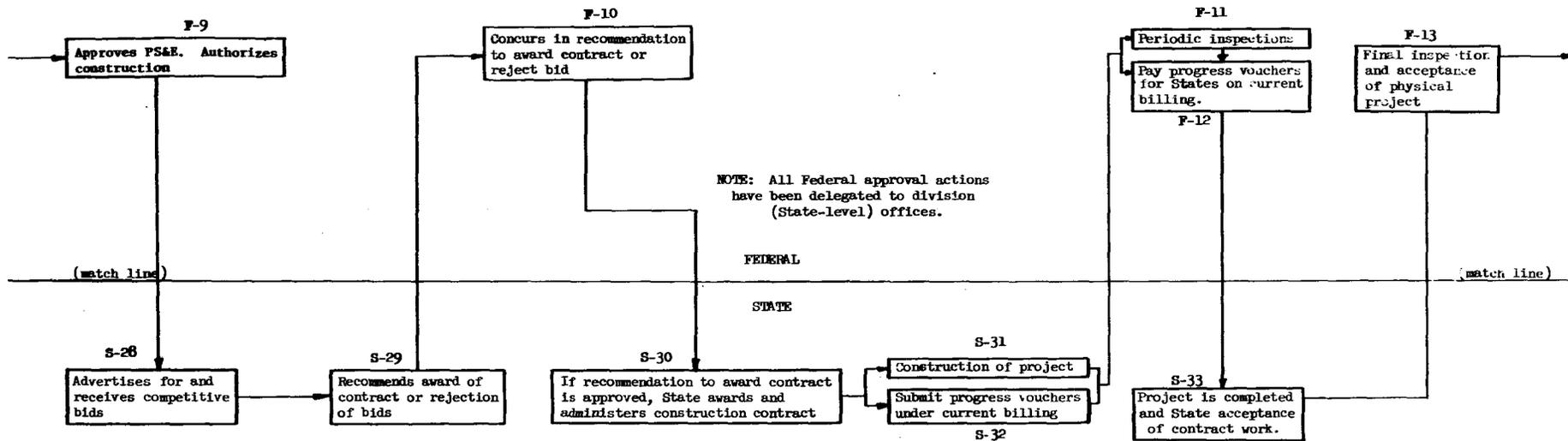
CHART I-D



U.S. Department of Transportation  
Federal Highway Administration  
Chart of Federal-Aid  
Highway Grant Program Process

# FEDERAL-AID HIGHWAY PROGRAM PROCESS

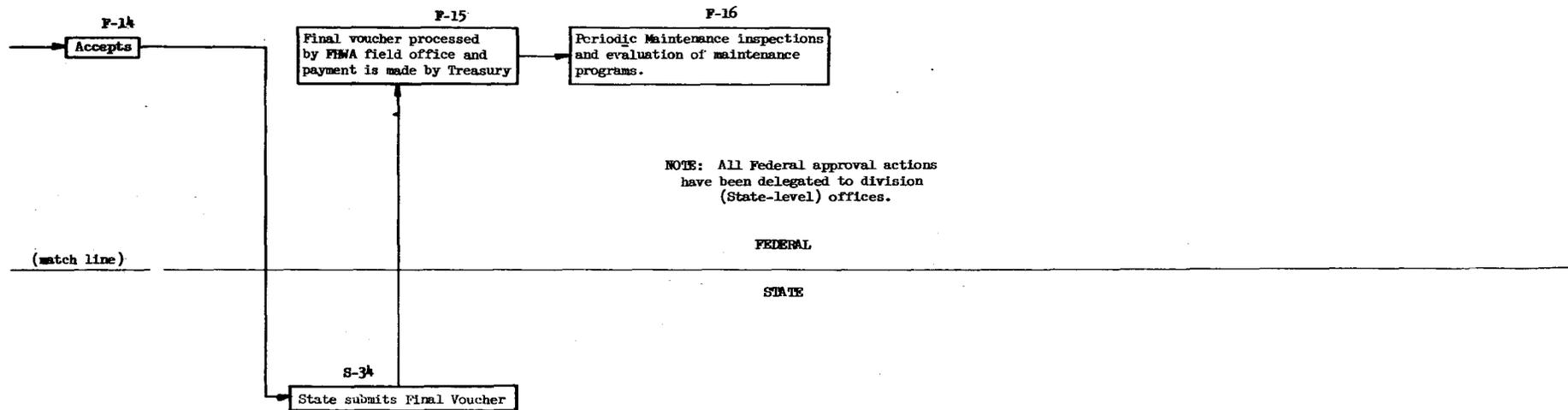
CHART I-E



U.S. Department of Transportation  
 Federal Highway Administration  
 Chart of Federal-Aid  
 Highway Grant Program Process

# FEDERAL-AID HIGHWAY PROGRAM PROCESS

CHART I-F



U.S. Department of Transportation  
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Chart of Federal-Aid  
Highway Grant Program Process