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[Federal Efforts To Reduce Redtape in Highway Construction Have Had Limited Success]. August 18, 1978. 8 pp.

Report to Karl S. Bowers, Acting Administrator, Federal Highway Administration; by Frank V. Subalusky, Assistant Director, Community and Economic Development Div.

Contact: Community and Economic Development Div.
Organization Concerned: Department of Transportation.
Authority: Federal-Aid Highway Act of 1973 (P.L. 93-87; 23 U.S.C. 117). National Environmental Policy Act of 1969 (42 U.S.C. 4321). Department of Transportation Act (49 U.S.C. 1653(f)). Civil Rights Act of 1964, title VI (42 U.S.C. 2000(d)). Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. P.L. 90-284. 42 U.S.C. 3601. 42 U.S.C. 4601.

The Federal Highway Administration's (FHWA's) Certification Acceptance procedure was established as an alternative procedure for administering federally financed construction of highways. Under this procedure, the Secretary of Transportation may transfer certain of his duties for administering Federal-aid highways to the States in order to reduce the level of Federal involvement and the amount of paperwork in the development and construction of these highways. The Certification Procedures have had, however, only limited success in reducing the level of Federal involvement and the amount of paperwork. Federal laws and requirements excluded from the Certification Acceptance procedure appear to be a significant deterrent to effectively accomplishing the goals and objectives of Certification Acceptance. Many States consider these laws to be the major source of time-consuming redtape and paperwork. Reduction of the amount of Federal involvement and unnecessary paperwork may not be fully realized until the States can follow individually tailored procedures to satisfy the policies and objectives of the Federal requirements. A number of States have expressed concern that amended procedures will not make Certification Acceptance any more attractive because Federal requirements are still too stringent and benefits are negligible. Implementation and progress of the new procedures should be closely monitored and, if the basic objectives are not being accomplished, Certification Acceptance procedures should be expanded to include the laws and requirements that are now excluded. (RRS)



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

August 18, 1978

Mr. Karl S. Bowers, Acting Administrator
Federal Highway Administration
Department of Transportation

Dear Mr. Bowers:

This letter is to inform you of the results of our review of the implementation of the Federal Highway Administration's (FHWA) Certification Acceptance procedure.

As you know, Congress established Certification Acceptance under the Federal-Aid Highway Act of 1973 (Public Law 93-87), as an alternative procedure for administering federally financed construction of primary, secondary, and urban highways. Under this procedure, the Secretary of Transportation may transfer certain of his duties for administering Federal-aid highways to the States in order to reduce the level of Federal involvement and the amount of paperwork in the development and construction of these highways.

We found that FHWA's Certification Acceptance procedure, however, had only limited success in reducing the level of Federal involvement and the amount of paperwork because:

- States continued to follow detailed FHWA directives, requirements, and procedures, thereby shifting the administrative burden from the Federal Government to the States with little or no reduction in the amount of paperwork and redtape;
- Certain Federal programs, such as environmental protection that are considered by most States to be a major source of Federal paperwork are, by law, excluded from the Certification Acceptance procedure; and
- Many States considered the Federal requirements for Certification Acceptance to be too restrictive.

The Congress and FHWA have initiated action to help improve the Certification Acceptance procedure and make it a more effective alternative for administering federally aided highway projects. However, because the FHWA changes to the procedure have only recently been implemented and because only a few States have had an opportunity to operate under the revised procedure, it may be some time before the effectiveness of these changes can be fully determined.

In addition to our work at the FHWA headquarters offices in Washington, D.C., we visited FHWA Division offices and State highway offices in three certified States--Kentucky, Pennsylvania, and Virginia--and in five States that were not certified--Arkansas, Louisiana, North Carolina, Oklahoma, and Texas. We sent questionnaires to the 50 States, the District of Columbia, and Puerto Rico to obtain the views of highway officials on FHWA's certification procedure. We also discussed the Certification Acceptance procedure with representatives of the American Association of State Highway and Transportation Officials, and the Center for Auto Safety in Washington, D.C. We reviewed pertinent Federal legislation, FHWA policies and procedures, and Federal and State records pertaining to Certification Acceptance.

Details of our findings, observations, and recommendation are presented below.

STATES ADOPTED FEDERAL REGULATIONS

The 1973 Act creating the Certification Acceptance procedure required that:

"* * * projects 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 title."

This so-called "equivalency" requirement meant that the States in many cases would have to revise their laws, regulations, and procedures to meet the Federal requirements. This we found, was a major factor that discouraged States from seeking Certification Acceptance approval from FHWA.

Recognizing this problem, FHWA developed a "simplified" application process for States to follow when requesting certification approval. Under the "simplified" format, States instead of developing their own laws, directives, and

regulations to meet the legislative "equivalency" requirement, adopted the Federal laws and regulations. The State then would follow FHWA's detailed administrative procedures and directives so that most of the Federal paperwork was still being prepared in administering the highway projects.

As of March 14, 1978, nine States were certified by FHWA under the "simplified" application procedure. These States said they noticed some reduction in the amount of Federal paperwork and redtape, but eight of the States also reported that they experienced an increase in the amount of State paperwork. Officials in several States and FHWA officials expressed the view that the procedure simply shifted the administrative burden from the Federal Government to the States and contrary to what was intended by Congress, did not result in a reduction in the overall amount of paperwork required in administering highway projects. Seven of the nine States said there was some savings in the amount of time it took to complete a highway project using the Certification Acceptance procedure. They attributed the savings primarily to eliminating the need for FHWA's approval on a step-by-step, project-by-project basis. Many of the uncertified States told us that they had decided not to apply for certification approval because of the lack of perceived benefits.

MAJOR FEDERAL PROGRAMS ARE NOT COVERED UNDER CERTIFICATION ACCEPTANCE

The law governing Certification Acceptance specifically limits the duties which the Secretary may transfer to the States. The law (23 U.S.C. 117) states that:

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

Federal and State officials in seven of the eight States we visited told us that the Federal laws and requirements which are not covered under the Certification Acceptance

procedure, such as the National Environmental Policy Act, are the major sources of time consuming Federal paperwork that often unnecessarily delay highway projects. The laws most frequently mentioned by State officials as causing delays were the National Environmental Policy Act of 1969, the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, and the Federal Water Pollution Control Act of 1972.

Our survey of 50 States, the District of Columbia, and Puerto Rico showed that 28 believed that the FHWA Certification Acceptance procedure could be significantly strengthened and improved if it was expanded to include the activities and the programs that are not covered by Title 23 of the U.S. Code.

Arkansas officials said that although many Federal requirements are essential to help insure the proper coordination of the planned projects with the various public and private interests, other Federal requirements are overly detailed and time consuming in relation to the limited benefits such efforts provide to highway planning. State highway officials in Virginia and Louisiana expressed similar views and opinions.

FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS DISCOURAGED STATES FROM REQUESTING CERTIFICATION APPROVAL

State officials told us that the FHWA requirements in reviewing and approving States' operations discouraged them from applying for Certification Acceptance approval. Many of the States that said they were not interested in seeking Certification Acceptance approval cited the excessive amount of documentation FHWA required and the possibility that the State may lose Federal funds after projects have been completed if FHWA does not agree that the State had followed suitable procedures in administering the highway projects.

Texas highway officials said even though they had been operating since 1954 under FHWA's Secondary Road Plan procedures which authorized State highway departments to assume Federal duties in the construction of secondary roads, FHWA in 1975 would not approve their application to assume the same type of responsibilities under the more recent Certification Acceptance procedure. Similarly, Illinois officials said:

"We understood the program but we were surprised at the difference in detail required between the Secondary Road Plan and Certification Acceptance."

Ten States that did not apply for Certification Acceptance informed us that they anticipated problems with "after-the-fact" monitoring by FHWA. Some States said the FHWA certification procedure would require the States to maintain detailed documentation and feared that they would be denied Federal funds if they unintentionally overlooked a Federal requirement.

One State whose certification request had been disapproved by FHWA, but who plans to reapply, said:

"The C.A. [Certification Acceptance] concept is an appropriate approach to project development. However, considerable improvement in State-Federal cooperation and trust must be developed. The State Transportation organization should be evaluated in regard to its capabilities to make decisions and to perform the work. If found acceptable, authority and responsibility should be transferred to the State with FHWA conducting audits as necessary to insure proper expenditure of Federal funds."

ATTEMPTS TO IMPROVE CERTIFICATION ACCEPTANCE PROCEDURE

The Federal-Aid Highway Act of 1976 deleted the requirement that State laws have to be "equivalent" to Federal law. Instead, the requirement was made that State laws " * * * accomplish the policies and objectives * * * " of the Federal law.

In January 1978, FHWA issued regulations implementing the 1976 Act. States were given the option to use the Secondary Road Plan procedure, the Certification Acceptance procedure, or a combination of these two procedures in carrying out the administration of Federal-aid highway projects.

States are permitted to use their own laws, regulations, directives, and standards provided that they can demonstrate to the satisfaction of the Secretary that their regulations and standards will accomplish the Federal policies and objectives as contained in or issued pursuant to Title 23 of the U.S. Code.

FHWA officials told us in May 1978 that the duties and responsibilities for reviewing and evaluating State requests for certification are now being delegated to the FHWA's regional offices in an attempt to expedite the Certification Acceptance approval process.

State highway officials' responses to the Department's Notice of Proposed Rulemaking for the recent FHWA directives were mixed. Nine of the 19 States that commented on the revised procedures said they favored the changes. State officials in 6 of the remaining 10 States said the FHWA changes did not make Certification Acceptance any more attractive because the Federal requirements were still too stringent and the benefits of the procedure are negligible. Officials in the remaining four States did not express an opinion as to the effect of the recent FHWA changes.

As of March 14, 1976, only three States had been certified under the new procedure. These States did not have sufficient experience at the time our review was completed for us to assess the effectiveness of FHWA's new regulations.

FHWA Task Force Recommends Reduction of Federal Regulations

In October 1976, FHWA established a Regulations Reduction Task Force to make a comprehensive review of its Federal-aid highway regulations--this review was not limited to Certification Acceptance regulations, but covered a wide range of regulations affecting Federal-aid highway program administration in general.

In a June 1977 report to the FHWA Administrator, the Task Force concluded that there was substantial room for improving the existing directive system--both as to Certification Acceptance and other agency regulations affecting Federal-aid highway program administration--and that such improvements could be made by the Secretary of Transportation with few changes in legislation. The task force said that, in their opinion the so-called "simplified format" of Certification Acceptance did not provide a significant amount of relief from "Federally imposed redtape."

Overall, the study recognized the need for a greater delegation of authority, further reliance by FHWA on States, and simplification of existing procedures and instructions to provide greater flexibility at the local level.

Most of the task force's recommendations to reduce Federal regulations have been agreed to by FHWA officials; but final agreement had not been reached on the recommendation to combine three environmental impact directives into one directive and reduce FHWA's environmental related regulations from 205 to 35.

CONCLUSIONS AND RECOMMENDATION

Certification Acceptance has not, in our view, fully accomplished the objectives set forth by the Congress. Few States adopted the Certification Acceptance procedure, and those that have experienced only marginal benefits.

Federal laws and requirements not covered by Title 23 of the U.S. Code, such as the National Environmental Policy Act, which are excluded from the Certification Acceptance procedure, appear to be a significant deterrent to effectively accomplishing the goals and objectives of Certification Acceptance. Many States consider these laws to be the major source of time-consuming Federal redtape and paperwork.

The purpose of Certification Acceptance--to reduce the amount of Federal involvement and unnecessary paperwork--may not be fully realized until the States can follow their individually tailored procedures to satisfy the policies and objectives of the Federal requirements. The amended Highway Act, and FHWA's revised directive for Certification Acceptance issued in January 1978 appear to be moves in the right direction. The revised directive helps to simplify the procedures to be followed by the States when requesting Certification Acceptance approval from FHWA, but how effective these changes will be in improving the Certification Acceptance procedure remains to be seen.

A number of the States have already expressed concern that these new procedures would not make Certification Acceptance any more attractive because the Federal requirements are still too stringent and the benefits at best would be negligible.

In view of this reaction, we recommend that you closely monitor the implementation and progress of the new procedures. If the results of this effort show that the basic objectives of the Act are still not being accomplished, we believe that you should consider the need to expand the Certification

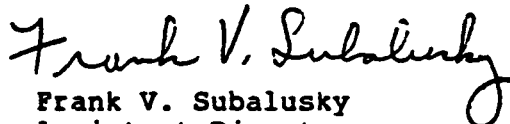
acceptance procedure to include Federal laws and requirements not now covered by Title 23 of the U.S. Code.

Any such delegation of duties to States should, of course, be granted only in cases where they have demonstrated their ability to carry out such additional responsibilities in full compliance with the basic objectives and requirements of the Federal laws and regulations.

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We appreciate the cooperation and the courtesy of the FHWA staff during this work. We would appreciate also being advised of your reaction to the matters discussed and any action you take or plan to take with respect to our recommendation.

Sincerely yours,


Frank V. Subalusky
Assistant Director