

compile the results of all of the VE analyses that are conducted annually in each State DOT, the District of Columbia, and Puerto Rico and to submit these results to FHWA (52 analyses at 3 hours each). The estimated total burden to provide the additional information to attain full compliance with the final rule is 356 hours.

National Environmental Policy Act

The FHWA has analyzed this rule for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined it will not have any effect on the quality of the human and natural environment, because this rule merely establishes the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed. The promulgation of this regulation has been determined to be a categorical exclusion under 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this rule does not have substantial direct effects on one or more Indian Tribes; does not impose substantial direct compliance costs on Indian Tribal governments; and does not preempt Tribal law. This rule establishes the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed and does not impose any direct compliance requirements on Indian Tribal governments, nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this rule does not constitute a significant energy action under that order since it will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA has determined that

this rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this rule does not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 627

Grant programs—transportation, Highways and roads.

Issued on: January 27, 2012.

Victor M. Mendez,
Administrator.

In consideration of the foregoing, the FHWA amends title 23 of the Code of Federal Regulations by revising part 627 to read as follows:

PART 627—VALUE ENGINEERING

- Sec.
627.1 Purpose and applicability.
627.3 Definitions.
627.5 Applicable projects.
627.7 VE programs.
627.9 Conducting a VE analysis.

Authority: 23 U.S.C. 106(e), 106(g), 106(h), 112(a) and (b), 302, 315; and 49 CFR part 18.

§ 627.1 Purpose and applicability.

(a) The purpose of this part is to prescribe the programs, policies and procedures for the integration of value engineering (VE) into the planning and development of all applicable Federal-aid highway projects.

(b) Each State transportation agency (STA) shall establish and sustain a VE program. This program shall establish the policies and procedures identifying

when a VE analysis is required. These policies and procedures should also identify when a VE analysis is encouraged on all other projects where there is a high potential to realize the benefits of a VE analysis.

(c) The STAs shall establish the policies, procedures, functions, and capacity to monitor, assess, and report on the performance of the VE program, along with the VE analyses that are conducted and Value Engineering Change Proposals (VECP) that are accepted. The STAs shall ensure that its subrecipients conduct VE analyses in compliance with this part.

§ 627.3 Definitions.

The following terms used in this part are defined as follows:

Bridge Project. A bridge project shall include any project where the primary purpose is to construct, reconstruct, rehabilitate, resurface, or restore a bridge.

Final Design. Final design has the same meaning as defined in 23 CFR 636.103.

Project. A portion of a highway that a STA or public authority proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project is defined as the logical termini in the environmental document and may consist of several contracts, or phases of a project or contract, which are implemented over several years.

Total Project Costs. The costs of all phases of a project including environment, design, right-of-way, utilities and construction.

Value Engineering (VE) Analysis. The systematic process of reviewing and assessing a project by a multidisciplinary team not directly involved in the planning and development phases of a specific project that follows the VE Job Plan and is conducted to provide recommendations for:

(1) Providing the needed functions, considering community and environmental commitments, safety, reliability, efficiency, and overall life-cycle cost (as defined in 23 U.S.C. 106(f)(2));

(2) Improving the value and quality of the project; and

(3) Reducing the time to develop and deliver the project.

Value Engineering (VE) Job Plan. A systematic and structured action plan for conducting and documenting the results of the VE analysis. While each VE analysis shall address each phase in the VE Job Plan, the level of analysis conducted and effort expended for each

phase should be scaled to meet the needs of each individual project. The VE Job Plan shall include and document the following seven phases:

(1) *Information Phase* Gather project information including project commitments and constraints.

(2) *Function Analysis Phase* Analyze the project to understand the required functions.

(3) *Creative Phase* Generate ideas on ways to accomplish the required functions which improve the project's performance, enhance its quality, and lower project costs.

(4) *Evaluation Phase* Evaluate and select feasible ideas for development.

(5) *Development Phase* Develop the selected alternatives into fully supported recommendations.

(6) *Presentation Phase* Present the VE recommendation to the project stakeholders.

(7) *Resolution Phase*: Evaluate, resolve, document and implement all approved recommendations.

(g) *Value Engineering Change Proposal (VECP)*. A construction contract change proposal submitted by the construction contractor based on a VECP provision in the contract. These proposals may improve the project's performance, value and/or quality, lower construction costs, or shorten the delivery time, while considering their impacts on the project's overall life-cycle cost and other applicable factors.

§ 627.5 Applicable projects.

(a) A VE analysis shall be conducted prior to the completion of final design on each applicable project that utilizes Federal-aid highway funding, and all approved recommendations shall be included in the project's plans, specifications and estimates.

(b) Applicable projects shall include the following:

(1) Each project located on the National Highway System (NHS) (as specified in 23 U.S.C. 103) where the estimated total project cost is \$25 million or more that utilizes Federal-aid highway funding;

(2) Each bridge project located on or off of the NHS where the estimated total project cost is \$20 million or more that utilizes Federal-aid highway funding;

(3) Any major project (as defined in 23 U.S.C. 106(h)), on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project;

(4) Any project for which a VE analysis has not been conducted and a change is made to the project's scope or design between the final design and the letting which results in an increase in the project's total cost exceeding the

thresholds identified in paragraphs (b)(1), (2) or (3) of this section; and

(5) Any other Federal-aid project the FHWA determines to be appropriate.

(c) An additional VE analysis is not required if, after conducting the VE analysis required under this part for any project meeting the criteria of paragraph (b) of this section, the project is subsequently split into smaller projects in the design phase or if the project is programmed to be completed by the letting of multiple construction projects. However, the STA may not avoid the requirement to conduct a VE analysis on an applicable project by splitting the project into smaller projects, or multiple construction projects.

(d) The STA's VE Program's policies and procedures shall identify when any additional VE analysis should be considered or conducted in the planning and development of transportation projects.

(e) For projects utilizing design-build and other alternative project delivery methods for which final design is not complete prior to the release of the final request for proposals or other applicable solicitation documents, the estimated total cost for purposes of the thresholds identified in paragraphs (b)(1) and (2) of this section, shall be based on the best estimate of the cost to construct the project.

§ 627.7 VE programs.

(a) The STA shall establish and sustain a VE program under which VE analyses are conducted for all applicable projects. The STA's VE program shall:

(1) Establish and document VE program policies and procedures that ensure the required VE analysis is conducted on all applicable projects, and encourage conducting VE analyses on other projects that have the potential to benefit from this analysis;

(2) Ensure the VE analysis is conducted and all approved recommendations are implemented and documented in a final VE report prior to the project being authorized to proceed to a construction letting;

(3) Monitor and assess the VE Program, and disseminate an annual report to the FHWA consisting of a summary of all approved recommendations implemented on applicable projects requiring a VE analysis, the accepted VECPs, and VE program functions and activities;

(4) Establish and document policies, procedures, and contract provisions that identify when VECP's may be used; identify the analysis, documentation, basis, and process for evaluating and accepting a VECP; and determine how

the net savings of each VECP may be shared between the agency and contractor;

(5) Establish and document policies, procedures, and controls to ensure a VE analysis is conducted and all approved recommendations are implemented for all applicable projects administered by local public agencies; and ensure the results of these analyses are included in the VE program monitoring and reporting; and

(6) Provide for the review of any project where a delay occurs between when the final plans are completed and the project advances to a letting for construction to determine if a change has occurred to the project's scope or design where a VE analysis would be required to be conducted (as specified in 23 CFR 627.5(b)).

(b) STAs shall ensure the required VE analysis has been performed on each applicable project including those administered by subrecipients, and shall ensure approved recommendations are implemented into the project's plans, specifications, and estimate.

(c) STAs shall designate a VE Program Coordinator to promote and advance VE program activities and functions. The VE Coordinator's responsibilities should include establishing and maintaining the STA's VE policies and procedures; facilitating VE training; ensuring VE analyses are conducted on applicable projects; monitoring, assessing, and reporting on the VE analyses conducted and VE program; participating in periodic VE program and project reviews; submitting the required annual VE report to the FHWA; and supporting the other elements of the VE program.

§ 627.9 Conducting a VE analysis.

(a) A VE analysis should be conducted as early as practicable in the planning or development of a project, preferably before the completion of the project's preliminary design. At a minimum, the VE analysis shall be conducted prior to completing the project's final design.

(b) The VE analysis should be closely coordinated with other project development activities to minimize the impact approved recommendations might have on previous agency, community, or environmental commitments; the project's scope; and the use of innovative technologies, materials, methods, plans or construction provisions.

(c) For projects utilizing design-build and other alternative project delivery methods that will be advertised prior to the completion of final design, the STA or local public agency shall conduct a VE analysis prior to the release of the

final Request for Proposals or other applicable solicitation documents.

(d) STAs shall ensure the VE analysis meets the following requirements:

(1) Uses a multidisciplinary team not directly involved in the planning or design of the project, with at least one individual who has the training and experience with leading a VE analysis;

(2) Develops and implements the VE Job Plan;

(3) Produces a formal written report outlining, at a minimum:

(i) Project information;

(ii) Identification of the VE analysis team;

(iii) Background and supporting documentation, such as information obtained from other analyses conducted on the project (e.g., environmental, safety, traffic operations, constructability);

(iv) Documentation of the stages of the VE Job Plan which would include documentation of the life-cycle costs that were analyzed;

(v) Summarization of the analysis conducted;

(vi) Documentation of the proposed recommendations and approvals received at the time the report is finalized; and

(vii) The formal written report shall be retained for at least 3 years after the completion of the project (as specified in 49 CFR 18.42).

(e) For bridge projects, in addition to the requirements in paragraph (d) of this section, the VE analyses shall:

(1) Include bridge substructure and superstructure requirements that consider alternative construction materials; and

(2) Be conducted based on:

(i) An engineering and economic assessment, taking into consideration acceptable designs for bridges; and

(ii) An analysis of life-cycle costs and duration of project construction.

(f) STAs and local public agencies may employ qualified consultants (as defined in 23 CFR 172) to conduct a VE analysis. The consultant shall possess the training and experience required to lead the VE analysis. A consulting firm or individual shall not be used to conduct or support a VE analysis if they have a conflict of interest (as specified in 23 CFR 1.33).

(g) VECPs, STAs, and local public agencies are encouraged to use a VECP clause (or other such clauses under a different name) in an applicable project's contract, allowing the construction contractor to propose changes in the project's plans, specifications, or other contract documents. Whenever such clauses are used, the STA and local authority will

consider changes that could improve the project's performance, value and quality, shorten the delivery time, or lower construction costs, while considering impacts on the project's overall life-cycle cost and other applicable factors. The basis for a STA or local authority to consider a VECP is the analysis and documentation supporting the proposed benefits that would result from implementing the proposed change in the project's contract or project plans.

(h) Proposals to accelerate construction after the award of the contract will not be considered a VECP and will not be eligible for Federal-aid highway program funding participation. Where it is necessary to accelerate construction, STAs and local public agencies are encouraged to use the appropriate incentive or disincentive clauses so that all proposers will take this into account when preparing their bids or price proposals.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in April 2012 and interest assumptions under the asset allocation regulation for valuation dates in the second quarter of 2012. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective April 1, 2012.

FOR FURTHER INFORMATION CONTACT:

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may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (<http://www.pbgc.gov>).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for April 2012 and updates the asset allocation interest assumptions for the second quarter (April through June) of 2012.

The second quarter 2012 interest assumptions under the allocation regulation will be 3.11 percent for the first 20 years following the valuation date and 3.36 percent thereafter. In comparison with the interest assumptions in effect for the first quarter of 2012, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.63 percent in the select rate, and a decrease of 0.34 percent in the ultimate rate (the final rate).

The April 2012 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for March 2011, these interest assumptions are unchanged.