

COMPARATIVE ANALYSIS OF SECTIONS 107(d) and 317, Title 23, U.S.C.

ITEM NO.	ESSENTIAL ELEMENTS Col. 1	STATUTORY REQUIREMENTS	
		Section 107(d) Col. 2	Section 317 Col. 3
a.	Property eligible for transfer	Lands or interests in land owned by the United States, including control of access.	Lands or interest in land owned by the United States, Sec. 317(a)
b.	Source of materials	Not expressly mentioned	Expressly authorized. Source of materials may be transferred for the construction or maintenance of any highway, Sec. 317(a)
c.	Eligible Transferees	State or other person constructing the projects on such lands.	State highway department, or its nominee, Sec. 317(b)
d.	Eligible Projects	Restricted to projects on the Interstate System.	Restricted to projects constructed on a Federal-aid System or under the provisions of Chapter 2 of Title 23, See Sec. 317(d)
e. is	Determinations to be made by the Secretary of Transportation	That the right-of-way, including control of access, over land owned by the U.S. are required for a project on the Interstate System.	That the land or interest in land reasonably necessary for a Federal-aid highway project.
f.	Certifications required of State.	(None expressly required by statute. However, Office of Chief Counsel requires State to certify that land is reasonably necessary for the construction of project on the Interstate System).	(None expressly required by statute. However, OCC requires State's certification that the land requested is reasonably necessary for a Federal-aid project.)

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g.	Certifications required by owning agency.	(None required by Statute. The Secretary is authorized to make arrangements with owning agency. The owning agency is <u>directed</u> by the Statute to cooperate with the Secretary.)	Transfer is authorized if owning agency fails to certify within four months of Secretary's request therefor, that proposed transfer is contrary to public interest or inconsistent with the purposes for which the land has been acquired, Sec. 317(b).
h.	Period of time within which owning agency must act on request for transfer of land.	(No time limit specified in Statute. Owning agency is "directed" by Statute to cooperate with the Secretary. Sec. 107(d).)	Owning agency must approve or reject the requested transfer within four months of filing thereof by the Secretary of Transportation, Sec. 317(b)
i.	Data to be submitted to owning agency.	(None specified by statute. 23 CFR 712.503, Appendix 1 specifies the data to be furnished by the State with its application for transfer. Statute authorizes Secretary to make any arrangements with owning agency as may be necessary to effect the transfer.)	23 CFR 712.503 Appendix 1 specifies the data to be furnished by the State with its application for transfer.
j.	Conditions of Transfer	Secretary of Transportation comes into agreement with owning agency on transfer conditions.	Owning agency authorized to impose any conditions deemed necessary for the adequate protection and utilization of the "reserve" (Remainder lands) sec. 317(b)
k.	Duration of Grant Reversionary Interest.	No statutory limitation. Duration of grant is fixed by agreement between Secretary and owning agency. Generally, FHWA imposes same limitation for all transfers under Sec. 107(d) and 317.	By statute land or materials revert to the control of owning agency when no longer required for a Federal-aid highway or a highway constructed under provisions of chapter 2 of Title 23, U.S.C. Sec. 317(c)

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1	Form and content of grant to State	Statute authorizes Secretary to make the necessary arrangements "to give" the State or other persons constructing the project "adequate rights-of-way." No specific form of grant is required.	No specific form of grant is required. Section 317(b) recites that the land and materials may be "appropriated and transferred" to the State highway department, or its nominee, subject to the conditions specified by the Secretary of the Department supervising administration of the land so transferred.