

**§ 773.104**

**23 CFR Ch. I (4–1–10 Edition)**

all or part of the responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of one or more highway projects.

**§ 773.104 Eligibility.**

(a) Only a State DOT of a State is eligible to participate in the program.

(b) The program is limited to a maximum five State DOTs, including the State DOTs of Alaska, California, Ohio, Oklahoma and Texas as the five participant States. Should any of these five State DOTs choose not to apply, have its participation terminated, or withdraw from the pilot program, another State DOT may be selected.

**§ 773.105 Statements of interest.**

(a) The State DOTs of Alaska, California, Ohio, Oklahoma and Texas are given priority for participation in the program.

(b) Within sixty days of March 14, 2007, the State DOTs of Alaska, California, Ohio, Oklahoma and Texas shall submit a statement of interest to participate in the program. The statement of interest shall declare that the State DOT intends to submit an application to participate in the pilot program.

(c) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas fail to submit a statement of interest by May 14, 2007 or decline participation in the pilot program, such State DOT shall no longer be given priority consideration for selection in the program and its application will be selected in competition with other State DOTs.

(d) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas submit a statement of interest declaring their intent to participate in the program, the State shall actively work to develop and submit its application and meet all applicable program criteria (including the enactment of necessary State legal authority).

**§ 773.106 Application requirements for participation in the program.**

(a) Each State DOT wishing to participate in the program must submit an application to the FHWA.

(b) Each application submitted to the FHWA must contain the following information:

(1) The highway project(s) or classes of highway projects for which the State is requesting to assume FHWA's responsibilities under NEPA. The State DOT must specifically identify, in its application, each project for which a draft environmental impact statement has been issued prior to the submission of its application to the FHWA;

(2) The specific responsibilities for the environmental review, consultation, or other action required under other Federal environmental laws, if any, pertaining to the review or approval of a highway project, or classes of highway projects, that the State DOT wishes to assume under this program. The State DOT must also indicate whether it proposes to phase-in the assumption of these responsibilities;

(3) For each responsibility requested in paragraphs (b)(1) and (b)(2) of this section, the State DOT shall submit a description in the application detailing how it intends to carry out these responsibilities. The description shall include:

(i) A summary of State procedures currently in place to guide the development of documents, analyses and consultations required to fulfill the environmental responsibilities requested. The actual procedures should be submitted with the application, or if available electronically, the Web link must be provided;

(ii) Any changes that have been or will be made in the management of the environmental program to provide the additional staff and training necessary for quality control and assurance, appropriate levels of analysis, adequate expertise in areas where responsibilities have been requested, and expertise in management of the NEPA process;

(iii) A discussion of how the State DOT will verify legal sufficiency for the environmental document it produces; and

(iv) A discussion of how the State DOT will identify and address those projects that would normally require FHWA headquarters prior concurrence of the FEIS under 23 CFR 771.125(c).

(4) A verification of the personnel necessary to carry out the authority that may be granted under the program. The verification shall contain the following information:

(i) A description of the staff positions, including management, that will be dedicated to providing the additional functions needed to accept the delegated responsibilities;

(ii) A description of any changes to the State DOT's organizational structure that are deemed necessary to provide for efficient administration of the responsibilities assumed; and

(iii) A discussion of personnel needs that may be met by the State DOTs use of outside consultants, including legal counsel provided by the State Attorney General or private counsel;

(5) A summary of financial resources showing the anticipated financial resources available to meet the activities and staffing needs identified in (b)(3) and (b)(4) of this part, and a commitment to make adequate financial resources available to meet these needs;

(6) Certification and explanation by State's Attorney General, or other State official legally empowered by State law, that the State DOT can and will assume the responsibilities of the Secretary for the Federal environmental laws and projects requested and that the State DOT will consent to exclusive Federal court jurisdiction with respect to the responsibilities being assumed. Such consent must be broad enough to include future changes in relevant Federal policies and procedures to which FHWA would be subject or such consent would be amended to include such future changes;

(7) Certification by the State's Attorney General, or other State official legally empowered by State law, that the State has laws that are comparable to the Federal Freedom of Information Act (5 U.S.C. 552), including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction; and

(8) Evidence that the required notice and solicitation of public comment by the State DOT relating to participation in the program has taken place. Requirements for notice and solicitation of public comments are as follows:

(i) not later than 30 days prior to submitting its application, a State must give notice that the State intends to participate in the program and solicit public comment by publishing the complete application of the State in accordance with the appropriate public notice law of the State. If allowed under State law, publishing a notice of availability of the application rather than the application itself may satisfy the requirements of this subparagraph so long as the complete application is made reasonably available to the public for inspection and copying, and

(ii) copies of all comments received shall be submitted with the application. The State should summarize the comments received, and note changes, if any, that were made in the application in response to public comments.

(c) The application shall be signed by the Governor or the head of the State agency having primary jurisdiction over highway matters. The application must also identify a point of contact for questions regarding the application. Applications may be submitted in electronic format.

#### § 773.107 Application approval.

If a State DOT's application is approved, then the State DOT will be invited to enter into a written Memorandum of Understanding (MOU) with the FHWA, as provided in 23 U.S.C. 327. None of FHWA's responsibilities under NEPA or other environmental laws may be assumed by the State DOT prior to execution of the MOU.

#### § 773.108 Application amendments.

(a) After a State DOT submits its application to the FHWA, but prior to the execution of a MOU, the State DOT may amend its application at any time to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to making any such amendments, the State DOT must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the State DOT must provide copies of all comments received and note the changes, if any, that were made in response to the comments.