

quire. At a minimum, an application shall include—

(A) a description of the projects or classes of projects for which the State seeks to assume responsibilities under subsection (a)(2); and

(B) a certification that the State has the capability to assume such responsibilities.

(2) PUBLIC NOTICE.—Before entering into a memorandum of understanding allowing a State to participate in the pilot program, the Secretary shall—

(A) publish notice in the Federal Register of the Secretary's intent to allow the State to participate in the program, including a copy of the State's application to the Secretary and the terms of the proposed agreement with the State; and

(B) provide an opportunity for public comment.

(3) SELECTION CRITERIA.—The Secretary may approve the application of a State to assume responsibilities under the program only if—

(A) the requirements under paragraph (2) have been met; and

(B) the Secretary determines that the State has the capability to assume the responsibilities.

(4) OTHER FEDERAL AGENCY VIEWS.—Before assigning to a State a responsibility of the Secretary that requires the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency.

(d) STATE DEFINED.—With respect to the recreational trails program, the term "State" means the State agency designated by the Governor of the State in accordance with section 206(c)(1).

(e) PRESERVATION OF PUBLIC INTEREST CONSIDERATION.—Nothing in this section shall be construed to limit the requirements under any applicable law providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.

(Added Pub. L. 109-59, title VI, § 6003(a), Aug. 10, 2005, 119 Stat. 1865.)

REFERENCES IN TEXT

The date of enactment of the SAFETEA-LU, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

Section 101(a)(35), referred to in subsec. (a)(2)(B), was redesignated section 101(a)(29) and subsequently amended by Pub. L. 112-141 and no longer defines transportation enhancement activities.

PRIOR PROVISIONS

A prior section 325, added Pub. L. 102-240, title VI, § 6003(a), Dec. 18, 1991, 105 Stat. 2168, related to international highway transportation outreach program, prior to repeal by Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452.

§ 326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for de-

termining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) ASSISTANCE TO STATES.—On request of a Governor of a State, the Secretary shall provide to the State technical assistance, training, or other support relating to—

(A) assuming responsibility under subsection (a);

(B) developing a memorandum of understanding under this subsection; or

(C) addressing a responsibility in need of corrective action under subsection (d)(1)(B).

(3) TERM.—A memorandum of understanding—

(A) shall have a term of not more than 3 years; and

(B) shall be renewable.

(4) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(5) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) a notification of the determination of noncompliance;

(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

(C) the State, after the notification and period described in clauses (i) and (ii) of subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(f) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorney's fees directly attributable to eligible activities associated with the project.

(Added Pub. L. 109-59, title VI, §6004(a), Aug. 10, 2005, 119 Stat. 1867; amended Pub. L. 112-141, div. A, title I, §1312, July 6, 2012, 126 Stat. 545; Pub. L. 114-94, div. A, title I, §1307, Dec. 4, 2015, 129 Stat. 1390.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally

to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 326, added Pub. L. 102-240, title VI, §6004(a), Dec. 18, 1991, 105 Stat. 2169; amended Pub. L. 105-130, §5(e)(4), Dec. 1, 1997, 111 Stat. 2558, related to education and training program, prior to repeal by Pub. L. 105-178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

AMENDMENTS

2015—Subsec. (c)(2) to (5), Pub. L. 114-94, §1307(1), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (d)(1), Pub. L. 114-94, §1307(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State."

2012—Subsec. (a)(4), Pub. L. 112-141, §1312(1), added par. (4).

Subsec. (d), Pub. L. 112-141, §1312(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State."

Subsec. (f), Pub. L. 112-141, §1312(3), added subsec. (f).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§327. Surface transportation project delivery program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery program (referred to in this section as the "program").

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project;