

Federal law as such requirements apply to the following projects:

(A) Projects funded under section 104(h).

(B) Transportation enhancement activities under section 133, as such term is defined in section 101(a)(35).

(b) AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall enter into a memorandum of understanding with a State participating in the pilot program setting forth the responsibilities to be assigned under subsection (a)(2) and the terms and conditions under which the assignment is being made.

(2) CERTIFICATION.—Before the Secretary enters into a memorandum of understanding with a State under paragraph (1), the State shall certify that the State has in effect laws (including regulations) applicable to projects carried out and funded under this title and chapter 53 of title 49 that authorize the State to carry out the responsibilities being assumed.

(3) MAXIMUM DURATION.—A memorandum of understanding with a State under this section shall be established for an initial period of no more than 3 years and may be renewed by mutual agreement on a periodic basis for periods of not more than 3 years.

(4) COMPLIANCE.—

(A) IN GENERAL.—After entering into a memorandum of understanding under paragraph (1), the Secretary shall review and determine compliance by the State with the memorandum of understanding.

(B) RENEWALS.—The Secretary shall take into account the performance of a State under the pilot program when considering renewal of a memorandum of understanding with the State under the program.

(5) SOLE RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) 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.

(6) 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.

(c) SELECTION OF STATES FOR PILOT PROGRAM.—

(1) APPLICATION.—To be eligible to participate in the pilot program, a State shall submit to the Secretary an application that contains such information as the Secretary may require. 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.

#### 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 determining 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.).

(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) **TERM.**—A memorandum of understanding—

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

(B) shall be renewable.

(3) **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.

(4) **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.**—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.

(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.

(Added Pub. L. 109-59, title VI, §6004(a), Aug. 10, 2005, 119 Stat. 1867.)

#### 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.

### §327. Surface transportation project delivery pilot program

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—The Secretary shall carry out a surface transportation project delivery pilot 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; but

(ii) the Secretary may not assign—

(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

(II) any responsibility imposed on the Secretary by section 134 or 135.

(C) **PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.**—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(D) **FEDERAL RESPONSIBILITY.**—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) **NO EFFECT ON AUTHORITY.**—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

(b) **STATE PARTICIPATION.**—

(1) **NUMBER OF PARTICIPATING STATES.**—The Secretary may permit not more than 5 States