

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

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;

(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) in a State that has assumed the responsibilities of the Secretary under clause (ii), a recipient of assistance under chapter 53 of title 49 may request that the Secretary maintain the responsibilities of the Secretary with respect to 1 or more public transportation projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 13¹ 4321 et seq.); but

(iv) the Secretary may not assign—

(I) any responsibility imposed on the Secretary by section 134 or 135 or section 5303 or 5304 of title 49; or

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

(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 as-

sumed 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.

(F) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(G) 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 attorneys’ fees directly attributable to eligible activities associated with the project.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES.—All States are eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

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

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

¹ So in original.

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that—

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) have a term of not more than 5 years; and

(6) be renewable.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rule-making authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during each of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(h) MONITORING.—After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(i) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(j) TERMINATION.—

(1) TERMINATION BY THE 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) notification of the determination of noncompliance; and

(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under 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 by 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.

(Added Pub. L. 109–59, title VI, § 6005(a), Aug. 10, 2005, 119 Stat. 1868; amended Pub. L. 111–322, title II, § 2203(c), Dec. 22, 2010, 124 Stat. 3526; Pub. L. 112–140, title I, § 101(e)(1), June 29, 2012, 126 Stat. 392; Pub. L. 112–141, div. A, title I, § 1313(a)–(h), July 6, 2012, 126 Stat. 545–547.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(2)(A), (B)(ii), (iii), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, 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.

The date on which amendments to this section by the MAP-21 take effect, referred to in subsec. (b)(2), is 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.

AMENDMENTS

2012—Pub. L. 112-141, §1313(a)(1), struck out “pilot” before “program” in section catchline.

Subsec. (a)(1). Pub. L. 112-141, §1313(a)(2), struck out “pilot” before “program (referred to)”.

Subsec. (a)(2)(B)(ii) to (iv). Pub. L. 112-141, §1313(b)(1), added cls. (ii) to (iv) and struck out former cl. (ii) which read as follows: “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.”

Subsec. (a)(2)(F), (G). Pub. L. 112-141, §1313(b)(2), added subpars. (F) and (G).

Subsec. (b)(1). Pub. L. 112-141, §1313(c)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The Secretary may permit not more than 5 States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program.”

Subsec. (b)(2). Pub. L. 112-141, §1313(c)(2), substituted “date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate,” for “date of enactment of this section, the Secretary shall promulgate” in introductory provisions.

Subsec. (c)(4) to (6). Pub. L. 112-141, §1313(d), added pars. (4) to (6).

Subsec. (e). Pub. L. 112-141, §1313(e), substituted “subsection (j)” for “subsection (i)”.

Subsec. (g)(1)(B). Pub. L. 112-141, §1313(f), substituted “of the third and fourth years” for “subsequent year”.

Subsec. (h). Pub. L. 112-141, §1313(g)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 112-141, §1313(g)(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 112-140 substituted “September 30, 2012” for “the date that is 7 years after the date of enactment of this section”.

Subsec. (j). Pub. L. 112-141, §1313(h), amended subsec. (j) generally. Prior to amendment, subsec. (j) related to termination of the original pilot program on Sept. 30, 2012, and termination of State participation by the Secretary.

Pub. L. 112-141, §1313(g)(1), redesignated subsec. (i) as (j).

2010—Subsec. (i)(1). Pub. L. 111-322 substituted “7 years after” for “6 years after”.

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.

Pub. L. 112-140, title I, §101(e)(2), June 29, 2012, 126 Stat. 392, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 101 of the Surface Transportation Extension Act of 2012 [Pub. L. 112-102] and shall not be subject to the special rule in section 1(c) of this Act [set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title].”

§ 328. Eligibility for environmental restoration and pollution abatement

(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of stormwater treatment systems to meet Federal

and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

(Added Pub. L. 109-59, title VI, §6006(b), Aug. 10, 2005, 119 Stat. 1872.)

§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this section may be used for the following activities if such activities are related to transportation projects funded under this title:

(1) Establishment of plants selected by State and local transportation authorities to perform one or more of the following functions: abatement of stormwater runoff, stabilization of soil, and aesthetic enhancement.

(2) Management of plants which impair or impede the establishment, maintenance, or safe use of a transportation system.

(b) INCLUDED ACTIVITIES.—The establishment and management under subsection (a)(1) and (a)(2) may include—

(1) right-of-way surveys to determine management requirements to control Federal or State noxious weeds as defined in the Plant Protection Act (7 U.S.C. 7701 et seq.) or State law, and brush or tree species, whether native or nonnative, that may be considered by State or local transportation authorities to be a threat with respect to the safety or maintenance of transportation systems;

(2) establishment of plants, whether native or nonnative with a preference for native to the maximum extent possible, for the purposes defined in subsection (a)(1);

(3) control or elimination of plants as defined in subsection (a)(2);

(4) elimination of plants to create fuel breaks for the prevention and control of wildfires; and

(5) training.

(c) CONTRIBUTIONS.—

(1) IN GENERAL.—Subject to paragraph (2), an activity described in subsection (a) may be carried out concurrently with, in advance of, or following the construction of a project funded under this title.

(2) CONDITION FOR ACTIVITIES CONDUCTED IN ADVANCE OF PROJECT CONSTRUCTION.—An activity described in subsection (a) may be carried out in advance of construction of a project only if the activity is carried out in accordance with all applicable requirements of Fed-