



U.S. Code

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§ 134. Metropolitan transportation planning

(a) Policy.— It is in the national interest to—

(1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135 (d).

(b) Definitions.— In this section and section 135, the following definitions apply:

(1) **Metropolitan planning area.—** The term “metropolitan planning area” means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

(2) **Metropolitan planning organization.—** The term “metropolitan planning organization” means the policy board of an organization created as a result of the designation process in subsection (d).

(3) **Nonmetropolitan area.—** The term “nonmetropolitan area” means a geographic area outside designated metropolitan planning areas.

(4) **Nonmetropolitan local official.—** The term “nonmetropolitan local official” means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) **TIP.—** The term “TIP” means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

(6) **Urbanized area.—** The term “urbanized area” means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

(c) General Requirements.—

(1) **Development of long-range plans and tips.—** To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

(2) **Contents.—** The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) **Process of development.—** The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) Designation of Metropolitan Planning Organizations.—

(1) **In general.—** To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) **Structure.—** Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

(A) local elected officials;

- (B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and
- (C) appropriate State officials.

(3) Limitation on statutory construction.— Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

- (A) develop the plans and TIPs for adoption by a metropolitan planning organization; and
- (B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) Continuing designation.— A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) Redesignation procedures.— A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

(6) Designation of more than 1 metropolitan planning organization.— More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(e) Metropolitan Planning Area Boundaries.—

(1) In general.— For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) Included area.— Each metropolitan planning area—

- (A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and
- (B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) Identification of new urbanized areas within existing planning area boundaries.— The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) Existing metropolitan planning areas in nonattainment.— Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

(5) New metropolitan planning areas in nonattainment.— In the case of an urbanized area designated after the date of enactment of the SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

- (A) shall be established in the manner described in subsection (d)(1);
- (B) shall encompass the areas described in paragraph (2)(A);
- (C) may encompass the areas described in paragraph (2)(B); and
- (D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(f) Coordination in Multistate Areas.—

(1) In general.— The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) Interstate compacts.— The consent of Congress is granted to any two or more States—

- (A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and
- (B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) Lake tahoe region.—

- (A) **Definition.**— In this paragraph, the term “Lake Tahoe region” has the meaning given the term “region” in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).
- (B) **Transportation planning process.**— The Secretary shall—

- (i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and
- (ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 135.

(C) Interstate compact.—

(i) In general.— Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) Involvement of federal land management agencies.—

(I) Representation.— The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) Funding.— For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, prior to any allocation under section 202 of this title and notwithstanding the allocation provisions of section 202, the Secretary shall set aside 1/2 of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233) and this paragraph.

(D) Activities.— Highway projects included in transportation plans developed under this paragraph—

- (i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and
- (ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

(4) Reservation of rights.— The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) MPO Consultation in Plan and TIP Coordination.—

(1) Nonattainment areas.— If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) Transportation improvements located in multiple mpos.— If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) Relationship with other planning officials.— The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

- (A) recipients of assistance under chapter 53 of title 49;
- (B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and
- (C) recipients of assistance under section 204.

(h) Scope of Planning Process.—

(1) In general.— The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

- (A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- (B) increase the safety of the transportation system for motorized and nonmotorized users;
- (C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and for freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(G) promote efficient system management and operation; and

(H) emphasize the preservation of the existing transportation system.

(2) Failure to consider factors.— The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) Development of Transportation Plan.—

(1) In general.— Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(A) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407 (d)).

(B) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407 (d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) Transportation plan.— A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) Identification of transportation facilities.— An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

(B) Mitigation activities.—

(i) In general.— A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(ii) Consultation.— The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(C) Financial plan.— A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(D) Operational and management strategies.— Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(E) Capital investment and other strategies.— Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

(F) Transportation and transit enhancement activities.— Proposed transportation and transit enhancement activities.

(3) Coordination with clean air act agencies.— In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) Consultation.—

(A) In general.— In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) Issues.— The consultation shall involve, as appropriate—

(i) comparison of transportation plans with State conservation plans or maps, if available; or

(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(5) Participation by interested parties.—

(A) In general.— Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) Contents of participation plan.— A participation plan—

(i) shall be developed in consultation with all interested parties; and

(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) Methods.— In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(6) Publication.— A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(7) Selection of projects from illustrative list.— Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

(j) Metropolitan TIP.—**(1) Development.—**

(A) In general.— In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

(B) Opportunity for comment.— In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(C) Funding estimates.— For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) Updating and approval.— The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

(2) Contents.—

(A) Priority list.— The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) Financial plan.— The TIP shall include a financial plan that—

(i) demonstrates how the TIP can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) Descriptions.— Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

(3) Included projects.—

(A) Projects under this title and chapter 53 of title 49.— A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

(B) Projects under chapter 2.—

(i) Regionally significant projects.— Regionally significant projects proposed for funding under chapter 2 shall be

identified individually in the transportation improvement program.

(ii) Other projects.— Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

(C) Consistency with long-range transportation plan.— Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

(D) Requirement of anticipated full funding.— The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

(4) Notice and comment.— Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(5) Selection of projects.—

(A) In general.— Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

(i) by—

(I) in the case of projects under this title, the State; and

(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

(ii) in cooperation with the metropolitan planning organization.

(B) Modifications to project priority.— Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

(6) Selection of projects from illustrative list.—

(A) No required selection.— Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) Required action by the secretary.— Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

(7) Publication.—

(A) Publication of tips.— A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) Publication of annual listings of projects.— An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

(k) Transportation Management Areas.—

(1) Identification and designation.—

(A) Required identification.— The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) Designations on request.— The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) Transportation plans.— In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

(3) Congestion management process.— Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

(4) Selection of projects.—

(A) In general.— All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected

for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) National highway system projects.— Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

(5) Certification.—

(A) In general.— The Secretary shall—

- (i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and
- (ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) Requirements for certification.— The Secretary may make the certification under subparagraph (A) if—

- (i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and
- (ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) Effect of failure to certify.—

- (i) **Withholding of project funds.**— If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.
- (ii) **Restoration of withheld funds.**— The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) Review of certification.— In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(l) Abbreviated Plans for Certain Areas.—

(1) In general.— Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) Nonattainment areas.— The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(m) Additional Requirements for Certain Nonattainment Areas.—

(1) In general.— Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

(2) Applicability.— This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(n) Limitation on Statutory Construction.— Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

(o) Funding.— Funds set aside under section 104 (f) of this title or section 5305 (g) of title 49 shall be available to carry out this section.

(p) Continuation of Current Review Practice.— Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.

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