

SUMMARY OF SAFETEA-LU PROVISIONS WITH HISTORIC RESOURCE IMPLICATIONS

September 12, 2005

Section 6001 – Transportation Planning: This section retains and revises the metropolitan and statewide transportation planning statutory requirements. Key provisions include:

- **Metropolitan and Statewide Plans –Environmental Mitigation:** Metropolitan and statewide transportation plans must include a discussion of types of potential environmental mitigation activities, to be developed in consultation with Federal, State and Tribal wildlife, land management, and regulatory agencies.
- **New Consultations:** MPOs and States must consult with State, local, and tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation in developing long-range transportation plans.
- **Participation Plan:** “In consultation with all interested parties”, MPOs must develop and utilize a “Participation Plan” that provides reasonable opportunities for interested parties to comment on the content of the metropolitan transportation plan and metropolitan TIP.

Section 6002 – Efficient Environmental Reviews for Project Decisionmaking: Prescribes a new environmental review process for highway, public transportation capital, and multimodal projects, mandatory for EISs and optional for EAs. Key provisions include:

- Creates new category of “participating agencies” (Federal, state, local and tribal agencies with an interest in the project) with certain rights and responsibilities
- Requires development of a coordination plan and schedule to be provided to all participating agencies and made available to the public.
- Establishes a 180-day statute of limitations on litigation beginning with publication of a notice in the Federal Register that a permit, license or approval action is final.

Section 6003 – State Assumption of Responsibilities for Certain Programs and Projects (TE & Rec Trails): Authorizes the Secretary to establish a pilot program for up to 5 states to assume the Secretary’s responsibilities for environmental reviews for the Transportation Enhancement Program and the Recreational Trails Program, excluding delegation of the Secretary’s responsibilities relating to Federally-recognized Indian tribes.

Section 6004 – State Assumption of Responsibility for Categorical Exclusions: Allows the Secretary to delegate responsibility for categorical exclusion (CE) determinations to states, subject to criteria to be established by the Secretary. Also allows for delegation of the Secretary’s responsibilities for other environmental reviews (e.g., 4(f) of the Department of Transportation Act) for projects classified as CEs. May not include delegation of government-to-government consultation with Federally-recognized Indian tribes. US DOT is to implement this provision through individual MOUs with states, after public notice and comment.

Section 6005 – Surface Transportation Project Delivery Pilot Program: Allows US DOT to delegate to 5 states (specified as CA, TX, OK, AK, and OH) the Secretary’s responsibility for NEPA and reviews and consultations required by other Federal environmental laws for highway

projects. Contains multiple conditions and restrictions, some of which may require new state legislation. Requires USDOT to issue regulations via rulemaking to establish application requirements within 270 days of SAFETEA-LU's enactment.

Section 6007 – Exemption of Interstate System: This provision exempts the vast majority of the Interstate Highway System from consideration as an historic site under Section 4(f) of the Department of Transportation Act. The limited exceptions to this provision are the same discrete Interstate elements currently being identified by FHWA under provisions of the Section 106 exemption adopted administratively in March 2005.

Section 6008 –Integration of Natural Resource Concerns into Transportation Project Planning: Requires consideration of the FHWA report, Flexibility in Highway Design.

Section 6009 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites): Major provisions include:

- The requirements of Section 4(f) of the Department of Transportation Act will be considered satisfied with respect to a Section 4(f) resource if it is determined that a transportation project will have only a “de minimis impact” on the 4(f) resource. The Agencies with jurisdiction must concur in writing with the determination. For historic properties the de minimis criteria are defined as “no adverse affect” or no "historic properties affected” under Section 106 of the National Historic Preservation Act.
- Promulgation of regulations within 1 year after the date of enactment to clarify factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives.

Section 6010 – Environmental Review of Activities that Support Deployment of Intelligent Transportation Systems: Requires the Secretary to initiate rulemaking within 1 year to establish Intelligent Transportation System (ITS) activities as CEs, “to the extent appropriate,” Also requires development of a national programmatic agreement for ITS and Section 106 of the National Historic Preservation Act. *Most ITS activities already qualify as CEs.*

Section 1114 – Highway Bridge Program: The Bridge Program is broadened in scope to include “systemic preventative maintenance” and freed from the requirement that bridges must be considered “significantly important”.

Section 1804 –National Historic Covered Bridge Preservation Program: Covered bridges on or eligible for the National Register of Historic Places are eligible for rehabilitation, repair, or preservation under this discretionary program authorized at \$40 million.

Section 1122(a) – Definitions (Transportation Enhancements Activities): The definition of transportation enhancements (TE) in 23 USC 101(a)(35) is amended to clarify that acquisition of historic battlefields is an eligible activity, effective immediately.

Section 1802 – National Scenic Byways Program: This program was amended to allow Indian tribes to apply directly to the FHWA for Byway designation and for funding, effective immediately.

NOTES:

6001: Most of the transportation planning requirements became effective immediately when SAFETEA-LU was signed into law on August 10, 2005; however, many of these provisions require rulemaking to implement the changes.

FHWA and FTA expect to initiate a comprehensive rulemaking to update the metropolitan and statewide planning regulations in the near future. In the interim, States and MPOs are allowed to continue to comply with existing planning regulations for this current set of updates.

6002: *highway and transit EISs for which a NOI was published prior to 8/11/05 may continue as “grandfathered” under prior law.*

6002: *It is assumed that most “approvals” (e.g., Section 106 MOAs) will be completed by RODs or FONSIIs and a separate notice would not be required, unless there is a substantial lapse of time between the FHWA decision and other federal action.*

6004: *. Within the next 3-4 months, FHWA and FTA will develop guidance and a template memorandum of understanding (MOU) for FHWA Divisions and FTA Regions to use in carrying out this provision. States may not use this authority for specific projects until an MOU is in place.*

6005: *The statute does not address tribal consultation, but FHWA’s interpretation is that this provision does not extend additional authority for States to assume USDOT responsibilities for such consultation.*

6008: *and the document, “Eight Characteristics to Yield Excellence and the Seven Qualities of Excellence in Transportation Design.”*

6009: *The de minimis provision for historic properties can be applied immediately for those projects in which a draft Section 4(f) evaluation has not been distributed. Section 106 compliance is essential to the de minimis finding and therefore, the assessment of effects should be documented on a property-by-property basis.*

For parks, recreation areas, wildlife and waterfowl refuges, US DOT will have to issue guidance to allow application of the de minimis provision. The process for developing the guidance is underway and is expected to be complete within one month but is subject to change depending on the need to coordinate with other agencies.