

Successes **in** Stewardship

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July 2007

Streamlining the Environmental Process: State DOTs Take on NEPA Compliance Responsibilities

As transportation projects grow in complexity, efficiency is critical to attaining a streamlined, integrated project development process. To achieve this, transportation agencies – including the Federal Highway Administration (FHWA) and state departments of transportation (DOTs) – continue to develop processes to address National Environmental Policy Act (NEPA)-related environmental reviews and consultation.

The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) introduced two provisions aimed at transferring FHWA environmental responsibilities from FHWA to state DOTs. The first provision allows participating state DOTs to assume Categorical Exclusion (CE) responsibilities. The second

provision allows up to five state DOTs to participate in the Surface Transportation Project Delivery Pilot Program and to assume responsibility for NEPA and other environmental activities at varying levels.

This issue of *Successes in Stewardship* summarizes these two provisions and describes how state DOTs can apply for CE and/or NEPA delegation.

Assigning Responsibility for Designated Categorical Exclusions

Section 6004 of SAFETEA-LU, codified as 23 USC §326, states that FHWA Division Offices may assign responsibilities and liabilities for making project-specific CE determinations to state DOTs through a signed Memorandum of Understanding (MOU). State DOTs that are interested in assuming responsibility can enter into an MOU with the state's FHWA Division Office. FHWA Headquarters has developed an [MOU template](#) to help state DOTs in drafting the MOU. Each MOU is tailored to address state-specific issues, and the template's language is updated as needed. States are encouraged to include details on any monitoring conducted as part of CE delegation, to outline and justify the inclusion of activities beyond those provided in the regulations that the state would like to assume under this delegation, and to describe how these activities will be supported.

After the Division Office has reviewed the completed draft MOU, it is reviewed by FHWA Headquarters and revised if necessary in conjunction with the state DOT and the FHWA Division Office. The MOU is then submitted to the Council on Environmental Quality (CEQ) for comment. Once CEQ has provided its comments, a notice of availability is published in the Federal Register and in statewide newspapers for a 45-day comment period. After the comment period has ended and all comments have been considered, the MOU is finalized. States must also obtain legal authority to waive their sovereign immunity so that they will be subject to Federal court jurisdiction in the event of litigation.

State MOU Update

Three state DOTs have worked closely with FHWA in delegating NEPA authority for CEs. California executed its MOU on June 7, 2007. Alaska and Utah are continuing to work with FHWA on their MOUs before submitting them to CEQ for comment. All three states have adopted legislation to waive their sovereign immunity for the purpose of this assignment.



FHWA and Caltrans are working together to consolidate responsibilities for the Environmental Review Process. This will allow the state to assume NEPA responsibilities that were previously overseen at the Federal level. (Caltrans logo courtesy of <http://www.dot.ca.gov/>)

How to Apply

For more information on how states can assume responsibility for CEs, refer to the April 2006 *Guidance on the State Assumption of Responsibility for Categorical Exclusions*, which includes:

- MOU template
- MOU Guidance
- FHWA Questions and Answers on the Implementation of SAFETEA-LU Section 6004
- MOU Federal Register Notice template

For further information, please contact Owen Lindauer (202-366-2655) or Janet Myers of the Office of Chief Counsel (202-366-2019).

Surface Transportation Project Delivery Pilot Program

Section 6005 of SAFETEA-LU, codified as 23 USC §327, outlines the assignment of U.S. DOT environmental responsibilities under NEPA and other environmental laws to a state DOT through the Project Delivery Pilot Program (Pilot Program). The Pilot Program, designed for up to five states (Alaska, California, Ohio, Oklahoma, and Texas are given priority in SAFETEA-LU), allows each state to test whether consolidating responsibilities in the state's hands streamlines the environmental review process. The Secretary of Transportation assigns, and the state assumes, the Secretary's responsibilities under NEPA for at least one state highway project. The Secretary may further assign to the state all or part of the Secretary's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law related to the review of a specific highway project. As with CE assignment, when a state assumes the Secretary's responsibilities under the Pilot Program it incurs sole responsibility and liability in lieu of FHWA. SAFETEA-LU also requires FHWA to conduct audits of each participating pilot state DOT to ensure compliance in meeting all Federal laws for which the state has been assigned responsibility. Semiannual audits will take place during each of the first two years of state participation in the Pilot Program, and annual audits will occur in each subsequent year.

Pilot Program Update

FHWA published a notice of proposed rulemaking (NPRM) on April 5, 2006 to establish requirements for state applications. The [Final Rule](#) was published on February 12, 2007. Section 773.105 of the rule required that the five states designated in SAFETEA-LU submit letters of interest to FHWA by May 15, 2007 to participate in the Pilot Program. California, Alaska, and Oklahoma submitted letters of interest while Ohio and Texas declined to participate. To fill the two open slots, in early July FHWA will issue a notice in the Federal Register soliciting interest from other states to participate in the program.

The California DOT (Caltrans) submitted its application for the Pilot Program to FHWA on May 21, 2007. The MOU between FHWA and Caltrans concerning the state of California's participation in the Pilot Program was executed on June 29, 2007. The first FHWA audit of Caltrans will take place six months after the execution date of the MOU.

Looking Ahead

Upcoming announcements include Federal Resource Agency involvement in transportation planning (available this summer) and the Final Rule on Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 6009), to be published in fall 2007. For more details on the impact of SAFETEA-LU on the environmental review process, visit the [FHWA SAFETEA-LU](#) webpage.

Contact Information

	<u>Categorical Exclusions</u>	<u>Surface Transportation Project Delivery Pilot Program</u>
FHWA Office of Project Development and Environmental Review, E-76 1200 New Jersey Avenue, SE Washington, DC 20590	Owen Lindauer Project Development Specialist/Archaeologist Owen.Lindauer@dot.gov 202-366-2655	Ruth Rentch Project Development Specialist Ruth.Rentch@dot.gov 202-366-2034
FHWA Office of Chief Counsel E-84 1200 New Jersey Avenue, SE Washington, DC 20590	Janet Myers Senior Attorney Advisor Janet.Myers@dot.gov 202-366-2019	Michael Harkins Attorney Advisor Michael.Harkins@dot.gov 202-366-4928

Look What's New!

The Exemplary Human Environment Initiative (EHEI) is a new program created to recognize and publicize transportation initiatives that make the transportation system work better for the people who use it. Awards will be given in the following categories: encouraging non-motorized transportation, enhancing the environment for human activities, process improvements, educational and training programs, product development, and other.

Nomination forms are due July 13, 2007. For more information visit the [EHEI website](#) or contact John Fegan in FHWA Office of Human and Natural Environment at john.fegan@dot.gov or (202) 366-5007.

Successes in Stewardship is a Federal Highway Administration newsletter highlighting current environmental streamlining and stewardship practices from around the country. To subscribe, visit http://environment.fhwa.dot.gov/sis_registration/Register.aspx or call 617-494-3137.