

The following provides a more detailed summary of the “Inside the Industry” article that is featured in the June 2007 issue of At A Glance™.

INSIDE THE INDUSTRY

Environmental Review Process under SAFETEA-LU Section 6002

A Six-Month Review after Guidance Issued

On Aug. 10, 2005, President George W. Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) into law. SAFETEA-LU promotes more efficient and effective federal transportation programs by focusing on issues of national significance, while giving state and local transportation decision makers more flexibility for solving transportation problems.

Section 6002 of SAFETEA-LU adds requirements and refinements to the environmental review process for transportation projects. All Environmental Impact Statements (EISs) for which the Notice of Intent to prepare an EIS was published in the Federal Register after Aug. 10 must follow SAFETEA-LU's requirements.

While Section 6002 went into effect in August 2005, guidance describing how the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) would implement the new requirements within the environmental review process required by the National Environmental Policy Act (NEPA) was missing. Therefore, **on Nov. 15, 2006, FHWA and FTA issued guidance on the application of Section 6002 of SAFETEA-LU.**

Six months after the guidance was issued, we have had a chance to see and understand the major changes under Section 6002 and how they will impact the transportation project development process. The following offers a brief summary of the major changes we have seen.

It is important to note that the Ohio Division of FHWA and the Ohio Department of Transportation (ODOT) have agreed upon the procedures that will be used for implementation of these new rules in ODOT's Project Development Process (PDP). ODOT's Office of Environmental Services has stated that these new procedures will be incorporated into the next update of the PDP and will also incorporate these requirements into the new Environmental Process Manual, due out this summer.

Project Sponsor -- The project sponsor is the “agency or other entity, including any private or public-private entity,” that seeks approval of the U.S. Department of Transportation (U.S. DOT) for a highway or transit project. The project sponsor is given certain roles and responsibilities and can be any state or local governmental agency receiving federal funds. Project sponsors serve as joint lead agencies with the U.S. DOT for purposes of project development and preparing environmental documents in accordance with NEPA. Other agencies can adopt the NEPA document prepared by the project sponsor and lead agency.

Participating Agencies -- The lead agency is responsible for designating participating agencies (i.e., other government agencies) that may have an interest in the project, as well as inviting agencies to participate in the environmental review process. A participating agency can be a cooperating agency, in accordance with the Council of Environmental Quality (CEQ) regulations implementing NEPA at 40 CFR Part 1500. Cooperating agencies are, by CEQ regulation, participating agencies; participating agencies are not necessarily cooperating agencies.

Coordination Plans and Schedules -- The lead agency must prepare a plan for coordinating public and agency participation in the environmental review process. The lead agency can prepare a schedule for the environmental review process as part of the coordination plan, but this is optional. If a schedule is prepared, the participating agencies need to be consulted.

Public Opportunities to Comment on Purpose and Need and Alternatives Analysis -- The lead agencies need to provide opportunities for the public to help define both the project's purpose and needs, as well as the range of alternatives considered for the project. These opportunities need to be both meaningful and 'as early as practicable' in the environmental review process. After an opportunity for public involvement, the lead agency will determine the range of alternatives to be considered. The lead agency is given extreme deference in preparing the purpose and need, as recently affirmed by the CEQ in its memorandum.

Issue Identification -- Lead agencies need to make information available to participating agencies as early as possible, and participating agencies need to make issues of concern known as early as possible. It isn't known how issues identification will work in day-to-day practice, nor have we seen an example.

Issue Resolution -- An issues resolution meeting can be called at any time during project development by the project sponsor or the Governor of the state in which the project is located.

Preferred Alternative - A Higher Level of Detail -- The preferred alternative can be developed in more detail than other alternatives. This is particularly the case for mitigation measures to support a 404 permit application and facilitate overall processing without delays.

Concurrent Reviews -- Agencies are directed, if possible, to perform reviews required by other laws concurrently with the review of the environmental document. Examples of this could include a Section 404 permit application or consultation under Section 7 of the Endangered Species Act.

Statute of Limitations - 180 days -- All claims relating to the issuance of a permit, license, or approval must be brought within 180 days of publication of the Federal Register notice announcing that the permit, license, or approval has been finalized. All claims must be brought forward at the earliest possible time or action on a project.

For more information on Section 6002, please visit the FHWA's Web site -- www.fhwa.dot.gov/hep/section6002/intro.htm.