



NEPA Delegation News

“A Publication of Caltrans Division of Environmental Analysis”

This fact sheet is the third in a series that looks at the assignment of federal responsibilities under SAFETEA-LU. The first and second fact sheets, describe the NEPA Delegation Pilot Program enacted under SAFETEA-LU Section 6005.

Introduction

Under a federal law signed in 2005 called the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the California Department of Transportation (Caltrans) may now assume certain Federal Highway Administration (FHWA) responsibilities under the National Environmental Policy Act (NEPA).

SAFETEA-LU Section 6004 allows Caltrans to assume FHWA’s responsibilities* for determining if a transportation project qualifies for a Categorical Exclusion (CE)—a type of NEPA action that does not involve significant environmental impacts. For these categorically excluded projects, Section 6004 also allows Caltrans to assume FHWA’s responsibilities for coordination and consultation under other federal environmental laws such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act. Caltrans is currently negotiating a Memorandum of Understanding (MOU) with FHWA, that will outline the specific terms of this assumption of responsibilities. 🚧

About Section 6004

Caltrans’ assumption of FHWA’s CE responsibilities under Section 6004 will streamline the federal environmental review process for categorically excluded transportation projects by eliminating FHWA’s project-by-project review and approval. Caltrans will apply federal environmental requirements in the same manner that FHWA does now, maintaining FHWA’s rigorous environmental standards.

Caltrans is well prepared to assume FHWA’s responsibilities and has already been administratively delegated the authority to act on behalf of FHWA for a number of other federal environmental programs, such as certain consultation responsibilities under the National Historic Preservation Act and the Endangered Species Act. Caltrans has extensive experience complying with federal environmental laws, regulations and policies, and regularly prepares NEPA

documents for State highway system and federally-funded local roadway projects for FHWA review and approval. FHWA will monitor Caltrans’ compliance with the Section 6004 MOU. Caltrans must commit to providing adequate staff resources to carry out the MOU and will be required to provide periodic reports to FHWA summarizing its performance. 🚧

What are CEs ?

CEs are a category of NEPA actions that do not have a significant individual or cumulative effect on the environment. If a project is determined to be categorically excluded, preparation of a NEPA document (an Environmental Impact Statement or an Environmental Assessment) is not required. Categorically excluded projects must still comply with the permitting and consultation requirements of other federal environmental regulations, which may require the development of avoidance, minimization, or mitigation strategies, if any are necessary.

FHWA defines its CEs in regulations at 23 CFR 771.117, where they are divided into two groups based on a transportation project’s potential for environmental effects:

1. The “c” list, in 23 CFR 771.117(c), consists of actions that almost never cause significant environmental impacts, for instance, minor construction activities, such as bicycle lanes or landscaping. These actions are automatically classified as CEs, except where “unusual circumstances”

• ACRONYMS •

Caltrans	California Department of Transportation
CE	Categorical Exclusion
CFR	Code of Federal Regulations
DMS	Document Management System
FHWA	Federal Highway Administration
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
PCE	Programmatic Categorical Exclusion
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
USDOT	U.S. Department of Transportation

*Before Caltrans can assume responsibilities under Section 6004, SAFETEA-LU requires that the agency assume sole legal responsibility and liability for its decisions made under Section 6004 by waiving its 11th Amendment right to sovereign immunity against actions brought by its citizens in federal court. California’s waiver became effective in November 2006 when the transportation bond (Proposition 1B) was passed by the voters. With this waiver in place, Caltrans is now moving forward with negotiating its MOU with FHWA.

occur (e.g. environmental controversy or when a project involves significant environmental effects).

2. The “d” list, in 23 CFR 771.117(d), consists of examples of actions that normally do not result in significant environmental effects, but for which studies must still be prepared to document that a project will not result in a significant environmental effect.

In 1990, FHWA and Caltrans signed a Programmatic CE (PCE) Agreement that provides Caltrans with approval authority for certain types of categorically excluded projects without the need for project-specific FHWA review or approval. Caltrans has signature authority for PCEs. FHWA must approve CEs that do not qualify as PCEs. Once the Section 6004 MOU is signed, the PCE Agreement will no longer be used. 🚧

Responsibilities Under 6004

Under Section 6004, Caltrans can assume responsibility for approving CEs on the “c” list and the “d” list. In addition, Caltrans may propose additional actions that qualify as CEs under the “d” list, provided that documentation is presented to FHWA justifying these additions. Caltrans is proposing seven additional actions as CEs based on the types of activities that FHWA and Caltrans have historically approved as CEs in California. Appendix A of the draft Section 6004 MOU lists the proposed additional CE actions. If approved, Caltrans would assume responsibility for approving these CEs under the MOU. For projects that are not listed on the “c” or “d” list or Appendix A, but for which a CE classification is appropriate, Caltrans would assume responsibility under the NEPA Delegation Pilot Program (see project Website). 🚧

In Preparation

To prepare for the assumption of responsibilities under both SAFETEA-LU Sections (6004 and 6005), Caltrans is taking a number of actions to expand upon and strengthen its environmental procedures. This includes updating and

refining its environmental documentation tools, providing additional training to its staff, and meeting with federal resource agencies to discuss its expanded role in formal consultations. Caltrans will continue to meet with these agencies and stakeholder groups to share information about its new responsibilities under both programs. 🚧

Public Comments Welcome

The draft Section 6004 MOU between Caltrans and FHWA was made available for public review on April 9th. The MOU was also noticed in the Federal Register on April 11th. Caltrans published public notices in three major newspapers in California on April 12th.

The public is invited to comment on any aspect of the draft MOU. Comments on the MOU must be received by **May 29th, 2007**. Comments should be identified by the U.S. Department of Transportation (USDOT) Document Management System (DMS) Docket Number FHWA-2007-27804 and may be submitted by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

- Website: <http://dms.dot.gov>: follow the instructions for submitting comments provided on the USDOT electronic docket site.
- Facsimile: Fax comments to (202) 493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL-401, Washington, D.C. 20590. 🚧

What's Next...

Caltrans and FHWA will consider all comments as part of finalizing the MOU. The MOU is expected to be fully executed by late summer 2007. The MOU will be in effect for three years and is renewable if FHWA determines that Caltrans has successfully carried out its assigned responsibilities. 🚧🚧🚧

Where to Get Information

For further information about SAFETEA-LU Section 6004 or other topics discussed in this fact sheet, please contact the individuals below.

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Project Website

To get more information about SAFETEA-LU, the NEPA Delegation Pilot Program, Caltrans, opportunities for involvement, or to receive future fact sheets via e-mail, visit the project Website at the URL below. This Website will be updated regularly as the Sections 6005 and 6004 programs progress.

http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm

