

INTERIM GUIDANCE FOR IMPLEMENTING SAFETEA-LU PROVISIONS ON PLANNING, ENVIRONMENT, AND AIR QUALITY FOR FHWA AUTHORITIES

September 2, 2005

ENVIRONMENT PROVISIONS:

Section 6003 – State Assumption of Responsibilities for Certain Programs and Projects (TE & Rec Trails): Authorizes the Secretary to establish a pilot program for states to assume the Secretary's responsibilities for environmental reviews for the Transportation Enhancement Program and the Recreational Trails Program. Excludes delegation of the Secretary's responsibilities relating to Federally-recognized Indian tribes. For the first 3 years of SAFETEA-LU, only 5 states may be selected by the Secretary for this pilot program. *HEP will assess State interest in using this provision; if the interest is there, HEP will develop application procedures and more information in the future, after more immediate SAFETEA-LU implementation requirements are met. Questions or comments can be directed to Christopher Douwes in HEPN.*

Section 6005 – Surface Transportation Project Development 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. This section applies to highway projects only. Can be for 1 project or multiple 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. *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. HEP and HCC have begun a series of discussions with (a) other affected Federal agencies, (b) the 5 affected Divisions; and (c) the 5 affected states, to develop the best way to implement this Section. FHWA expects to hold individual meetings with the 5 states in September to ascertain their interest in this and discuss the obligations and requirements that would apply. Divisions and States should begin discussing which projects and which USDOT authorities the States wish to assume in preparation for the formal State application. Questions or comments can be directed to Carol Adkins in HEPE.*

Section 6006 – Environmental Restoration and Pollution Abatement; Control of Noxious Weeds and Aquatic Noxious Weeds and Establishment of Native Species: Provides new and expanded eligibility for using Federal-aid funds. First, it extends the existing STP eligibility for pollution abatement and restoration to the NHS. Second, it adds a new eligibility item under both the STP and the NHS for projects that promote the detection and eradication of noxious weeds, and it establishes a preference to the extent practicable for the planting of native plant species. *These provisions are effective immediately. We will issue further guidance as necessary to address questions that arise. Questions or comments can be directed to Fred Bank in HEPN.*

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 under a FHWA nationwide initiative, that continue to be subject to the Section 106 of the National Historic Preservation Act process under provisions of the Section 106 exemption adopted administratively in March 2005. *A Consultant will be on board soon to do phone interviews with State DOTs, State Historic Preservation Officers (SHPOs), FHWA Divisions, and others and to compile a list of candidate elements for consideration at the national level. FHWA Divisions should begin discussing with State DOTs and SHPOs the individual elements of the Interstate System in your State that warrant consideration. Questions or comments can be directed to MaryAnn Naber in HEPE.*

PLANNING AND ENVIRONMENT FUNDING PROGRAMS:

Section 1101(a)(19) – Appropriations for Borders and Corridors Programs: Authorizes \$140,000,000 for fiscal year 2005 for the National Corridor Planning and Development and Coordinated Border Infrastructure programs under sections 1118 and 1119 of TEA-21. *These programs will be closed, so they can be replaced by the new programs and funding structures in SAFETEA-LU. The close-out will likely take several years based on past experience with States that have difficulty obligating specific projects. HEPI will issue instructions regarding implementation of the HABF redistribution notice. Questions or comments can be directed to Martin Weiss in HEPI.*

Section 1103 – Apportionments (CMAQ): Establishes a modified apportionment formula for CMAQ funding. Uses the multiple weighting of eight-hour ozone classifications previously used for the one-hour classifications. Adds a 1.0 weighting for the Subpart 1 eight-hour ozone nonattainment areas and for all maintenance areas. Does not provide a weighting factor for PM_{2.5} or PM₁₀ although CMAQ funds may be used in those areas. *These factors will be effective with the FY06 apportionment and will be applied to reconcile FY05 apportionments. Questions or comments can be directed to Mike Koontz in HEPN.*

Section 1007 – Metropolitan Planning (PL Funds): Adds a new requirement that state DOTs must reimburse MPOs for costs of carrying out the Section 134 planning process, out of PL funds, within 30 days of receiving the MPO's claim for reimbursement. *This requirement is effective immediately. If a state DOT believes the MPO did not provide adequate supporting documentation for reimbursement claims and the state DOT needs more than the 30 days to verify the claims, the state DOT should reimburse the MPO and then deduct any charges later determined to be unallowable from the MPO's next claim for reimbursement. Please ensure that state DOTs and MPOs are aware of it and that state DOTs are complying. Questions or comments can be directed to Tony Solury (HEP-2) or Ken Petty in HEPP.*

Section 1117 – Transportation, Community, and System Preservation (TCSP) Program: SAFETEA-LU more than doubles the TCSP Program for the last four fiscal years. However, SAFETEA-LU does not provide for formula allocation, as contained in the Administration's SAFETEA proposal. Effective immediately, the TCSP Program is no longer 100 percent

Federally-funded. The Federal share is now in accordance with 23 U.S.C. 120(b). *Questions or comments can be directed to Ken Petty in HEPP.*

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 and inventory for outdoor advertising are eligible activities. *These clarifications are effective immediately. HEP staff will revise existing TE guidance on FHWA's website at <http://www.fhwa.dot.gov/environment/te/index.htm> to reflect those clarifications for TE project eligibility. Questions or comments can be directed to Christopher Douwes in HEPN.*

Section 1303 – Coordinated Border Infrastructure Improvement Program: Establishes an apportioned (a.k.a. formula) program for about \$833 million/year for the States with land borders with Canada or Mexico. Projects are to be selected by the States. Eligible projects must be within 100 miles of the border. Eligible uses include construction of highways, safety enforcement infrastructure, operations improvements and international coordination. States may fund projects that are physically located in Mexico or Canada under some conditions. *HEP expects to issue guidance on this program within a month. Questions or comments can be directed to Roger Petzold in HEPI.*

Section 1304 – High Priority Corridors on the National Highway System: Modifies and adds to corridors previously identified in ISTEA 1105 as amended. Also designates some corridors as future interstates. Subsection 1304(d) seems to provide funding for improvement of the corridors, but it just provides the authorization that would be needed if some future appropriations act provided the funding. *Questions or comments can be directed to Mike Neathery, Frank Clark or Martin Weiss in HEPI.*

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. *This provision is effective immediately. HEP will implement this change for pending FY 2005 discretionary grants once projects are selected. HEP will also provide more specific guidance as needed in the solicitation of FY 2006 grants this fall. Questions or comments can be directed to Bethaney Bacher in HEPN.*

Section 1807 – Nonmotorized Transportation Pilot Program: This is a new program for four communities to encourage nonmotorized transportation—Columbia, MO; Marin County, CA; Minneapolis-St. Paul, MN and Sheboygan County, WI. *Agreements need to be in place for the communities to initiate the pilots. FY 2006 funding should be available by February 2006. We need to coordinate the efforts of the four pilot communities to ensure comparable data collection and analysis for use in preparing reports to Congress due in 2007 and 2010. HEP staff are consulting with staff in the four affected FHWA Divisions on how best to form the agreements and administer the four pilots. Questions or comments can be directed to John Fegan in HEPN.*

Section 1808 – Addition to CMAQ-Eligible Projects: Provides continued eligibility to use CMAQ funds in former one-hour ozone areas which are required to prepare maintenance plans. Reinforces the eligibility of projects that contribute to attainment or maintenance. Specifies the eligibility of advanced truck stop electrification, interoperable emergency communications

equipment, and transportation systems management and operations projects that mitigate congestion and improve air quality. Calls for priority to be given to funding diesel retrofit projects and other cost-effective CMAQ strategies that improve air quality. *HEPN will coordinate with FTA in updating FHWA's CMAQ guidance to clarify the new eligibility categories. In the interim, however, these projects are immediately eligible (and in fact many of these project types were eligible even before SAFETEA-LU was enacted). In addition, EPA will also be developing related guidance on obtaining conformity credit for emissions reductions associated with diesel retrofits. Until EPA issues this guidance, credit for diesel retrofits can only be obtained through the current SIP revision process. Questions or comments can be directed to Mike Koontz in HEPN.*

OTHER PROVISIONS:

Section 1106 – Future Interstate Routes: Increases the time allowed to bring designated 'future interstates' to Interstate standards from 12 to 25 years. *This change is effective immediately and is self-explanatory. HEP will begin a revision of 23CFR470 to incorporate this change into FHWA regulations. HEP will also notify divisions about six months prior to the expiration of the new deadline (this will not be in the FHWA regulations). Questions or comments can be directed to Frank Clark in HEPI.*

Section 1908 – Inclusion of Certain Route Segments on Interstate System and NHS: Requires some designation actions. *HEP will shortly contact FHWA Divisions where action is needed. Questions or comments can be directed to Frank Clark in HEPI.*

Section 1927 – 14th Amendment Highway and 3rd Infantry Division Highway: Requires studies for two corridors, one between Augusta, GA and Natchez, MS, and one between Savannah, GA and Knoxville, TN. Three line items in section 1702 provide about \$1.3 million (over the life of SAFETEA-LU) to Georgia for these two studies. *HEPI expects to work with the Georgia Division and Georgia DOT to establish protocols for implementing this section in cooperation with other States in these corridors (Alabama, Mississippi, North Carolina, South Carolina and Tennessee). Questions or comments can be directed to Martin Weiss or Mike Neathery in HEPI.*

Section 1923 – Transportation Assets and Needs of Delta Region: Provides funding (\$1 million) for a study that will result in a report to Congress. The study is to address all modes of transportation. *The funding will go to the Delta Regional Authority to author the report. HEP will consult Divisions in the 8 States within the Delta Region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee). Questions or comments can be directed to Martin Weiss or Mike Neathery in HEPI or Rob Ritter or Ken Petty in HEPP.*