Memorandum

U.S. Department
of Transportation
Federal Highway Administration
Federal Transit Administration

Subject: ACTION: Interim Guidance on SAFETEA-LU Provisions that Affect Planning, Environment, and Air Quality

Date: September 2, 2005

Reply to: HEP-1

Attn. of:

From: (Original signed by) Cynthia J. Burbank, Associate Administrator
Planning, Environment and Realty, FHWA
(Original signed by) David J. Vozzolo for
Brigid Hynes-Cherin, Associate Administrator
for Planning and Environment, FTA

To: FHWA Division Administrators
FTA Regional Administrators

We are sending this memorandum to provide FHWA and FTA field offices with Interim Guidance on SAFETEA-LU provisions that affect the joint responsibilities of FHWA and FTA in the areas of planning, environment, and air quality. We prepared this Interim Guidance to meet the need of FHWA and FTA field offices for information on how to implement changes in SAFETEA-LU, especially those that are immediately effective.

This Interim Guidance focuses on joint FHWA-FTA authorities. For SAFETEA-LU provisions that are not joint FHWA-FTA responsibilities, we will be transmitting guidance separately.

We hope this Interim Guidance is helpful to you in administering the Federal-aid highway and transit programs. As noted in the attachment, we will be providing additional guidance and rulemaking for certain provisions, and will do so as soon as possible.

Attachment

cc: FHWA Directors of Field Services
HEP Office Directors

Federal Highway Administration
EMurakami:LSB: 6X6971:11/29/00
cc: HEPM – Reading/Chron File

INTERIM GUIDANCE
FOR IMPLEMENTING KEY SAFETEA-LU PROVISIONS ON PLANNING, ENVIRONMENT, AND AIR QUALITY FOR JOINT FHWA/FTA AUTHORITIES
September 2, 2005

This joint FHWA/FTA interim guidance is intended for the use of FHWA and FTA field offices in working with their State/local planning partners and grantees in implementing SAFETEA-LU. Short summaries of key changes to the statutory requirements for planning and environmental reviews are provided, followed by guidelines for how FHWA Division and FTA Region Offices should administer and oversee highway and transit programs during this TEA-21/SAFETEA-LU transitional period. This interim guidance covers planning, air quality, and environmental requirements that are jointly administered by FHWA and FTA. Additional information and case study examples of the new or changed requirements under SAFETEA-LU will be developed, as appropriate.

FHWA and FTA will be issuing separate interim guidance on SAFETEA-LU provisions and funding programs that each agency will be administering separately.

I. PLANNING PROVISIONS:

- **Section 6001 – Transportation Planning**: This section, along with virtually identical language in sections 3005 and 3006, retains and revises the metropolitan and statewide transportation planning statutory requirements. Although most of the text in these sections mirrors previous law, key statutory changes are summarized below. Furthermore, sections 3005 and 6001(b) provide that "The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section."

  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, FHWA and FTA realize that the planning process must continue to function as a whole. It would be difficult for States and MPOs to separate out the schedule requirements in the current regulations from the content requirements. Therefore, FHWA and FTA have determined that, in order to not require a State or MPO to "deviate from its established planning update cycle," States and MPOs are allowed to continue to comply with existing planning regulations for this current set of updates. Any transportation plans, metropolitan transportation improvement programs (TIPs), and state transportation improvement programs (STIPs) currently under development (per TEA-21 schedules), may be completed under the pre-SAFETEA-LU planning requirements, including adherence to plan and TIP update cycles and content requirements.

  While all TIPs, STIPs, and plans adopted after July 1, 2007, must comply with SAFETEA-LU planning provisions. States and MPOs may wish to take advantage of the SAFETEA-LU

provisions prior to July 1, 2007, and they are encouraged to do so. If a State or MPO opts to implement the SAFETEA-LU planning provisions prior to July 1, 2007, they must meet ***all*** *SAFETEA-LU requirements in Section 6001, since the various provisions are closely interrelated. If plans and TIPs are prepared under the new update cycle described below, they must also comply with the expanded scope, consultation, mitigation, and participation requirements set forth in SAFETEA-LU. In addition, in no instance should the next update of a STIP or TIP be more than 4 years from the most recent update.*

Implementation of the new 4-year cycle allowed for FHWA/FTA certification of planning processes in Transportation Management Areas (TMAs) is the responsibility of the FHWA/FTA field offices and can take place immediately under certain circumstances, as discussed below.

We have provided some basic guidance below for those States and MPOs that opt to implement SAFETEA-LU immediately.

- **Metropolitan Plan Cycles:** Metropolitan transportation plans shall be updated at least every four years in air quality nonattainment and maintenance areas, and at least every five years in attainment areas. *To align the MPO adoption of the transportation plan in nonattainment and maintenance areas and conformity determinations, the date of the FHWA/FTA conformity determination on the transportation plan is to be used as the basis for tracking update cycles in nonattainment and maintenance areas.*

- **TIP/STIP Cycles and Scope:** STIPs and metropolitan TIPs must be updated at least every 4 years and must contain at least 4 years of projects and strategies. *The 4-year frequency cycle and the 4-year scope requirements go hand-in-hand and must be implemented together, for any STIP or metropolitan TIP adopted after July 1, 2007.*

- **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. *Details on these "discussions of types of potential environmental mitigation activities" are outlined in amended 23 U.S.C. 134(i)(2)(B) and 23 U.S.C. 135(f)(4), respectively, based on the consultation requirements highlighted below. Identical provisions for transit appear in the amended 49 U.S.C. 5303(i)(2)(B) and 49 U.S.C. 5304(f)(4). The environmental mitigation requirement must be in place prior to MPO and State adoption/approval of transportation plans addressing SAFETEA-LU provisions.*

- **New Consultations:** MPOs and States must consult "as appropriate" with "State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation" in developing long-range transportation plans. Additionally for the Long-Range Statewide Transportation Plan, States must consult with Federally-recognized Tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. *These new requirements must be in place prior to MPO and State adoption/approval of transportation*

plans addressing SAFETEA-LU provisions. Details for metropolitan and statewide planning are outlined in the amended 23 U.S.C. 134(i)(4) and 23 U.S.C. 135(f)(2)(D), respectively, and for transit, in the amended 49 U.S.C. 5303(i)(4) and 49 U.S.C. 5304(f)(2)(D).

- **Consistency of Transportation Plan with Planned Growth and Development Plans:** Revises the previous planning factor related to environment to add "promot[ing] consistency between transportation improvements and State and local planned growth and economic development patterns." *This new requirement must be in place prior to MPO and State adoption/approval of transportation plans addressing SAFETEA-LU provisions.*

- **Transportation System Security:** SAFETEA-LU calls for the security of the transportation system to be a stand-alone planning factor, signaling an increase in importance from prior legislation, in which security was coupled with safety in the same planning factor. *This new requirement must be in place prior to MPO and State adoption/approval of transportation plans addressing SAFETEA-LU provisions.*

- **Operational and Management Strategies:** Metropolitan transportation plans shall include operational and management strategies to improve the performance of the existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods (see amended 23 U.S.C. 134(i)(2)(D)) and 49 U.S.C. 5303(i)(2)(D)). *The requirement for the inclusion of operational and management strategies must be in place prior to MPO adoption of transportation plans addressing SAFETEA-LU provisions.*

- **Participation Plan:** 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. Further, this "Participation Plan" must be developed "in consultation with all interested parties". This consultation requirement is intended to afford parties who participate in the metropolitan planning process a specific opportunity to comment on the plan prior to its approval. *A participation plan must be in place prior to MPO adoption of transportation plans and TIPs addressing SAFETEA-LU provisions. FTA/FHWA particularly expect this to encompass governmental and nonprofit organizations that receive Federal assistance from a source other than the Department of Transportation to provide non-emergency transportation services and recipients of assistance under section 204 of title 23, U.S.C.*

- **Visualization Techniques in Plans and Metropolitan TIP Development:** As part of transportation plan and TIP development, MPOs shall employ visualization techniques (see amended 23 U.S.C. 134(i)(5)(C)(ii)) and 49 U.S.C. 5303(i)(5)(C)(ii)). States shall also employ visualization techniques in the development of the Long-Range Statewide Transportation Plan (see amended 23 U.S.C. 135(f)(3)(B)(ii)) and 49 U.S.C. 5304(f)(3)(B)(ii)). *States and MPOs must employ visualization techniques prior to adoption of statewide and metropolitan transportation plans and metropolitan TIPs addressing SAFETEA-LU provisions.*

- **Publication of Plans and TIP/STIP:** MPOs shall publish or otherwise make available for public review transportation plans and TIPs "including (to the maximum extent practicable)

in electronically accessible formats and means, such as the World Wide Web" (see amended 23 U.S.C. 134(i)(6) on plans and 23 U.S.C. 134(j)(7)(a) on TIPs, and for transit, amended 49 U.S.C. 5303(i)(6) and 49 U.S.C. 5303(j)(7)(a)). States also shall use a similar approach for the Long-Range Statewide Transportation Plan (see amended 23 U.S.C. 135(f)(8)) and 49 U.S.C. 5304(f)(8)). *These publication requirements must be in place prior to adoption of transportation plans and TIPs addressing SAFETEA-LU provisions.*

- **Annual Listing of Obligated Projects:** SAFETEA-LU specifies that the development of the annual listing "shall be a cooperative effort of the State, transit operator, and MPO" and also shall include two new project types, "investments in pedestrian walkways and bicycle transportation facilities" for which Federal funds have been obligated in the preceding year. *This revised requirement for an annual listing must be in place prior to adoption of transportation plans and programs addressing SAFETEA-LU.*

- **Congestion Management Processes in Transportation Management Areas (TMAs):** Within a metropolitan planning area serving a TMA, there must be "a process that provides for effective management and operation" to address congestion management (see amended 23 U.S.C. 134(k)(3)) and 49 U.S.C. 5303(k)(3)). *This provision is similar to the ISTEA/TEA-21 requirement for a Congestion Management System (CMS) to be developed and implemented in TMAs. Each TMA (with input from the FHWA Division Offices and FTA Regional Offices) should assess the extent that the TMA's existing CMS meets the new statutory requirements for a congestion management process under amended 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) and define a plan and schedule to implement this process. Consistent with previous FHWA/FTA guidance, the phase-in schedule for this provision in newly designated TMAs is 18 months after the identification of a TMA.*

- **TMA Certification Cycle:** FHWA/FTA must certify each TMA planning process at least every four years (as opposed to the prior legal/statutory requirement of every three years). *This provision is effective immediately and allows FTA/FHWA to add one year to existing TMA certifications. The only exception is "conditional certifications" issued for a TMA, which must be completed in accordance with the schedule previously defined by the FHWA Division Office and FTA Regional Office. The timing for certification reviews remains a joint FTA/FHWA decision, and SAFETEA-LU extends the minimum allowable frequency to "at least every 4 years." This does not preclude FTA/FHWA from initiating a Certification Review more frequently and at any time it is warranted. The status and quality of MPOs' Plan and TIP development, the potential for conformity lapse, and other MPO performance indicators should be considered by FTA/FHWA in deciding whether to delay (as allowed under SAFETEA-LU), or accelerate, Certification Reviews.*

- **Coordinated Public Transit-Human Services Transportation Plan (Sections 3012, 3018, and 3019):** As a condition for receiving formula funding under the following 3 FTA programs, proposed projects must be derived from a locally developed public transit-human services transportation plan: (1) Special Needs of Elderly Individuals and Individuals with Disabilities [49 U.S.C. 5310(d)(2)(B)(i) and (ii)]; (2) Job Access and Reverse Commute [49 U.S.C. 5316(g)(3)(A) and (B)]; and (3) New Freedom [49 U.S.C. 5317(f)(3)(A) and (B)]. The plan must have been developed through a process that included representatives of public,

private, and non profit transportation and human services providers, as well as the public. *This new requirement reinforces the broadened list of entities to be involved in the MPO's Participation Plan (23 U.S.C. 134 (i)(5)(A) and 49 U.S.C. 5303 (i)(5)(A)), as described above. In preparing the local public transit-human service transportation plans, service providers seeking assistance under these programs should ensure full coordination with the applicable metropolitan and statewide planning processes.*

Headquarters Contacts for Questions or Comments on Planning Provisions: *John Humeston or Harlan Miller in HEPP or Charlie Goodman in TPE.*

II. AIR QUALITY PROVISIONS

Section 6011 – Transportation Conformity: Makes several changes to the transportation conformity process including:

- a 12 months conformity lapse grace period;
- a change in the update frequency cycle to 4 years;
- a conformity redetermination on existing transportation plans and TIPs within 2 years of certain actions on the state implementation plan (SIP) for air quality;
- options to shorten the time horizon for conformity demonstration (but must include an informational regional emissions analysis);
- transportation control measure (TCM) substitution without requiring a new conformity determination or SIP revision, and adoption of substitute TCM rescinds previous TCM; and
- streamlined conformity SIP requirements.

EPA is required to promulgate revised regulations to implement changes not later than 2 years after the enactment of SAFETEA-LU. *Although the EPA is required to promulgate a rule, some or all of these provisions may be effective even before the rule is issued. We are working with EPA to develop interim guidance on how to implement these provisions while the rule is being developed. We expect to supplement this guidance document by issuing additional interim guidance in coordination with EPA as soon as possible.*

Headquarters Contacts for Questions or Comments: *Emily Tait or Gary Jensen in HEPN or Abbe Marner in TPE.*

III. ENVIRONMENT PROVISIONS:

Section 6002 – Efficient Environmental Reviews for Project Decisionmaking: Prescribes a new environmental review process for highway, public transportation capital, and multimodal projects. It is mandatory for EISs and optional for EAs, at the discretion of the Secretary. It specifies changes from current NEPA procedures, including new obligations for a public comment process for project Purpose and Need and for project Alternatives, and requires the development of a coordination plan and schedule that must be provided to all participating agencies and made available to the public. The provision allows States to continue operating under environmental review processes approved by the Secretary under TEA-21 authority. *All*

highway and transit EISs for which the NOI was published after 8/11/05 must follow the new process (except as provided by Section 6002(b), as described below) while highway and transit EISs for which a NOI was published prior to 8/11/05 may continue as "grandfathered" under prior law.

For highway projects only, the FHWA Division and State may wish to transition ongoing EIS projects to the new process, if advantageous to the project, and where they can demonstrate that the new requirements for coordination with agencies and the public have been met through the existing project development process (i.e., interagency merger agreements, public workshops that included early identification of purpose and need and alternatives, etc).

Under Section 6002(b), States have the option of continuing to advance projects under processes "approved" under TEA-21's Section 1309 authority. Please discuss with your State whether or not they would like to continue any such existing environmental review process. In such a case, please request that the State provide FHWA written documentation indicating the intent to follow previously established processes, either as a program or for individual projects. The state should include an explanation as to how the process falls under this provision. This documentation must be sufficient to stand up in court in case of a legal challenge to not following the new 6002 process. You should obtain written Headquarters concurrence before informing a State that they may follow a pre-existing environmental review process for EIS projects in lieu of following the new Section 6002 process. FHWA will be providing more comprehensive guidance on the new process for new and on-going highway EISs, as well as the application of the "existing process" provision within the next 90 days.

For transit projects, FTA does not have any processes specifically approved under TEA-21's section 1309, so the SAFETEA-LU option of grandfathering such processes is not generally helpful. For multimodal highway-transit projects for which FHWA and FTA are co-lead agencies, FTA will make every effort to follow FHWA's lead in complying with this provision. FTA will be providing further guidance on compliance with this provision within the next 90 days. The FTA Regional office and sponsoring transit agency may transition an ongoing transit EIS to the new process, if it is deemed advantageous to the project, and if the new requirements for coordination with agencies and the public have been essentially followed during the project development process up to now. [FTA does not expect any ongoing EISs to meet these conditions, but please contact Joe Ossi in TPE if one does.]

Headquarters Contacts for Questions or Comments: Pam Stephenson in HEPE or Harold Aikens in HCC or Joe Ossi in TPE.

Section 6002 – Statute of Limitations: Creates 23 U.S.C. 139 (l) which, establishes a 180-day statute of limitations on litigation. However, the 180-day clock starts with publication of a notice in the Federal Register that a permit, license or approval action is final. Heretofore, notices regarding RODs and FONSIs have not been published in the Federal Register, so a new process for publication will be required. *This provision is effective immediately and may be exercised independently of whether or not the new environmental review process under Section 6002 was followed.*

For highway projects, within the next 30 days, HCC will specify a process for publishing notices of the finality of RODs and FONSIs, as well as 404 permits and possibly other Federal actions in the Federal Register, so they can benefit from this provision. It is assumed that most "approvals" (e.g., Section 106 MOAs) will be completed by RODs or FONSIs and a separate notice would not be required, unless there is a substantial lapse of time between the FHWA decision and other federal action, such as subsequent issuance of a U.S. Army Corps of Engineers permit. This provision is discretionary and should be decided on a case-by-case basis, especially for EA/FONSI documents, depending on an assessment of controversy and likelihood for litigation. The standard statute of limitation time frame of 6 years will be used for those projects, approvals or permits that do not publish the Federal Register notice.

For transit projects, FTA plans to publish a Federal Register notice as soon as possible to start the 180-day clock ticking for projects with significant risk of litigation for which a ROD or FONSI has already been issued. [If you believe you have a project that should be included in this notice, please contact Joe Ossi in TPE].
Headquarters Contacts for Questions or Comments: Pam Stephenson in HEPE or Harold Aikens in HCC or Joe Ossi in TPE for transit issues.

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. *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. FHWA Divisions should begin discussing with the State its preferences as to which DOT authorities it wishes to assume under this provision (e.g., CE determination, Section 4(f) approval, coordination under various Federal laws, highway CEs only or both highway and transit CEs, etc.) Our assumption is that most States will want to assume all responsibilities allowed by law for highway projects. If transit projects will also be included, the FTA Regional office must be brought into the discussion. Please note that Section 6004 permits delegation of the specified responsibilities of the Secretary only to the States, not to transit agencies that are not State agencies. FHWA Divisions should discuss the systems and procedures the State will use to assure that the Section 6004 authority is appropriately exercised.*

Headquarters Contacts for Questions or Comments: Owen Lindauer in HEPE or Joe Ossi in TPE for transit issues.

Section 6009 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites): 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 provision allows avoidance, minimization, mitigation and enhancement measures to be considered in making the

de minimis determination. 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. The de minimis criteria for parks, recreation areas and wildlife and waterfowl refuges were not clearly defined in the law but are generally minor impacts not adversely affecting the activities, features or attributes of the Section 4(f) resource. In addition, Section 6009 requires the Secretary to promulgate regulations within 1 year after the date of enactment to clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code. *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.*

Headquarters Contacts for Questions or Comments: For the de minimis provision, Lamar Smith in HEPE or Joe Ossi in TPE for transit issues. For the rulemaking, Diane Mobley in HCC, or to Scott Biehl in TCC for transit issues.

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." This applies to multi-modal ITS projects. Also requires the Secretary to develop a national programmatic agreement for ITS and Section 106 of the National Historic Preservation Act. *Most ITS activities already qualify as CEs. FHWA and FTA are not aware of delays in implementing ITS activities due to environmental reviews, including Section 106. Within US DOT, a determination will be needed as to the lead DOT agency for implementing this section, since several DOT agencies have ITS interests and responsibilities.*

Headquarters Contacts for Questions or Comments: Aung Gye in HEPE or Joe Ossi in TPE.

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 PM_{10} 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.*