



NEPA Delegation News

"A Publication of Caltrans Division of Environmental Analysis"

Introduction

Under a new federal Pilot Program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the California Department of Transportation (Caltrans) is applying to the Federal Highway Administration (FHWA) to assume FHWA's current authority and responsibility for compliance with the National Environmental Policy Act (NEPA) for highway and local roads projects in California. Caltrans is also requesting to assume FHWA's responsibilities under other federal environmental laws in the application.

This fact sheet is second in a series. The first fact sheet described the purpose of the Pilot Program and provided an overview of the changes to environmental procedures that would occur under the program. This issue describes the application process and other Caltrans actions to prepare for implementing the Pilot Program. Both fact sheets and other information are available on the Caltrans NEPA Delegation Website at http://www.dot.ca.gov/hq/env/nepa_pilot/index.htm.

Background

In 2005, President Bush signed SAFETEA-LU into law. One section of SAFETEA-LU allows Caltrans to assume FHWA's responsibilities under NEPA, as well as other federal environmental laws, such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act. To participate in this program, Caltrans must submit an application to FHWA that specifies the responsibilities it would like to assume. The specific terms of the assumption of responsibilities will be outlined

in a Memorandum of Understanding (MOU) to be negotiated with FHWA.

SAFETEA-LU also requires that the states participating in the Pilot Program assume sole legal responsibility and liability for their decisions under the program by waiving their 11th Amendment right to sovereign immunity against actions brought by its citizens in federal court. California's waiver became complete when the transportation bond (Proposition 1B) was passed by the voters in the November 2007 general election. With the waiver in place for the narrow purposes of the Pilot Program, Caltrans can move forward to apply for the program.

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- Caltrans** California Department of Transportation
- FHWA** Federal Highway Administration
- MOU** Memorandum of Understanding
- NEPA** National Environmental Policy Act
- SAFETEA-LU** Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Under the Pilot Program, Caltrans will be required to comply with all applicable federal environmental laws and with FHWA environmental regulations, policies, and guidance. The program will not change or weaken federal environmental protection standards. Implementation of the Pilot Program will simplify and expedite the federal environmental review process for transportation projects, while ensuring the same level of protection for environmental resources. Caltrans' participation in the program will show California's leadership in transportation delivery and in environmental protection.

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Where to Get Information

For further information about the NEPA Delegation Pilot Program or any 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.

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



The Application

Per SAFETEA-LU, Pilot Program application requirements must be defined through federal rulemaking. The final rule was issued on February 12, 2007. Caltrans is in the process of finalizing its application based on these requirements. In its application, Caltrans is requesting to assume FHWA's NEPA responsibilities for projects on the State highway system, as well as for local roadway projects that will be funded in part with FHWA funds. Caltrans is, however, requesting that FHWA retain responsibility for a few specific large projects in the final phases of the environmental review process to maintain continuity.

SAFETEA-LU allows Caltrans to assume most federal environmental interagency consultations and compliance-related actions under the Pilot Program. Caltrans currently collaborates actively with federal resource agencies to develop mitigation strategies and is requesting to assume FHWA's formal consultation role with these resource agencies. Caltrans has been meeting with federal and state resource agency partners to begin developing this new relationship. The application includes provisions and processes for resolving any interagency disagreements

that might arise during future formal consultations. FHWA will independently discuss with federal resource agencies their views of Caltrans' application to assume formal consultation responsibilities. FHWA will retain formal government-to-government consultations with federally-recognized Indian tribes. ▲

these reviews will be required to undergo training that identifies the expectations of these reviews. Caltrans is also sponsoring two statewide workshops and providing specialized training to prepare its environmental staff for the Pilot Program.

Preparing for the Pilot Program

Caltrans' experienced environmental staff is well prepared to assume federal responsibilities.

Caltrans staff of over 700 environmental professionals is well qualified to assume new responsibilities under the Pilot Program. The agency has over 35 years of experience implementing California's own stringent environmental regulation, the California Environmental Quality Act. Caltrans staff also has many years of experience in preparing NEPA documents on behalf of FHWA.

To prepare for the Pilot Program, Caltrans established a NEPA Delegation Office that is taking actions to expand upon and strengthen its well-developed environmental procedures. These actions include expanding and formalizing



procedures for reviewing environmental documents to ensure that they meet federal requirements and standards. Environmental documents prepared by Caltrans staff, as well as by local agencies and their consultants, will be subject to these expanded reviews. Staff conducting



Caltrans is in the process of updating and refining its numerous environmental documentation tools to describe its expanded procedures to support the Pilot Program and to reflect its approval authority under the Pilot Program. These tools include *Caltrans' Standard Environmental Reference*, a widely used online resource that provides guidance on the procedural and content requirements of environmental documents.

Caltrans is also adding a few key positions to provide stronger linkages between Caltrans environmental staff throughout the state, as well as between staff responsible for preparing environmental documents for State highway projects and those responsible for overseeing locally sponsored projects.

Finally, Caltrans is developing a formal process review program to monitor its performance under the Pilot Program. These process reviews will be used to gauge the effectiveness of Caltrans environmental procedures under the Pilot Program and staff adherence to them, as well as identify any need for course correction. FHWA will also audit Caltrans twice a year for the first two years of the Pilot Program and once a year thereafter to ensure that Caltrans is meeting federal requirements. ▲

What's Next

On March 14, 2007, Caltrans notified the public of the availability of the draft Pilot Program application for review by publishing notices in major newspapers across California and widely distributing the application to federal and state resource agencies, Tribal Governments, County Clerk offices, regional agencies, environmental organizations, and other interested parties. Those interested in commenting on the application can do so through April 16, 2007 by e-mail, facsimile, or mail (see contacts below). Caltrans will consider all comments received in finalizing its application for FHWA approval.

After approval of the application, Caltrans will enter into a formal MOU with FHWA describing how the Pilot Program will be implemented. The Pilot Program is expected to begin in the summer of 2007. Under SAFETEA-LU, the Pilot Program lasts until August 2011. The California waiver of sovereign immunity sunsets on January 1, 2009, which could limit the Pilot Program's duration. The State legislature may extend the waiver if Caltrans performs well in the initial two years of the program. If the Pilot Program is successful, the United States Congress may extend it beyond 2011.

Caltrans will continue to meet with agencies and stakeholder groups to share information about the Pilot Program. Other outreach activities will be held and fact sheets like this will be issued as new information is available. The project Website is updated regularly. ▲▲▲



“We've made great progress over the last few months in preparing for Delegation. Caltrans has a large and experienced environmental staff and I know they are well equipped to successfully manage this program.”

—Cindy Adams, Caltrans NEPA Delegation Program Manager