

**SAFETEA-LU ENVIRONMENTAL REVIEW PROCESS
FINAL GUIDANCE**

*This guidance is non-binding should not be construed as
rules of general applicability and legal effect.*

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SAFETEA-LU ENVIRONMENTAL REVIEW PROCESS

FINAL GUIDANCE

Introduction

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are issuing this joint guidance on the environmental review process required by [Section 6002](#) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which has been codified as 23 USC §139. This section of SAFETEA-LU prescribes changes to existing FHWA and FTA procedures for implementing the [National Environmental Policy Act of 1969](#) (NEPA), as amended, and for implementing the regulations of the Council on Environmental Quality (CEQ), [40 CFR parts 1500 through 1508](#). These changes are the result of efforts to make the environmental review process more efficient and timely, and to protect environmental and community resources. This should result in expedited approvals of urgently needed transportation improvements such as those identified by USDOT's congestion initiative. Section 6002 of SAFETEA-LU describes the roles of the project sponsor and the lead, participating, and cooperating agencies; sets new requirements for coordinating and scheduling agency reviews; broadens the authority for States to use Federal funds to ensure timely environmental reviews; and specifies a process for resolving interagency disagreements.

The purpose of this guidance is to provide explanations of new and changed aspects of the environmental review process for FHWA and FTA NEPA practitioners. The guidance informs the reader about what, and how, things need to be done differently as a result of SAFETEA-LU. Although this guidance outlines a new environmental review process, it does not supersede any previous guidance or regulations promulgated under NEPA. In particular, the previously mentioned CEQ regulations ([40 CFR parts 1500-1508](#)) and the FHWA-FTA NEPA regulation ([23 CFR part 771](#)) are supplemented by this guidance and remain in effect. A question and answer format is used throughout the guidance, and the table of contents provides a list of all of the questions. Hyperlinks to specific sections of the law or cited documents are provided for each section and throughout the guidance for further reference, as appropriate. For example, terms used throughout the guidance (e.g., "project sponsor", "participating agency", etc.) are hyperlinked to corresponding definitions in SAFETEA-LU or other regulations.

This guidance is divided into three sections:

- [Environmental Review Process](#) – Section 1 contains guidance on elements of the environmental review process, including the applicability of this process; project initiation; the roles and responsibilities of the project sponsor, and the lead, cooperating, and participating agencies; and the analysis of alternatives.
- [Process Management](#) – Section 2 focuses on the management of the environmental review process and includes coordination and scheduling, public involvement, concurrent reviews, issue resolution, mitigation commitments, the adoption and use of documents, and interagency funding.
- [Statute of Limitations](#) – Section 3 focuses on the statute of limitations provisions of SAFETEA-LU. FHWA and FTA have somewhat different procedures for implementing the statute of limitations provisions, as described in Section 3.

This guidance also includes several appendices: [Appendix A](#) contains the full text of 23 USC §139, and [Appendix B](#) contains sample invitation letters to a participating agency. [Appendix C](#) features the resource document, *Interagency Guidance: Transportation Funding for Federal Agency Coordination Associated with Environmental Streamlining Activities*. [Appendix D](#) links to the FHWA/FTA guidance, *Linking the Transportation Planning and National Environmental Policy Act (NEPA) Processes*. Finally, [Appendix E](#) provides the updated FHWA guidance, including attachments, for FHWA implementation of the 180-day statute of limitations established by SAFETEA-LU in 23 U.S.C. §139(j). Appendix E does not apply to FTA and does not apply to projects for which FTA is the Federal lead agency.

The intent of this guidance is to provide project sponsors with as much flexibility as possible in administering the environmental review process, while providing a framework to facilitate efficient project management and decisionmaking in accordance with the law. In addition, this guidance is intended to assist agencies involved specifically in the development of [environmental impact statements \(EISs\)](#). Because the size and scope of EISs can vary, adjustments to the recommended approaches included in this guidance may be appropriate, but the minimum statutory requirement is always noted. While Section 6002 does create new requirements for the environmental review process, the FTA and FHWA believe that project sponsors that use proactive participation, communication, and coordination practices will succeed in expediting project reviews.

1. The Environmental Review Process

SAFETEA-LU establishes a new [environmental review process](#) for transportation projects developed as environmental impact statements (EISs).¹ All EISs for which the Notice of Intent was published in the *Federal Register* after August 10, 2005, must follow SAFETEA-LU's requirements. These requirements are intended to promote efficient project management by [lead agencies](#) and enhanced opportunities for coordination with the public and with other Federal, State, local, and tribal government [agencies](#) during the project development process.

This section focuses on the different elements of the environmental review process and provides information on: project initiation; the roles and responsibilities of the project sponsor, and the lead, participating, and cooperating agencies; the development of project purpose and need; the analysis of alternatives; the identification and design of the preferred alternative; and opportunities for public involvement.

Through its language on the roles and responsibilities of lead, cooperating, and participating agencies, SAFETEA-LU emphasizes the responsibilities of the lead agencies under NEPA in determining the final purpose and need for the action and the range of alternatives, after considering input from the public and participating agencies. While one or more of the USDOT modal agencies will always be the Federal lead agency on a Federal transportation project, USDOT will share the lead agency role with other governmental entities, as defined by the law. Therefore, unless otherwise specified to indicate an ultimate decisionmaker, the term "lead agency(ies)" throughout the guidance refers to a collaboration among all joint lead agencies, whether they are serving as a joint lead agency under the authority of Section 6002 or by invitation pursuant to CEQ regulations, in making a decision or performing a task. Where not otherwise specified, the lead agencies are free to perform all tasks and make all decisions jointly, or to allocate their joint responsibilities and authorities among themselves by mutual written agreement. If the lead agencies do not agree on a particular matter under their joint authority, then they must work out their differences because that particular matter cannot progress until the lead agencies reach agreement.

To enhance interagency coordination and ensure that issues of concern are identified, SAFETEA-LU creates a new category of involvement in the environmental review process termed "participating agency." The intent of the new category is to encourage governmental agencies at any level with an interest in the proposed project to be active participants in the NEPA evaluation. Designation as a participating agency does not indicate project support, but does give invited agencies new opportunities to provide input at key decision points in the process.

SAFETEA-LU specifies that the lead agencies also must give the public the opportunity for involvement during the development of the purpose and need statement and the identification of the range of alternatives to be considered. Prior to SAFETEA-LU, the public scoping process typically included these elements of a NEPA review, but there was no explicit Federal requirement to provide an opportunity for public involvement on purpose and need and on the range of alternatives in advance of the draft environmental impact statement (DEIS).

SAFETEA-LU encourages efficiency in the environmental review process by allowing the lead agencies to decide whether to develop the preferred alternative to a higher level of design detail for mitigation purposes or to facilitate compliance with other laws. This guidance addresses the timing and information needed to make that decision.

¹ The guidance applies to all projects using the Section 6002 environmental review process. The process is mandatory for EIS projects. For the applicability of Section 6002 in the case of projects involving environmental assessments or categorical exclusions, see Question 8.

GENERAL INFORMATION ABOUT THE ENVIRONMENTAL REVIEW PROCESS

Question 1: What does the term “transportation project” mean in this guidance?

Answer: Within this guidance, the term “transportation project” means any highway project, any public transportation capital project, and any multimodal project that requires an approval from FHWA or FTA.

Question 2: To which agencies does the term “USDOT” refer?

Answer: Within this guidance, the term “USDOT” means FHWA or FTA, whichever agency must approve the transportation project under evaluation. In the case of a multimodal highway-transit project requiring approvals from both agencies, “USDOT” means both FHWA and FTA. Where FHWA has assigned certain environmental responsibilities to a State under [Section 6005](#) of SAFETEA-LU, “USDOT” means the State department of transportation (State DOT), to the extent the State has been delegated FHWA environmental responsibilities and authorities.

Question 3: What is meant by the “environmental review process”?

Answer: The term “environmental review process” means the project development process followed when preparing a document required under NEPA regulations for a transportation project. In addition to NEPA requirements, the term also includes the process for compliance with, and completion of, any environmental permit, approval, review, or study required for the transportation project under any Federal law. Some of the other Federal environmental laws, such as “Section 4(f)” ([49 USC §303](#)), are within the purview of USDOT, and some, such as [Section 404 permitting](#), are under the authority of other Federal agencies. In some States, a State agency may have partial or complete authority over a Federal environmental program that is included in the environmental review process, as a result of a delegation to the State, or assumption of that authority by the State.

USDOT is responsible for ensuring that any EIS or other required NEPA document² for a transportation project is prepared and completed in accordance with SAFETEA-LU and other applicable Federal laws and regulations. SAFETEA-LU also tasks USDOT with managing and facilitating the advancement of a transportation project through the environmental reviews under the purview of other agencies. Therefore, USDOT’s involvement may extend into “post-NEPA” project development activities that will encourage timely environmental approvals, permits, or actions, as needed.

Question 4: How do the environmental requirements for metropolitan and statewide planning in Sections 3005, 3006, and 6001 of SAFETEA-LU relate to the environmental review process?

Answer: SAFETEA-LU Sections 3005, 3006, and 6001 require that:

- The transportation planning process provides for actions and strategies that protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- Transportation plans be developed in consultation with State, tribal, and local agencies responsible for land-use management, natural resources, conservation, environmental protection, and historic preservation;

² This document uses the term “NEPA document” to refer to documents prepared specifically to comply with NEPA, and uses “environmental document” to refer more generally to documents prepared to comply with NEPA or with any other Federal environmental law whose compliance is folded into the environmental review process.

- This consultation involve a comparison of transportation plans with State, tribal, and local conservation plans and maps, if available, and with inventories of natural and historic resources, if available; and
- Transportation plans include a discussion of potential environmental mitigation activities and potential areas to carry out these activities.

As presented in the USDOT guidance on linking planning and NEPA processes ([Appendix D](#)), these planning activities can contribute to establishing the purpose and need for a project, determining the range of reasonable alternatives, assessing the cumulative impacts of the projects in the plan, and developing an approach to mitigating the adverse impacts of a project. In addition, the agencies identified during the planning consultations may be invited to act as “participating agencies” (defined in [Questions 21 to 29](#)), if appropriate. Questions [11](#), [12](#), [13](#), and [35](#) address other aspects of linking the planning and environmental review processes.

Question 5: How does the SAFETEA-LU environmental review process relate to FHWA’s emphasis on context sensitive solutions (CSS)?

Answer: FHWA’s [CSS program](#) encourages the early, continuous, and meaningful involvement of the public and the use of a collaborative, interdisciplinary approach that involves all stakeholders throughout the project development process. The goal of CSS is to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources, while satisfying the project’s purpose and need. The SAFETEA-LU requirements of providing opportunities for the involvement of the public and participating agencies in the development of project purpose and need and the range of alternatives support the intent of these CSS principles.

Question 6: Do the new requirements in SAFETEA-LU affect existing merger agreements for integrating NEPA and other environmental laws and regulations?

Answer: An interagency agreement in place prior to August 10, 2005 may continue to be used, at the discretion of the lead agencies, to govern the coordination among the signatories to that agreement. However, such agreements cannot be imposed on participating agencies that are not party to the agreement. These agencies and the general public must be granted the opportunities for involvement provided by Section 6002 regardless of the terms of a pre-existing interagency agreement. Therefore, the coordination plans described in Questions 47-57 typically will require supplementation beyond the pre-existing merger agreement, because such agreement would not address the entire environmental review process encompassed by Section 6002.

The lead agencies’ decision whether to import pre-existing merger agreement procedures into a project-specific or programmatic coordination plan should be based on their judgment of how best to expedite the environmental review process while continuing to advance the environmental objectives of NEPA and other Federal laws. Interagency merger agreements should be reviewed to determine if their future application will meet the purpose and intent of SAFETEA-LU. For example, the lead agencies may need to renegotiate or dissolve a merger agreement that calls for other agencies to concur in purpose and need statements or the range of alternatives if the agreement is not expediting project development. In the absence of an applicable merger agreement, participating agencies are encouraged to offer input—supportive or adverse—at these points and these comments must be considered by the lead agencies when they exercise their responsibility to establish the purpose and need (23 U.S.C 139(f)(2)) and range of alternatives (23 U.S.C. 139(f)(4)(B)) for the NEPA document.

Where a pre-existing merger agreement does include concurrence requirements, the lead agencies may continue to use those parts of the merger agreement if they wish, as indicated above. However, if the lead agencies conclude that concurrence on an issue is not achievable on

a particular project, then the lead agencies must exercise their decisionmaking obligations under Section 6002.

While not required, it is in the best interest of efficiency and good government to work cooperatively with those agencies that have independent jurisdiction by law to develop a purpose and need statement and alternatives that are mutually acceptable, so that one NEPA document can satisfy both agencies' requirements. (See Questions [32](#) and [36](#).)

Question 7: Do the new requirements in SAFETEA-LU Section 6002 apply to Tier 1 EIS documents?

Answer: The SAFETEA-LU requirements do apply to Tier 1 EISs. The NEPA regulations of USDOT and CEQ permit the tiering of EISs ([23 CFR 771.111\(g\)](#) and [40 CFR 1502.02](#)). The first tier EIS would address broad issues in the study area, such as the effectiveness of complementary transportation actions of various modes and general locations in alleviating the transportation problems in the study area. The initiation of a first tier EIS does trigger the SAFETEA-LU requirements. However, the description of the "type of work" and other information for project initiation (see [Question 11](#)), the impact assessment methodologies, the corresponding coordination plan with participating agencies, and other features of the review process will reflect the broader level of decisionmaking at the Tier 1 planning phase. When the lead agencies initiate Tier 2 proceedings, the SAFETEA-LU requirements will apply, but procedures and documentation should be adapted as appropriate to reflect the results of the Tier 1 proceedings.

APPLICABILITY REQUIREMENTS ([Link to SAFETEA-LU](#))

Question 8: Which projects must follow the environmental review process?

Answer: All transportation projects requiring an EIS for which the original Notice of Intent was published in the *Federal Register* after August 10, 2005, must follow the procedures outlined in Section 6002. A limited exception is addressed in [Question 9](#) below.

USDOT also has the authority under Section 6002 to apply its requirements to certain classes of projects or individual projects that are developed as environmental assessments (EAs). For EA projects, the decision on the use of Section 6002 will be made by the FHWA Division Office or FTA Regional Office, with the concurrence of the other lead agency(ies), on a case-by-case basis for individual projects or classes of projects. The "default" assumption, which need not be documented outside this guidance, is that the Section 6002 environmental review process will not be applied to EAs. The decision to apply Section 6002 to a particular EA or class of EAs should depend on the benefits, in terms of expediting the EA process and stewarding the environment that would result by following this process. A decision to follow these procedures for an EA or class of EAs should be documented in the coordination plan or other project record.

At this time, USDOT does not intend to exercise the authority to apply the Section 6002 process to CEs through this guidance.

Because this guidance was not available between August 10, 2005, and the date of this guidance, lead agencies may have used procedures to comply with Section 6002 that differ in some detail from the procedures contained in this guidance. In such cases, the Federal lead agency will determine whether additional action is needed and practical in order to make the process consistent with Section 6002.

Question 9: When can a State use its existing environmental review process instead of SAFETEA-LU?

Answer: SAFETEA-LU permits States that “re-engineered” their environmental review process to streamline transportation decisionmaking under the provisions of [§1309 of the Transportation Equity Act for the 21st Century \(TEA-21\)](#) to request a grandfathering exemption to continue operating their program under those processes. States wishing to pursue this grandfathering exemption should submit a request to the FHWA Office of Planning, Environment, and Realty for review and approval by March 31, 2007. The request should provide supporting documentation that the State’s existing process was approved by the FHWA under TEA-21 §1309. An environmental review process approved by FHWA for this grandfathering treatment must be used for the State’s program as a whole or for a pre-approved class of projects, but cannot be substituted for Section 6002 procedures on a project-by-project basis.

FTA did not approve any re-engineered streamlining processes during the lifetime of TEA-21. Therefore, this SAFETEA-LU provision would apply only to an FTA project sponsored or co-sponsored by a State DOT whose TEA-21 process has been officially accepted by FHWA.

Question 10: If a NEPA review for which the Notice of Intent was published prior to the date of enactment of SAFETEA-LU (August 11, 2005) is being re-evaluated due to a 3-year lapse in activity, or re-scoped for any reason, or if a supplemental EIS (SEIS) is needed, must the SAFETEA-LU environmental review process be followed?

Answer: On a project for which the Notice of Intent was published in the *Federal Register* prior to the enactment of SAFETEA-LU, the SAFETEA-LU environmental review process need not be followed if:

- (1) a re-evaluation of the DEIS or FEIS is performed that results in a determination that an SEIS or new EIS is not needed;
- (2) an SEIS as described in [23 CFR 771.130](#), that does not involve the reassessment of the entire action, is needed; or
- (3) an EIS that was under active development during the 8 months prior to August 11, 2005, is being re-scoped due to changes in plans or priorities, even if a revised Notice of Intent is published. “Active development” is evidenced by one or more of the following actions: documented meetings with members of the public or other agencies, correspondence with other agencies, or publication of project newsletters.

In all other cases of re-scoping or reassessing the entire action through an SEIS or new EIS, the SAFETEA-LU environmental review process must be followed (except in States with an approved TEA-21 procedure, as described in [Question 9](#)).

PROJECT INITIATION ([Link to SAFETEA-LU](#))

Question 11: How is the environmental review process for a transportation project initiated?

Answer: To initiate the environmental review process for a transportation project using the Section 6002 process, SAFETEA-LU requires that the project sponsor notify USDOT about the type of work, termini, length, and general location of the proposed project. The notification must also provide a list of any other Federal approvals (e.g., [Section 404](#) permits) anticipated to be necessary for the proposed project, to the extent that such approvals are known at the outset. The notice also should indicate the timeframe within which the environmental review process

should be started. The information required to initiate the environmental review process may be generated by the metropolitan or statewide planning processes, or by other means such as corridor planning studies, traffic studies, or congestion or pavement management systems. For more information on using products of the planning process, see [Question 35](#) and [Appendix D](#). The notification can be provided in the form of a letter or through a programmatic document (discussed below) such as the State Transportation Improvement Program (STIP) that meets the informational requirements in Section 6002.

If a notification letter is used, it should be signed or emailed by the official authorized to sign EISs for the sponsoring agency or that official's authorized delegate, and should be sent to the FHWA Division Administrator or FTA Regional Administrator. States may use existing procedures that provide the project initiation information required by SAFETEA-LU if the appropriate official originates the notice. For example, a draft Notice of Intent under 40 CFR 1501.7 and 1508.22, sent to the Division or Regional Administrator by the appropriate official of the sponsoring agency, may serve as the initiation notice under Section 6002 so long as the information required by Section 6002 is contained in the draft Notice of Intent.

Notices of initiation also may be consolidated (batched) into a multi-project notice of initiation if the lead agencies determine that the resources of the lead agencies and the timing for the projects support such practice.

States may propose, and the USDOT may accept, programmatic approaches to satisfying the project initiation requirements of SAFETEA-LU. In any such proposal, the State must provide to USDOT in a properly approved document: (a) the information about each project (i.e., type of work, termini, length, general location, and the list of other Federal approvals) required for project initiation; and (b) an indication of exactly when the environmental review process for each project will commence, i.e., when the staff, consultant services, financial resources, and leadership attention necessary to move the project's environmental review process forward will be committed to that end. For example, a State that updates its STIP annually may propose to use it as the vehicle for project initiation by including in the STIP the project initiation information and the dates that each draft Notice of Intent will be delivered to USDOT.

Question 12: When should the notification for project initiation occur?

Answer: The timing of the notification is flexible and occurs when (1) the proposed transportation project is sufficiently defined to provide the required information noted in [Question 11](#), and (2) the project sponsor is ready to proceed with the NEPA phase of project development by devoting appropriate staff, consultant services, financial resources, and leadership attention to the project. The notification would normally occur prior to the publication of the Notice of Intent in the *Federal Register* and may even occur within the transportation planning process, if an appropriate level of project information is available.

Question 13: For FTA New Starts and Small Starts projects, how does the NEPA process, as enhanced by Section 6002, interface with the planning Alternatives Analysis that is part of the project development process for New and Small Starts projects?

Answer: FTA does not envision any change in the NEPA-New Starts interface as a result of Section 6002. The planning Alternatives Analysis required for FTA New Starts projects and defined in [49 USC 5309\(a\)\(1\)](#) may still be performed prior to initiating the environmental review process or concurrent with and merged into the environmental review process. The sponsoring transit agency, in consultation with FTA, has the discretion to decide which approach to use.

Performing the New Starts planning Alternatives Analysis prior to the environmental review process (so called "Option 1") is most effective when the study area has complex transportation issues and a myriad of potential solutions, including alternative transportation modes, transit

technologies, and alignments, and combinations thereof. In this case, a planning study to focus the issues is appropriate before initiating the environmental review process. When initiation of the environmental review process, as described in [Question 11](#), occurs after the New Starts planning Alternatives Analysis, “type of work” would be identified as the specific transit technology (e.g., light rail transit [LRT], bus rapid transit [BRT], commuter rail train, rail rapid transit) and general alignment adopted by the metropolitan planning organization (MPO) into the metropolitan transportation plan.

Performing the New Starts Alternatives Analysis concurrent with and merged into the environmental review process (so called “Option 2”) is most effective when the transit technology and alignment alternatives in the study area are severely limited by development patterns and densities and by available right-of-way. When the New Starts Alternatives Analysis is performed concurrent with and merged into the environmental review process, project initiation would occur at the start of the New Starts Alternatives Analysis and environmental review process. “Type of work” would be identified as “fixed guideway transit” because a transit technology has not yet been formally proposed. After the public hearing on the New Starts Alternatives Analysis/DEIS and MPO adoption of a transit technology and general alignment into the metropolitan transportation plan, a supplemental DEIS may be necessary in accordance with [23 CFR 771.130\(e\)](#).

Certain New Starts project sponsors have advocated publishing a *Federal Register* notice of intent to prepare an EIS, more accurately called an “early scoping notice,” and then conducting the New Starts planning Alternatives Analysis as a super-extended scoping process (so called “Option 1.5”). This option may provide an opportunity to identify and engage participating agencies (as [defined below](#)) earlier, i.e., during the New Starts planning Alternatives Analysis, through the early scoping notice. The USDOT guidance on linking the planning and NEPA processes ([Appendix D](#)) states that, for the results of a planning study (including a New Starts planning Alternatives Analysis) to be carried forward into the environmental review process, those results must be subjected to public and interagency review and comment during the scoping of the EIS, among other requirements. Section 6002 does not change the USDOT guidance of February 2005 in [Appendix D](#). Under this option, project initiation would occur after the New Starts planning Alternatives Analysis at the start of the environmental review process, and “type of work” would be identified as the specific transit technology (e.g., LRT, BRT, commuter rail train, rail rapid transit) and general alignment adopted by the MPO into the metropolitan transportation plan.

The New Starts discussion above applies also to any Small Starts project that would significantly affect the quality of the human environment and would therefore require an EIS under CEQ regulations. Although the Small Starts program is new, FTA expects that transit agencies will propose for Small Starts funding many projects that do not require an EIS. Such projects would not be subject to Section 6002 procedures, unless the transit agency seeks to use Section 6002 to expedite the environmental review process in accordance with Question 8.

LEAD AGENCIES ([Link to SAFETEA-LU](#))

Question 14: What agencies must serve as lead agencies in the environmental review process?

Answer: USDOT must serve as the Federal lead agency for a transportation project. The direct recipient of Federal funds for the project must serve as a joint lead agency.

For FHWA, the State DOT is typically the direct recipient of project funds, and therefore must serve as a joint lead agency along with FHWA. A local governmental agency that is the project sponsor may be invited to serve as a joint lead agency as described in Question 16.

For FTA, the local transit agency typically is the direct recipient of project funds, and therefore serves as a joint lead agency along with FTA. In practice, the role of the local transit agency in an FTA NEPA review is not expected to change as a result of the Section 6002 provision on lead agencies. Section 6002 merely provides the statutory authority for transit agencies to perform the role in NEPA reviews that they have traditionally performed.

Question 15: Which other agencies may serve as joint lead agencies?

Answer: Section 6002 makes no change regarding which other governmental agencies may serve as joint lead agencies. In addition to the required lead agencies, other Federal, State, or local governmental entities, including but not limited to toll, port, and turnpike authorities and MPOs, may act as [joint lead agencies, at the discretion of the required lead agencies](#), in accordance with CEQ regulations. For example, the U.S. Department of Homeland Security may serve as a joint lead agency with USDOT and the project sponsor on a transportation improvement at a national border crossing. The environmental documents prepared must satisfy the requirements of both lead Federal agencies. Agencies that become joint lead agencies by invitation assume the roles, responsibilities, and the authority of a lead agency under Section 6002.

Private entities, either acting as sponsors or co-sponsors of projects, cannot serve as joint lead agencies, and their role is limited to providing environmental or engineering studies and commenting on environmental documents.

Question 16: In the case of a transportation project for which the State DOT will receive and transfer Federal funds to a local governmental agency, which agencies are required to be a lead agency?

Answer: USDOT has interpreted SAFETEA-LU to mean that the direct recipient of Federal funds must serve as a joint lead agency with the USDOT. In the example presented in this question, the direct recipient would be the State DOT. Local governmental entities that are subrecipients of Federal funds, at the discretion of the Federal and non-Federal lead agencies, may be invited to be joint lead agencies, but are not required to serve. A subrecipient that will actually be designing and constructing the project will normally be asked to serve as a joint lead agency with the USDOT and the State DOT.

When the State DOT and a subrecipient are both serving with the USDOT as joint lead agencies, the lead agencies must jointly decide which of them has responsibility for hiring needed contractors and managing the day-to-day conduct of the environmental review. Any of the lead agencies may assume this responsibility, with the concurrence of the other lead agencies. This allocation of responsibilities would take into account the capabilities and resources available to the each of the lead agencies. When a subrecipient agency serving as a joint lead agency assumes responsibility for day-to-day management of the environmental review process, the role of the State DOT, the direct recipient, is to provide active oversight and supervision of the local governmental agency's work. The State DOT remains legally responsible for the performance of the local governmental agency, as was the case before SAFETEA-LU. Accordingly, USDOT expects the direct recipient to participate fully in the various decisions relegated to the lead agencies.

Question 17: How does the Federal lead agency requirement apply to the FHWA Public Lands Highway Program and FTA's Alternative Transportation in Parks and Public Lands Program?

Answer: SAFETEA-LU specifically states that USDOT shall be the Federal lead agency for the environmental review process for any project requiring a USDOT approval. Section 6002 does not apply to projects carried out by Federal Lands Highway that are for another agency and do not use Title 23 funds. Existing agreements with Federal land management agencies that

designate FHWA as a cooperating agency should be amended or replaced to ensure that FHWA is designated as the lead or joint lead agency. An agreement establishing joint lead agency status for multiple Federal agencies should provide that environmental documents prepared under that agreement satisfy the requirements of all lead agencies.

FTA's role in the environmental review process for projects funded through the new Alternative Transportation in Parks and Public Lands Program ([49 USC 5320](#)) is presented in separate guidance specifically about that program. See "[Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients of FY 2006 Funding](#)," July 2006.

Question 18: What are the roles of lead agencies under SAFETEA-LU?

Answer: The lead agencies must perform the functions that they have traditionally performed in preparing an EIS in accordance with [23 CFR part 771](#) and [40 CFR parts 1500-1508](#). In addition, the lead agencies now must identify and involve participating agencies; develop coordination plans; provide opportunities for public and participating agency involvement in defining the purpose and need and determining the range of alternatives; and collaborate with participating agencies in determining methodologies and the level of detail for the analysis of alternatives. In addition, lead agencies must provide increased oversight in managing the process and resolving issues.

Question 19: How has USDOT's role as Federal lead agency changed under SAFETEA-LU?

Answer: SAFETEA-LU strengthens the management and facilitation role of USDOT as the Federal lead agency during the environmental review process. USDOT, therefore, must perform the duties previously associated with the Federal lead agency and is responsible for the overall direction of the environmental review process and for expediting the delivery of the transportation project. Under Section 6002, USDOT, together with the other lead agency(ies), holds responsibility for deciding certain issues, including purpose and need, range of alternatives to be analyzed, and whether to develop the preferred alternative to a higher level of detail. At times, this role will require that USDOT take more proactive and assertive actions than in the past to facilitate the timely and adequate completion of the environmental review process. Such actions may include enforcing schedules (where applicable), facilitating resolution of issues, or appropriately asserting itself in other ways to ensure that the environmental review process moves forward in a timely manner.

Question 20: Which agencies can prepare the environmental documents?

Answer: For FHWA, any of the joint lead agencies (including a subrecipient that the other lead agencies have accepted as a joint lead agency) can prepare the environmental documents subject to applicable oversight and supervision requirements. The decision on who will prepare a particular environmental document is a joint decision by the lead agencies. For FTA, the transit agency will continue to prepare the environmental documents under the guidance and direction of FTA. The Federal lead agency ultimately remains responsible for the content of the environmental documents. SAFETEA-LU does not change the responsibility of USDOT, as the Federal lead agency, to furnish guidance, independently evaluate, and approve environmental documents under its authority, and to ensure that project sponsors comply with mitigation commitments.

PARTICIPATING AGENCIES ([Link to SAFETEA-LU](#))

Question 21: Which agencies should be invited to be participating agencies, and how is this decided?

Answer: Federal, State, tribal, regional, and local government agencies that may have an interest in the project should be invited to serve as participating agencies. Nongovernmental organizations and private entities cannot serve as participating agencies.

Although the project sponsor initially identifies potential participating agencies, the lead agencies collectively decide which agencies to invite to serve as participating agencies. The lead agencies cannot know with certitude all the agencies with a potential interest until the alternatives have been developed, and the alternatives cannot be set until the participating agencies have had an opportunity for involvement. Therefore, the lead agencies are expected to make good faith, common-sense efforts to identify and involve interested agencies early on, the objective being to surface and resolve issues as early and quickly as possible. It is not necessary to invite agencies that have only a tangential, speculative, or remote interest in the project. If the lead agencies do not agree on which agencies should be invited, then they must work out their differences because progress on inviting agency participation, and other activities that depend on the identification of participating agencies, will be held up until the lead agencies agree. The success of this element of the Section 6002 process will depend on the lead agencies exercising common sense and good faith to make the process work.

Some reasonable division of labor among the lead agencies in distributing the invitations may be appropriate. For example, the lead agencies may agree that the project sponsor will be responsible for inviting State and local agencies, and that the USDOT agency will be responsible for Federal agencies and Native American tribal governments. Such an understanding should be defined in the coordination plan ([discussed below](#)), or in some other written form.

Appropriate practices for inviting participating agencies may vary from State to State. To help identify potential participating agencies, FHWA recommends that each State develop a comprehensive and inclusive list of Federal, State, tribal, regional, and local agencies that have permitting authority, special expertise, or interest in transportation projects. In some States, this list may vary depending on the location of proposed projects. The process for identifying possible State and local agencies may be more difficult than the process of identifying Federal agencies. A good first step toward finding State or local agencies to serve as participating or cooperating agencies is to look at the agencies already participating in NEPA streamlining or NEPA/404 merger processes. These may include the State historic preservation offices, regional planning agencies, and departments of natural resources.

For FTA projects, transit agencies should seek access to the list of agencies developed by the State DOT for the project area. Over time, as transit projects are advanced through SAFETEA-LU's new environmental review process, the larger transit agencies that have ongoing programs of major projects should develop their own lists. Otherwise, FTA will work with the sponsoring transit agency to develop a list of potential participating agencies on a case-by-case basis.

Question 22: What are the roles and responsibilities of participating agencies?

Answer: The roles and responsibilities of participating agencies include, but are not limited to:

- Participating in the NEPA process starting at the earliest possible time, especially with regard to the development of the purpose and need statement, range of alternatives, methodologies, and the level of detail for the analysis of alternatives.
- Identifying, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. Participating agencies also may participate in the issue resolution process described later in this guidance.

- Providing meaningful and timely input on unresolved issues.
- Participating in the scoping process. The scoping process should be designed so that agencies whose interest in the project comes to light as a result of initial scoping activities are invited to participate and still have an opportunity for involvement.

Accepting the designation as a participating agency does not indicate project support and does not provide an agency with increased oversight or approval authority beyond its statutory limits, if applicable. Lead agencies should recognize that resource constraints may make full participation by an interested agency difficult at times and should strive to facilitate participation in scheduling and locating meetings, use of conferences calls, etc. However, the objective of Section 6002 is to move project reviews forward expeditiously, and participating agencies that cannot fully participate may have to prioritize their activities. Funding of additional agency resources, as described in Questions 67-69, may be considered by the States to alleviate chronic resource problems impeding environmental review processes.

Question 23: Who sends out the invitations to serve as participating agencies? When should the invitation be sent?

Answer: Any of the lead agencies may send invitations to potential participating agencies. Unless there is an agreement between the non-Federal lead agencies and a particular Native American Tribe regarding direct coordination, the Federal lead agency shall be responsible for inviting federally recognized tribes that may have an interest in the project. The timing of invitations to potential participating agencies may vary. To the extent that the lead agencies know prior to scoping that certain entities should be invited to serve, the lead agencies may send invitations at or after the time of the project notice of initiation (described in [Question 11](#)). If, as the project progresses, the lead agencies identify additional entities that should be invited to serve as participating agencies, then they should invite those entities promptly.

Question 24: What needs to be included in the invitation sent to potential participating agencies?

Answer: The invitation should be in the form of a hardcopy or email letter and must include a basic project description and map of the project location. If the invitation is sent electronically, it should be tracked to ensure delivery. As with all correspondence, a copy should be placed in the project file. The project description may be included in scoping materials enclosed with the letter. The invitation must clearly request the involvement of the agency as a participating agency and should state the reasons why the project is expected to interest the invited agency. Lead agencies should bear in mind that invited agencies (e.g., U.S. Environmental Protection Agency (EPA)) may have obligations under several authorities, and, in such case, the invitation should reflect all areas of jurisdiction of the invited agency. The invitation should identify the lead agencies and describe the roles and responsibilities of a participating agency. The invitation must specify a deadline for responding to the invitation. A response deadline of no more than 30 days, consistent with the comment deadlines set forth in SAFETEA-LU, is suggested. The scoping process may be conducted concurrently with the invitation process as long as the potential participating agencies are provided with sufficient scoping information and opportunity for involvement. See [Appendix B](#) for sample invitation letters for FHWA and FTA.

Question 25: What is involved in accepting or declining an invitation to be a participating agency?

Answer: The invitation should request a response either accepting or declining the role of participating agency. Per SAFETEA-LU, a Federal agency invited to participate shall be designated as a participating agency unless the agency declines the invitation by the specified deadline. If a Federal agency chooses to decline, their response letter (electronic or hard copy) must state that the agency (1) has no jurisdiction or authority with respect to the project, (2) has no expertise or information relevant to the project, and (3) does not intend to submit comments on

the project. If the Federal agency's response does not state the agency's position in these terms, then the agency should be treated as participating agency. Under the statutory provisions regarding Federal agency participation, it is likely that any invited Federal agency will serve as a participating agency. Therefore, in the interest of good resource management, invitations to Federal agencies should be sent with appropriate forethought about whether the agency has an actual interest in the project.

A State, tribal, or local agency must respond affirmatively to the invitation to be designated as a participating agency. If the State, tribal, or local agency fails to respond by the stated deadline or declines the invitation, regardless of the reasons for declining, the agency should not be considered a participating agency.

Participating agency status may be established on a programmatic basis or project-by-project.

Question 26: What happens if an agency does not initially become a participating agency, but subsequent events indicate that the agency wants or needs to become involved in the environmental review process?

Answer: The answer depends on the situation, as illustrated in the following scenarios:

- If an invited agency declines to be a participating agency, but the lead agencies think the invited agency has jurisdiction or authority over the project and will be required to make a decision about the project, or if the invited agency has acknowledged special expertise or has information relevant to the project, then the lead agencies should work immediately to resolve the disagreement about participation. If informal procedures prove inadequate to reach a mutually satisfactory agreement on participation, then the lead agencies may wish to elevate the issue within the agencies or to pursue the statutory issue resolution process described in [Questions 61 through 63](#) below.
- If an agency correctly declines an invitation, but new information indicates that the agency does indeed have authority, jurisdiction, acknowledged special expertise, or information relevant to the project, then the lead agencies should immediately extend a new invitation in writing to the agency to become a participating agency. The lead agencies also should consider whether this new information affects previous decisions on the project. If the agency agrees to be a participating agency, then the lead agencies should consult with that new participating agency in determining whether the new information affects previous decisions.
- If an agency declines an invitation to become a participating agency and later wants to participate, then the agency should be invited to become a participating agency but previous decisions will not be revisited.
- If initially an agency was unintentionally left out and now wants to participate, the agency should be extended an invitation to become a participating agency as soon as the oversight is realized. The lead agencies should request input and consider whether and how the new agency's participation in the process affects previous decisions. It may be necessary to reconsider previous decisions if it is probable that the input of the new participating agency would substantially change the decision.

Question 27: What happens if an agency declines to be a participating agency, but later submits comments on the project?

Answer: Any agency that has an interest, but declines to be a participating agency, is free to comment on the project in the same manner that a member of the public may comment. The declining agency foregoes the opportunity to provide early input on several project issues such as the development of purpose and need, the range of alternatives, and methodologies. The lead

agencies will always consider any substantive comments submitted by interested parties. However, the comments of an agency that declines an invitation to participate will be treated in accordance with the procedures outlined in the answer to Question 26. In order to avoid misunderstandings, the lead agencies should make it clear in the responses to the agency's comments that the agency declined to serve as a participating agency and, if applicable, that its comments therefore were not received at the appropriate time and could not be considered and acted upon at that time.

If the comments made by a Federal agency that declines participating agency status present substantial problems that may delay completion of the environmental review process, the matter should be submitted to the appropriate USDOT headquarters office and Federal agency headquarters for resolution. If issues of concern arise based on such agency's comments that cannot otherwise be resolved, then the lead agencies may consider pursuing the issue resolution procedures described in [Questions 61 through 63](#) below.

Question 28: What if an agency becomes a participating agency, but does not fully participate during the environmental review process?

Answer: The intent of the concept of "participating agency" is to allow for early and timely input regarding issues of concern. Therefore, it is incumbent upon the participating agencies to provide meaningful input at appropriate opportunities. Failure to raise issues that could have been addressed during such opportunities may result in these comments not receiving the same consideration that they would have received if raised at the appropriate time.

With the additional information available from the completion of technical studies or the DEIS itself, participating agencies may have concerns that were not evident during earlier commenting opportunities. Lead agencies should consider comments on old issues if those comments derive from new information. However, participating agencies should understand that backtracking to previously resolved issues will follow only if the new information is at substantial variance with what was expected and pertains to an issue of sufficient magnitude and severity to warrant reconsideration.

Expectations and commitments about agency participation should be addressed in the coordination plan described in [Questions 47 through 53](#) below. It is appropriate to tailor an agency's participation to its area of interest or jurisdiction. In doing so, the lead agencies should make their choices after considering the potential effects if the agency is not provided an opportunity for involvement in some aspects of the environmental review process.

If the coordination plan calls for an agency's involvement in a particular issue of interest to that agency, and the agency does not participate in that issue, the lead agencies must decide how critical that agency's input is to making a decision on the issue. If the participating agency has no separate jurisdiction or permit authority over the project, the lead agencies may decide to accept the agency's implicit "no comment" and move forward. If the lead agencies determine that participation by the agency in question is critical and may affect future decisions on the project, then the lead agencies may wish to pursue the involvement of the other agency through informal dispute resolution or other means. Use of the formal dispute resolution procedures discussed in [Questions 61 through 63](#) below, may be an option if the lead agencies deem it appropriate.

Question 29: If an agency decides not to submit comments or otherwise participate in USDOT's environmental review process, can that agency still submit comments to non-USDOT agencies when they review the project and make decisions under other laws?

Answer: SAFETEA-LU requires all Federal agencies, to the maximum extent practicable, to carry out their responsibilities under other laws in a manner that is concurrent and coordinated with the USDOT review process [[23 USC 139\(d\)\(7\)](#)]. Nothing in SAFETEA-LU prevents anyone from submitting comments to a Federal agency exercising its own jurisdictional authority over a

project. However, the SAFETEA-LU requirements on Federal agency coordination should serve to encourage the early identification of issues of concern and thereby prevent the submission of unexpected or “first time” substantive comments by Federal agencies during the proceedings of non-USDOT agencies (such as the Corps of Engineers). Additionally, the coordination plan described in [Questions 47 through 53](#) below should build safeguards into the environmental review process to help ensure timely comments by all participating agencies.

COOPERATING AGENCIES ([Link to SAFETEA-LU](#))

Question 30: What is the difference between a participating agency and a cooperating agency?

Answer: According to CEQ ([40 CFR 1508.5](#)), “cooperating agency” means any Federal agency, other than a lead agency, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or project alternative. A State or local agency of similar qualifications or, when the effects are on lands of tribal interest, a Native American tribe may, by agreement with the lead agencies, also become a cooperating agency.

Participating agencies are those with an interest in the project. The standard for participating agency status is more encompassing than the standard for cooperating agency status described above. Therefore, cooperating agencies are, by definition, participating agencies, but not all participating agencies are cooperating agencies. The lead agencies should consider the distinctions noted below in deciding whether to invite an agency to serve as a cooperating/participating agency or only as a participating agency.

The roles and responsibilities of cooperating and participating agencies are similar, but cooperating agencies have a higher degree of authority, responsibility, and involvement in the environmental review process. A distinguishing feature of a cooperating agency is that the CEQ regulations ([40 CFR Section 1501.6](#)) permit a cooperating agency to “assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.” An additional distinction is that, pursuant to [40 CFR 1506.3](#), “a cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.” This provision is particularly important to permitting agencies, such as the U.S. Army Corps of Engineers, who, as cooperating agencies, routinely adopt USDOT environmental documents.

Question 31: Must the lead agencies invite an agency that qualifies for both designations to serve as both a cooperating and a participating agency?

Answer: [The SAFETEA-LU requirement](#) for the designation of participating agencies does not alter USDOT’s responsibility under CEQ regulations to consult with Federal agencies qualifying to be cooperating agencies. Therefore, if a Federal agency qualifies as a cooperating agency, it should be invited to serve in that capacity as well as the participating agency capacity. A non-Federal agency or Native American tribe that qualifies under CEQ regulations to serve as a cooperating agency may be invited to serve in that capacity or as a participating agency, at the discretion of the lead agencies.

The invitation to an agency to serve as a cooperating agency should address the roles and responsibilities expected of a participating agency as well. In the interest of administrative efficiency, a single invitation should cover both roles, as illustrated in [Appendix B](#). If a Federal agency declines the invitation to serve as a cooperating agency, that agency should be treated as a participating agency unless its declination is couched in the terms described in Question 25.

PURPOSE AND NEED ([Link to SAFETEA-LU](#))

Question 32: Who is responsible for developing the project's purpose and need?

Answer: The lead agencies are responsible for the development of the project's purpose and need statement. In developing the statement of purpose and need, the lead agencies must provide opportunities for the involvement of participating agencies and the public and must consider the input provided by these groups. After considering this input, the lead agencies will decide the project's purpose and need. If the lead agencies do not agree, they must work out their differences because progress on stating the project's purpose and need, and other activities that depend on the statement of purpose and need will be stalled until the lead agencies agree. If a cooperating or participating agency has permit or other approval authority over the project, it would be useful, though not required, for the lead agencies and that permitting agency to develop jointly a purpose and need statement that can be utilized for all applicable environmental reviews and requirements. Per previous guidance issued by CEQ (see [Question 33](#)), which was affirmed by Congress in its conference report on SAFETEA-LU, other Federal agencies should afford substantial deference to the USDOT's articulation of the purpose and need for a transportation action.

Question 33: What direction does SAFETEA-LU give for the content of the purpose and need statement?

Answer: SAFETEA-LU does not substantively change the concept of purpose and need that was established by CEQ. SAFETEA-LU requires a clear statement of identified objectives that the proposed project is intended to achieve for improving transportation conditions. The objectives should be derived from needs and may include, but are not limited to, the following outlined in SAFETEA-LU:

- Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;
- Supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans;
- Serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

Although many transportation studies have established these listed or similar objectives in the past, SAFETEA-LU affirms the use of these objectives in establishing the purpose and need for a transportation project. For example, the statement of objectives might include goals and objectives obtained from Federal, State, or local planning documents that describe land use, growth, or other targets or limits. These planning objectives might indicate that high-density land use is planned for the study area and would require improved infrastructure. In such a case, it would be appropriate for travel demand forecasting or other modeling to consider the future land use as long as the land use forecast was obtained from an official Federal, State, or local planning document and was determined appropriate for use during NEPA.

The FHWA/FTA guidance on linking planning and NEPA ([Appendix D](#)) describes considerations for using planning information in the NEPA process. In accordance with that guidance:

- The purpose and need for a project can be shaped by goals and objectives established in a corridor or subarea study carried out by a state DOT, MPO, or transit agency as part of the statewide or metropolitan planning process;

- A general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from transportation planning analyses may be part of the project's purpose and need statement; and
- If the financial plan for an MPO's long-range transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement.

General direction on developing concise and understandable purpose and need statements is found in the CEQ/USDOT letter exchange found online at <http://www.environment.fhwa.dot.gov/guidebook/Ginterim.asp> and in FHWA/FTA Joint Guidance issued July 23, 2003, found online at <http://www.environment.fhwa.dot.gov/guidebook/Gjoint.asp>.

Question 34: SAFETEA-LU requires an “opportunity for involvement” for participating agencies and the public in defining the project purpose and need. How can this requirement be satisfied?

Answer: The lead agencies must give participating agencies and the public the chance to become involved in the development of the project purpose and need statement. This opportunity can occur early during the transportation planning process, or later during the scoping process. The level of involvement will be determined by the lead agencies case-by-case, taking into account the overall size and complexity of the project.³ The form and timing of that involvement is flexible, and the lead agencies should coordinate beforehand and agree on when and in what form the participating agency and public involvement will occur. The opportunity for involvement must be publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, conference calls, postings on web sites, distribution of printed materials, or any other involvement technique or medium. The project's coordination plan (described in [Questions 47 through 53](#) of this guidance) will establish the timing and form of the required involvement opportunities and the timing of the decision on purpose and need.

The opportunity for involvement must be provided prior to the lead agencies' decision regarding the purpose and need that will be incorporated into the NEPA document. The lead agencies' decision on purpose and need and their considerations in making that decision should be documented and shared with participating agencies to ensure that any disputes are surfaced as early as possible.

Question 35: How does the transportation planning process relate to the development of a project's purpose and need statement?

Answer: Transportation objectives developed during the transportation planning process and identified in a statewide or metropolitan transportation plan can be the primary source of a project's purpose and need statement. The transportation planning process enables State and local governments and metropolitan planning organizations, with the involvement of stakeholders and the public, to establish a vision for a region's future transportation system, define a region's transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these needs. Out of the process emerge proposed projects intended to meet the needs and achieve the objectives of the plan.

In accordance with the [USDOT guidance on linking planning and NEPA](#), the USDOT will give deference to decisions resulting from the transportation planning process under the conditions set forth in Question 7 of that guidance. Because of its obligations under NEPA, the USDOT must be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document.

³ Conference Report 109-203, page 1047-1048.

When the transportation planning process produces a specific purpose and need statement for a particular project, that purpose and need can be used in the environmental review process as follows: if the specific steps outlined in this guidance to identify participating agencies and to involve these agencies and the public in the development of the project purpose and need were taken during the transportation planning process, then further review of the project purpose and need may not be necessary; otherwise, the participating agencies and the public must be provided an opportunity for involvement once the environmental review process has been initiated. For more information, see the USDOT guidance on linking planning and NEPA ([Appendix D](#)).

ALTERNATIVES ANALYSIS⁴ ([Link to SAFETEA-LU](#))

Question 36: Who is responsible for developing the range of alternatives?

Answer: The lead agencies are responsible for the development of the range of alternatives. In developing the alternatives, the lead agencies must provide opportunities for the involvement of participating agencies and the public and must consider the input provided by these groups. After considering this input, the lead agencies will decide the range of alternatives for analysis. If the lead agencies do not agree, then they must work out their differences because progress on the alternatives, and other activities that depend on the alternatives, is halted until the lead agencies agree. If a cooperating or participating agency has permit or other approval authority over the project, it would be useful, though not required, for the lead agencies and that permitting agency to develop jointly the range of alternatives that can be utilized for all applicable environmental reviews and requirements.

Question 37: SAFETEA-LU requires an “opportunity for involvement” by participating agencies and the public in defining the range of alternatives. How can this requirement be satisfied?

Answer: As early as practicable, the lead agencies must give participating agencies and the public the chance to become involved in defining the range of alternatives. The level of involvement will be determined by the lead agencies case-by-case, taking into account the overall size and complexity of the project.⁵ The form and timing of that involvement is flexible, and the lead agencies should coordinate beforehand and agree on when and in what form the participating agency and public involvement will occur. The opportunity for involvement must be publicized and may occur in the form of public workshops or meetings, solicitations of verbal or written input, conference calls, postings on web sites, distribution of printed materials, or any other involvement technique or medium. The project’s coordination plan (described in [Questions 47 through 53](#) of this guidance) will establish the timing and form of the required involvement opportunities and the timing of the decision on the range of alternatives to be evaluated in the NEPA document. The required involvement opportunities for purpose and need and range of alternatives may be concurrent or sequential. If the opportunities are concurrent, and if the purpose and need statement is substantially altered as a result of the public and participating agency involvement, then the lead agencies must consider whether an opportunity for involvement in the range of alternatives that derive from the new purpose and need is warranted.

⁴ For transit New Starts and Small Starts projects, a planning Alternatives Analysis, as defined in [49 USC 5309\(a\)\(1\)](#), is required. In Section 6002, the term “alternatives analysis” does not refer to the transit New Starts requirement. It refers to the broad analysis of reasonable alternatives required by NEPA, which may range from the evaluation of alternative modes and alignments to consideration of site-specific design and mitigation options, to consideration of no action. For clarity, this guidance uses the term “New Starts Alternatives Analysis” to refer to the requirement in [49 USC 5309](#).

⁵ Conference Report 109-203, page 1048.

The opportunity for involvement must be provided prior to the lead agencies' decision regarding the range of alternatives to be evaluated in the NEPA document. The lead agencies' decision on the range of alternatives and their considerations in making that decision should be documented and shared with participating agencies to ensure that any disputes are surfaced as early as possible.

Question 38: What new requirements are included in SAFETEA-LU for developing the methodologies for the analysis of alternatives?

Answer: Under SAFETEA-LU, the lead agencies must determine, in collaboration⁶ with the participating agencies, the appropriate methodologies to be used and the level of detail required in the analysis of alternatives. Accordingly, the lead agencies must work cooperatively and interactively with the relevant participating agencies on the methodology and level of detail to be used in a particular analysis. Consensus is not required, but the lead agencies must consider the views of the participating agencies with relevant interests before making a decision on a particular methodology. Well-documented, widely accepted methodologies, such as those for noise impact assessment and Section 106 (historic preservation) review, should require minimal collaboration.⁷ The project's coordination plan (described in [Questions 47 through 53](#) of this guidance) will establish the timing and form of the required collaboration with participating agencies in developing the methodologies.

In accordance with [40 CFR 1503.3\(b\)](#), if a commenting [participating] agency criticizes the proposed methodology to be used in the analysis of an alternative, then the commenting [participating] agency should describe the alternate methodology that it prefers and state why.

After the lead agencies have collaborated with the participating agency on the methodologies and level of detail, the lead agencies will make the decision on the methodology and level of detail to be used. If the lead agencies do not agree, then they must work out their differences because progress on the methodologies and level of detail, and on the analyses that depend on these decisions is stalled until the lead agencies agree. The lead agencies' decisions on methodologies and their considerations in making those decisions should be documented and shared with participating agencies to ensure that any disputes are surfaced as early as possible.

Given the track record of interagency disagreements over methodology late in project development, the lead agencies should aggressively use the scoping process as described in [40 CFR 1501.7](#) to solicit public and agency input on methodologies and to reach closure on what methodologies will be used to evaluate important issues. This approach is particularly important on issues, such as the analysis of indirect and cumulative effects, for which questions of methodology are very open. As part of the scoping process, the lead agencies should communicate decisions on methodology to the participating agencies with relevant interests or expertise soon after they are made. The lead agencies may define a comment period on the methodology. At the discretion of the lead agencies, methodologies may be developed incrementally, with the initial methodology that is developed during scoping being refined with further collaboration after an initial impact analysis has been performed. Unless a participating agency objects to the selected, duly communicated methodology as described above, the lead agencies can reasonably assert in most cases that comments on methodology received much later in the process (e.g., after issuance of the DEIS) are not timely and will therefore not be acted upon. Exceptions should be based on significant and relevant new information or circumstances that are materially different from what was foreseeable at the time that the lead agencies made

⁶ The congressional Conference Report 109-203 (page 1048) accompanying SAFETEA-LU states: "Collaboration means a cooperative and interactive process. It is not necessary for the lead agency to reach consensus with the participating agencies on these issues; the lead agency must work cooperatively with the participating agencies and consider their views, but the lead agency remains responsible for decisionmaking."

⁷ The methodology used by the lead agencies must be consistent with any methodology established by statute or regulation under the authority of another Federal agency (e.g., the EPA's hot spot analysis under the Clean Air Act).

and communicated the decision on methodology. USDOT has determined that this procedure is the best approach to addressing the requirements of Section 6002 in a manner that is consistent with the comment and response process embodied in 40 CFR Part 1503.

The collaboration with a participating agency on the methodologies and level of detail can be accomplished on a project-by-project, program, or region-wide basis, or for some special class of projects (e.g., all projects affecting a particular watershed), as deemed appropriate by the lead agencies. If an approach other than project-by-project collaboration is used, however, the participating agencies with an interest in that methodology must be made aware at the outset of the collaboration that the lead agencies intend to develop a comprehensive methodology to be applied to a program or class of projects or to a region. The participating agencies' input on that methodology and level of detail should take into account the intended scope of use. While the level of detail used in describing such methodologies is left to the discretion of the lead agencies, the success of this newly required collaboration in surfacing disagreements for early resolution depends on an unambiguous description of the methodology and the impacts to which it applies. Once a methodology has been determined for a region, program, or class of project, the lead agencies can apply the methodology to qualifying projects without project-specific collaboration if the relevant participating agencies and lead agencies have entered into a programmatic agreement to that effect. If no such agreement is in place, the lead agencies still may apply that methodology to a qualifying project, but project-specific collaboration is necessary. It is expected that project-specific collaboration in such cases will be highly expedited and can be accomplished by advising the relevant agencies of the intention to apply the methodology in question.

The lead agencies may revise a methodology at any time, but if the reason is other than to respond to the concerns of a participating agency, then collaboration with the participating agencies with an interest in that methodology is needed when the methodology is revised. When there is a written programmatic agreement on a methodology that applies to the project, such agreement is binding only on the parties to the agreement. Other participating agencies with an interest in the methodology in question retain the right to collaborate on that methodology. The results of the collaboration on methodologies and level of detail should be communicated to participating agencies in written form so that any objections can be surfaced as early as possible.

If a cooperating or participating agency has permit or other approval authority over the project, it would be useful, though not required, for the lead agencies and that permitting agency to develop jointly methodologies that can be utilized for all applicable environmental reviews and requirements.

PREFERRED ALTERNATIVE ([Link to SAFETEA-LU](#))

Question 39: Who decides whether the preferred alternative can be developed to a higher level of detail than the other alternatives?

Answer: The lead agencies will decide whether to develop the preferred alternative, after it has been officially identified, to a higher level of detail than the other alternatives. The lead agencies must determine that the development of the preferred alternative to a higher level of detail than the other alternatives under review will not prevent the lead agencies from making an impartial decision on the appropriate course of action and is necessary to facilitate the development of mitigation measures or concurrent compliance with other environmental laws. The lead agencies must agree that a particular alternative is the preferred alternative and that the relevant conditions stated herein are met, before developing that alternative in greater detail. If the lead agencies do not agree, then they must work out their differences because work on developing an alternative in greater detail cannot proceed until the lead agencies agree.

Question 40: Why may a preferred alternative be developed to a higher level of detail?

Answer: SAFETEA-LU permits the preferred alternative to be developed to a higher level of detail than the other alternatives for only the following reasons: (1) to facilitate the development of mitigation measures, or (2) to facilitate concurrent compliance with other applicable environmental laws. Applied appropriately, this provision will be an effective tool for achieving the concurrent reviews called for in SAFETEA-LU.

Nothing in this guidance is intended to alter the established practice of FTA concerning the level of detail of the evaluation of New Starts and Small Starts under 49 U.S.C. 5309.

Question 41: How is the preferred alternative officially identified?

Answer: As in the past, the preferred alternative may be officially identified in a NEPA document (e.g., the DEIS), which is signed by the appropriate authority within each lead agency. This approach is appropriate whether or not the intent is to develop that alternative to a higher level of detail. The preferred alternative must be identified in the FEIS in accordance with CEQ regulations (40 CFR 1502.14(e)).

Another approach to officially identifying the preferred alternative is available when a non-Federal lead agency (normally the project sponsor) wants to develop an alternative, which has not yet been identified in a signed NEPA document as the preferred alternative, to a higher level of detail. The preferred alternative may be identified by means of a separate letter or other decision document issued by the non-Federal lead agency and accepted by the other lead agencies. The official of the non-Federal lead agency who is authorized to sign EISs may send a letter (electronic or hard copy) to the other lead agencies identifying the non-Federal agency's preferred alternative and briefly stating the reasons for that preference. If the other lead agencies accept the identification of the preferred alternative at that time, each one will so indicate to the other lead agencies. In deciding whether to accept the identification of the preferred alternative, the USDOT lead agency will consider its ability to comply with Federal requirements such as Section 4(f), the Section 404(b)(1) guidelines,⁸ the Executive Order on Floodplain Management, etc. Once a preferred alternative is officially identified, subsequent NEPA documents should disclose that preference.

If the USDOT lead agency accepts the identified alternative as the preferred, it does so in accordance with CEQ regulations (40 CFR 1502.14(e)) regarding the identification of the preferred alternative. Such acceptance is not a commitment to issue a Record of Decision (ROD) for that alternative or to fund that alternative. For FTA, acceptance of the preferred alternative is strictly for NEPA purposes, and it does not affect the New Starts or Small Starts rating process. In addition, the decision to accept the identification of a preferred alternative and the decision to develop that alternative in greater detail are separate decisions subject to different considerations as detailed herein.

Question 42: Who can initiate a request for development of a preferred alternative to a higher level of detail, and how is that done?

Answer: Normally, the non-Federal lead agency sponsoring the project will initiate the request to develop the preferred alternative to a higher level of detail. The request should be made by letter (electronic or hard copy) from the official authorized by the requesting agency to sign the EIS, or that official's authorized delegate, to the FHWA Division Office or FTA Regional Office, and to the appropriate offices of the other lead agencies, if any. The request may be included in a letter requesting acceptance of the identification of a preferred alternative, if appropriate. The letter

⁸ 40 CFR Part 230.

should request the concurrence of the other lead agencies in developing the preferred alternative to a higher level of detail. The request should provide the following information:

- Reasons why the agency wants to develop the preferred alternative to a higher level of detail before completion of NEPA review, including the specific Federal laws, impacts, resources, and mitigation measures whose processing would be facilitated by the proposed differential treatment of the alternatives;
- The general nature and extent of the work the agency would perform on the preferred alternative if the request is approved; and
- The reasons why greater design detail will not prejudice the lead agencies' consideration of other alternatives.

In accordance with good practice for administrative records, the USDOT lead agency should document its determination that the relevant conditions described in Section 6002 are met before any work is done to develop a preferred alternative in greater detail. This documentation may be in the form of a response letter (electronic or hard copy) to the non-Federal lead agency's request.

Question 43: When can the lead agencies identify a preferred alternative and allow its development to a higher level of detail? What factors should be considered when deciding?

Answer: The scenario that most readily fits the statutory provisions about the preferred alternative being developed to a higher level of detail is that the DEIS would identify the preferred alternative but treat it no differently than the other alternatives. Then, between the DEIS and FEIS when actions to deal with comments on the DEIS are underway, the lead agencies would develop the preferred alternative in greater detail to deal with mitigation issues and compliance with other laws. This scenario is not the only scenario that would comply with this provision of Section 6002. USDOT has developed the following minimum requirements for use in other cases.

The decision to develop a preferred alternative to a higher level of detail may occur only after the preferred alternative has been officially identified. USDOT, as Federal lead agency, will not accept the identification of a preferred alternative until completion of sufficient scoping and analysis of the alternatives to support the identification. The scoping process is not complete until the lead agencies have provided the opportunity for the involvement of the public and participating agencies in the development of purpose and need and the range of alternatives, and have considered their input and comments. Even after the completion of scoping and a preliminary analysis of alternatives, the USDOT lead agency may decide that identification of a preferred alternative is premature because there is not yet sufficient information on the alternatives to support the decision. For example, the USDOT lead agency may not be convinced, on the basis of only preliminary information, that a Section 4(f) determination will be possible for the non-Federal lead agency's preferred alternative.

Under any scenario, a non-Federal lead agency proposing to develop the preferred alternative to a higher level of detail should state why it needs the greater design detail and why such work will not prejudice the consideration of alternatives. All lead agencies should evaluate carefully any proposal to develop a preferred alternative to a higher level of detail and consider the potential that such action has for creating a bias in the later consideration of alternatives and selection of the project alternative. The evaluation also should consider other factors that may affect the environmental review process. Examples of such factors include whether the identification of a preferred alternative might have an unacceptably adverse effect on public confidence in the environmental review process for the project; whether that adverse effect on public confidence could be avoided by delaying the differential treatment of alternatives until a later point in the environmental review process; how the difference in level of detail among the alternatives might affect the presentation of the alternatives in the environmental documents; or the extent to which the proposed preferred alternative is supported by the results of public and participating agency involvement.

Question 44: What considerations might be relevant to the required determination about future impartiality?

Answer: The lead agencies should identify and consider any factors relevant to the project that would prevent them from making impartial decisions about alternatives in the future. The factors will vary from project to project. Considerations that may be relevant include the following:

- Whether the information on all alternatives already is sufficiently definite and well developed to identify important resources and potential impacts, and to permit a reasonably informed choice.
- Whether the early coordination with the public and participating agencies and the collaboration with participating agencies on impact methodologies resulted in general agreement about the level of detail for alternatives that can continue to guide preparation of the analysis of alternatives.
- The potential impact of the resulting financial and time commitments on overall project costs and schedule if another alternative ultimately is selected.
- The likelihood that fair comparisons among alternatives will result despite the development of a preferred alternative to a higher level of detail.

The key question is whether developing the preferred alternative more fully would cause, in the mind of the NEPA decisionmakers, an imbalanced comparison among alternatives because of time, money, or energy expended. The Federal lead agency must be confident that the lead agencies will be able to make a different choice of alternative, if warranted, at the end of the NEPA process. The use of this SAFETEA-LU provision must not result in “pro forma” treatment of alternatives other than the preferred alternative.

Question 45: Should the development of the preferred alternative to a higher level of design detail affect the presentation of the alternatives in the NEPA document?

Answer: SAFETEA-LU does not change the standard practices relating to the evaluation and presentation of alternatives. This includes disclosing the rationale for the identification of a preferred alternative. When the preferred alternative is developed at a higher level of detail, the lead agencies should take particular care to ensure that the evaluation of alternatives reflects the required rigorous and objective analysis. Each alternative must be explored at a sufficient level of detail to support a reasoned choice.

Key issues for the NEPA alternatives evaluations in these cases will be the use of “apples-to-apples” comparisons of alternatives, and the assurance that additional information developed on the preferred alternative is evaluated to identify and address any new or different information that might affect the choice of alternatives.

As always, the comparison of alternatives has to be done in a fair and balanced manner. If there are substantial differences in the levels of information available for the alternatives, it may be necessary to apply assumptions about impacts or mitigation to make the comparisons fair. For example, if mitigation is designed only for the preferred alternative, then assumptions that comparable measures can be taken to mitigate the impacts of the other alternatives should be included in the comparative analysis of the alternatives even though those other alternatives are not designed to the same level of detail. This comparison of mitigation across alternatives will ensure that the preferred alternative is not presented in an artificially positive manner as a result of its greater design detail.

The NEPA document should disclose the additional design work and the changes in impacts arising out of that design detail. If the impacts identified at the higher level of design detail are substantially different, they should be reviewed to determine whether additional work on other alternatives and/or reconsideration of the identification of the preferred alternative is warranted.

Question 46: Are there any limitations on how far a preferred alternative can be developed before NEPA is complete and the USDOT Record of Decision (ROD) is issued?

Answer: In accordance with SAFETEA-LU, the additional development of the preferred alternative may not proceed beyond that level necessary to identify ways to avoid or further minimize impacts, to develop mitigation, or to comply with other applicable environmental laws, such as [Section 404 of the Clean Water Act](#), [Section 7 of the Endangered Species Act](#), or [Section 106 of the National Historic Preservation Act](#). The degree of additional development needed and allowable will depend on the specific nature of the impact being mitigated or resource being protected, or the level of information required to comply with other applicable laws.

2. Process Management

This section of the guidance focuses on the parts of SAFETEA-LU Section 6002 that describe some of the logistics of managing the environmental review process. This section provides guidance on developing coordination plans and schedules, undertaking concurrent reviews, identifying and resolving issues of concern, ensuring compliance with mitigation commitments, adopting and using environmental documents, and providing or receiving funding for activities related to the environmental review process.

Regarding coordination and scheduling, [SAFETEA-LU](#) requires the establishment of a plan for coordinating public and agency participation. The coordination plan may include a schedule for the completion of the environmental review process. This guidance identifies the factors that should be considered in developing the coordination plan and establishing a schedule. The section on coordination and schedules is closely related to other sections of the guidance, particularly the questions on participating agencies, purpose and need, the range of alternatives, and analysis methodologies, all of which should be read in conjunction with each other.

On the topic of concurrent reviews, [SAFETEA-LU](#) indicates that each Federal agency acting as a participating agency should carry out its obligations under other applicable laws concurrently, and in conjunction with the review required under NEPA, unless doing so would impair the ability of the Federal agency to carry out its statutory obligations. Each Federal agency also must develop and implement the necessary tools and procedures to ensure that environmental reviews of transportation projects are undertaken by the agency in a timely, coordinated, and environmentally responsible manner.

[SAFETEA-LU](#) also includes information on how the agencies involved in a project should identify and resolve issues of concern. Lead agencies, for example, must make adequate information available to participating agencies so that they can identify potential issues of concern as early as practicable. Most issues will be amicably resolved or will be decided by the lead agencies on the merits of the case without repercussions on the process. If any issue that may delay completion of the environmental review process or result in denial of a permit or approval cannot be resolved among the lead and participating agencies, SAFETEA-LU provides a procedure for resolution of that issue.

On the issue of ensuring compliance with mitigation commitments, SAFETEA-LU does not change, but strongly reinforces, the current USDOT practice specified in the current regulation at [23 CFR 771.109\(b\)](#).

Finally, SAFETEA-LU describes the circumstances under which the State may provide Federal funding to agencies involved in the environmental review process. This provision specifies that States may provide Federal funds to government agencies and federally recognized tribes acting as participating agencies if they can thereby measurably expedite or improve the project delivery process.

COORDINATION AND SCHEDULE ([Link to SAFETEA-LU](#))

Question 47: Who is responsible for developing the coordination plan for public and agency participation?

Answer: SAFETEA-LU requires that the lead agencies establish a plan for coordinating public and agency participation and comment during the environmental review process. Lead agencies may find that best results occur when they consult with the participating agencies on the coordination plan, because key elements of the coordination plan may be setting expectations that require a commitment of resources by the participating agencies.

As with all joint responsibilities, the lead agencies must agree on the coordination plan or must work out their differences before proceeding to implement any element of the plan that is in dispute.

Question 48: When should the coordination plan be developed?

Answer: Coordination plans are developed early in the environmental review process after project initiation. The initial coordination plan may be changed by the lead agencies as additional participating agencies are identified or the complexity of issues becomes clearer. Many elements of a coordination plan may be repetitious from project to project, and may therefore be established by the lead agencies programmatically, for greater efficiency. Participating agencies may prefer programmatic elements in coordination plans because such elements would provide greater predictability and assist them in their allocation of resources. A coordination plan for an individual project may be established separately from any programmatic coordination plan, or it may incorporate one or more programmatic coordination plans established by the lead agencies to govern coordination with one or more participating agencies.

As stated in Question 6, pre-existing merger or other agreements may be incorporated into the coordination plan. New MOUs and agreements consistent with Section 6002 may also be incorporated into the coordination plan if the lead agencies agree that such MOU or agreement would expedite or otherwise improve the process. For example, a separate MOU or agreement between one or more of the lead agencies and a specific participating agency on a particular resource or impact of interest to that participating agency, or on the process for dealing with that impact of interest, may be executed and incorporated into the coordination plan.

The coordination plan must be shared with the public and with participating agencies so that they know what to expect and so that any disputes are surfaced as early as possible.

Consultation with the participating agencies on the project schedule is required whenever a coordination plan includes a project schedule (see [Question 52](#)).

Question 49: What should be included in a coordination plan?

Answer: The purposes of the coordination plan are to facilitate and document the lead agencies' structured interaction with the public and other agencies and to inform the public and other agencies of how the coordination will be accomplished. Section 6002 allows the lead agencies to decide how detailed the coordination plan should be. The coordination plan has the potential to expedite and improve the environmental review process by clearly establishing interactions and expectations, but its success will depend on the lead agencies exercising common sense and good faith to make it work.

The coordination plan should outline (1) how the lead agencies have divided the responsibilities for compliance with the various aspects of the environmental review process, such as the issuance of invitations to participating agencies, and (2) how the lead agencies will provide the opportunities for input from the public and other agencies, in accordance with applicable laws, regulations, and policies. The plan also should identify coordination points, such as:

- Notice of intent publication and scoping activities.
- Development of purpose and need.
- Identification of the range of alternatives.
- Collaboration on methodologies.
- Completion of the DEIS.
- Identification of the preferred alternative and the level of design detail.
- Completion of the final environmental impact statement (FEIS).
- Completion of the ROD.
- Completion of permits, licenses, or approvals after the ROD.

In addition, the coordination plan may establish a schedule of regular meetings and may identify which persons, organizations, or agencies should be included for each coordination point. The plan may set timeframes for input by those persons, organizations, and agencies. (See [Question](#)

[54](#)). The lead agencies can incorporate the coordination plan into a Memorandum of Understanding (MOU) that is applicable to a single project or to a category of projects.

Question 50: How does a coordination plan for the environmental review process relate to the “project management plan” required for FHWA’s [Major Projects](#) and for transit New Starts and Small Starts projects?

Answer: FHWA’s Major Projects are those projects receiving Federal financial assistance under [23 USC](#) that (1) have an estimated total cost of \$500 million or more or (2) have been identified by the USDOT as being “Major” as a result of some special interest in the project. SAFETEA-LU established a new requirement for Project Management Plans (PMPs) on all FHWA Major Projects. The PMP serves as a “roadmap” to help the project delivery team maintain a constant focus toward delivering the Major Project in an efficient and effective manner. The ultimate purpose of the PMP is to clearly define the roles, responsibilities, processes, and activities that will result in the FHWA Major Project being completed on time, within budget, with the highest degree of quality and safety, and in a manner in which the public trust, support, and confidence in the project will be maintained. The preparation of an initial PMP prior to initiating the project’s environmental study is critical to ensure that the FHWA Major Project is delivered in an efficient and effective manner. Therefore, the coordination plan required for the environmental review process should be fully integrated into the PMP, if applicable.

FTA has been requiring PMPs for major capital transit projects for many years and defines the purpose and content of the PMP in its project management oversight regulation at [49 CFR Part 633](#). The PMP for a major capital transit project is first developed at entry into Preliminary Engineering and is substantially updated at the start of each successive phase of project development through “Start-up of Revenue Operation.” Although the PMP and the coordination plan serve different purposes, there may be substantial overlap between the initial PMP and the coordination plan, especially if a project schedule is included in the coordination plan. Consistency between these plans is essential, but integration of the plans, which serve different purposes, is not required. Any Project Development Agreement (PDA) signed by FTA would also have to be consistent with the coordination plan.

Question 51: Does each State DOT need to update its public involvement procedures that were developed pursuant to [23 CFR 771.111\(h\)](#)?

Answer: Each State DOT should review their public involvement policies and procedures to determine whether they need to be updated to meet the new requirements in SAFETEA-LU. Depending on their level of detail, the policies and procedures may need to be updated to include the “participating agency” concept, the requirement that additional “interested parties” be involved in statewide and metropolitan transportation planning, the opportunities for public and participating agency involvement in determining purpose and need and the range of alternatives to be considered, as well as participating agency collaboration on methodologies.

Question 52: Are the lead agencies required to develop a project schedule as part of the coordination plan?

Answer: SAFETEA-LU encourages, but does not require, the inclusion of a project schedule in the coordination plan. CEQ regulations ([40 CFR 1501.8](#)) also strongly encourage the establishment of timeframes.

Project schedules are optional on FTA projects. FTA will agree to include a schedule, developed in accordance with Section 6002, if the project sponsor so requests. In deciding whether to include a schedule, the FTA Regional Office and the non-Federal lead agency should consider the extent to which a schedule for the environmental review process would expedite the process, improve project management, and force discipline on all parties involved.

The FHWA assumes that a schedule will be used on all EA and EIS projects processed under section 6002. If the non-Federal lead agency believes that a schedule is not needed, then the non-Federal lead agency will be expected to consult with the FHWA about how the project will proceed.

When the lead agencies include a project schedule in the coordination plan, that schedule must be prepared in consultation with each participating agency, the project sponsor (if not a lead agency), and the State. Concurrence in the schedule by the participating agencies is not required.

The schedule should include decisionmaking deadlines for each agency approval, such as permits, licenses, and other final decisions, consistent with statutory and regulatory requirements, in order to encompass the full environmental review process. Section 6002 allows the lead agencies to decide how detailed the schedule should be, and whether to use specific dates or durations. In deciding the level of detail of the schedule, the lead agencies should keep in mind the objective of expediting the process by communicating expectations and forcing discipline on themselves and others.

Question 53: What factors should be considered when creating a schedule as part of a coordination plan?

Answer: To establish a realistic schedule, SAFETEA-LU requires consideration of the following factors:

- The responsibilities of participating agencies under applicable laws.
- The resources available to the cooperating agencies.⁹
- The overall size and complexity of the project.
- The overall schedule for, and cost of, the project.
- The sensitivity of the natural and historic resources that could be affected by the project.

CEQ regulations ([40 CFR 1501.8](#)) suggest these and additional considerations, such as the degree of public controversy and the extent to which relevant information about the project or its impacts are already known, also be considered in setting a schedule. In preparing the schedule, the lead agencies must also solicit and consider any comments on the schedule by the participating agencies, the project sponsor (if not a lead agency), and the State.

Overarching all of these considerations in developing the schedule is the SAFETEA-LU objective of expediting project delivery. FHWA has adopted a policy objective of reducing the median time for completing EISs. If that objective is to be achieved, then schedules, though realistic, must also be aggressive.

The lead agencies must design the schedule so that they have adequate time to accept and consider public and participating agency comments and input, and have the time to conduct any appropriate additional engineering studies or impact assessments and to make any necessary project changes resulting from the comments and input. The schedule must be consistent with the SAFETEA-LU requirements regarding comment deadlines. (See [Question 54](#).) The schedule also must be consistent with other applicable time periods established under other laws. It should be remembered that the goal of using projects schedules is to reduce the overall time needed to complete the environmental review process.

To help State DOTs and resource agencies develop timeframes for completing environmental reviews of proposed transportation projects, FHWA developed the Negotiated Timeframes Wizard (the Wizard) software program. Among its many features, the Wizard enables agencies to

⁹ While not required by statute, consideration also should be given to the resources available to the participating agencies.

set project-specific timeframes for completing requirements, track the progress of meeting timeframes, and maintain a history of events. To download a copy of the Wizard, visit http://environment.fhwa.dot.gov/wizard/wiz_download.asp.

Question 54: What deadlines have been established under SAFETEA-LU for the public and participating agencies to submit comments?

Answer: SAFETEA-LU mandates that the DEIS comment period not exceed 60 days, unless a different comment period is established by agreement of the lead agencies, the project sponsor, and all participating agencies. The DEIS comment period begins on the date that EPA publishes the notice of availability of the DEIS in the *Federal Register*.

For any other point within the environmental review process at which the lead agencies seek comment by the public or participating agencies, the lead agencies shall establish a deadline for comment of not more than 30 days, unless a different comment period is established by agreement of the lead agencies, the project sponsor, and all participating agencies. At these points, although the 30-day maximum period applies, a shorter period commensurate with the volume and complexity of the materials to be reviewed may be appropriate. The comment period is measured, in these cases, from the date of availability of the materials on which comment is requested. All comment periods should be specified in the coordination plan and the lead agencies must provide participating agencies and the public with notice of comment periods.

In both cases, the lead agency has the authority to extend the deadlines for good cause.

Question 55: Should the coordination plan provide the public and participating agencies with an opportunity for comment during the period between the publication of a FEIS and the issuance of a ROD?

Answer: The 30-day waiting period between the FEIS notice in the *Federal Register* and the signing of the ROD is required by CEQ regulations [40 CFR 1506.10(b)] but is not a required comment period. The 30-day wait provides time for other Federal agencies that find the project environmentally unsatisfactory to refer the decision to CEQ [40 CFR 1504].

Occasionally, the lead agencies will seek comment on a specific unresolved issue discussed in the FEIS. In those cases, the comment deadline provisions of SAFETEA-LU (Question 54) apply and the comment period should run concurrently with the required 30-day waiting period. Even if the lead agencies do not request comments on a FEIS, they will address any new and substantive comments submitted during the 30 days following the FEIS publication [40 CFR 1503.1].

Note, however, that an effective environmental review process results in the submission of comments when they are most useful to decisionmaking by the lead agencies. After the FEIS, comments typically should focus on commitments discussed in the FEIS and on conditions that parties want the lead agencies to include in the ROD. The process should avoid duplication, and the lead agencies are not required to re-address comments that present issues specifically raised during the DEIS comment period and addressed in the FEIS.

Comments to which the lead agencies respond would be addressed in the ROD or in an attachment to the ROD. Neither the need to solicit further comments on an issue unresolved in the FEIS, nor the receipt of unsolicited comments that require a response, can be anticipated. Therefore, these contingencies would not be addressed in a coordination plan.

Question 56: Once a schedule has been established, can it be modified?

Answer: The lead agencies may modify the schedule. The lead agencies may lengthen the schedule for good cause, and the good cause for the change should be documented in the administrative record. For example, the initial schedule may not take into account the sensitivity of affected resources, the level of public controversy, and other complexities that become clear as the environmental review process progresses. The schedule may be shortened only with the concurrence of the affected cooperating agencies, and evidence of these concurrences should be included in the administrative record. Only the affected cooperating agencies, not all of the participating agencies, must concur in the shortened schedule, but consultation with the other participating agencies on the shortened schedule should be considered.

Question 57: How and to whom must the schedule be made available?

Answer: If a project schedule is prepared and is included in the coordination plan, that schedule must be provided to all participating agencies, the State DOT, and the project sponsor, and must be made available to the public. The method by which the schedule is made available to the public is flexible. It may be posted on a project web site, distributed to the people on a well-advertised project mailing list, or handed out at public and agency coordination meetings. If the schedule is modified, then the modified schedule must be shared with the public and other participants as described above.

REQUIREMENTS PLACED ON NON-USDOT FEDERAL AGENCIES

Question 58: What are the new requirements related to deadlines for decisions under other Federal laws?

Answer: SAFETEA-LU requires USDOT to report to Congress when a project decision by a Federal agency is not completed within 180 days after the later of two statutory milestones. The first milestone is the completion of decisionmaking by the USDOT agency, which occurs with the signing of the NEPA ROD or Finding of No Significant Impact (FONSI). The second milestone is the date of submission of a complete application to the Federal agency for a permit, license, or approval for the project. The completeness of the application is determined by the Federal agency with jurisdiction over the permit, license, or approval.

Question 59: How will USDOT implement this requirement to report to Congress on the deadlines for decisions under other Federal laws?

Answer: The USDOT field offices (i.e., the FHWA Division Office or the FTA Regional Office) and the other lead agencies are responsible for tracking these decisionmaking timelines as a part of their management of the project. This new reporting responsibility requires the lead agencies' field offices to continue to track and monitor project milestones after the completion of the USDOT ROD.

The USDOT field office should begin to address schedule problems as soon as they occur. If it appears likely that project decisions will not be completed by the later of the two 180-day deadlines, then the USDOT field office should notify the affected Federal agency that the reporting deadline for its decision is approaching. If the overall project coordination process is proceeding appropriately, all Federal agencies will already be aware that the reporting deadline is approaching and will know the reasons the decision is not complete. However, in order to ensure clear communication on the reporting requirement, the USDOT field office should contact the affected Federal agency to discuss the issue and causes at least 60 days before the deadline. The affected Federal agency's explanation for the delay, together with the lead agencies' perspectives on the issue, should be included in the USDOT field office report described below.

Following that initial coordination, the USDOT field office should report to its Headquarters Program Office about the situation and the reasons underlying it. The Headquarters Program Office, in turn, will contact the affected Federal agency headquarters office to alert them to the situation and to the likelihood that the congressional reporting requirement will be triggered for the project. This initial coordination and reporting process should be completed before the expiration of the 180-day deadline. Either the USDOT field office or the Headquarters Program Office may initiate formal or informal dispute resolution procedures as appropriate.

If the coordination plan provides a deadline later than the statutory 180-day deadline, the field office should report to the Headquarters Program Office that the 180-day deadline will pass without a decision. The report should describe the relevant scheduling provisions of the coordination plan and indicate that the schedule was agreed to by the lead agencies as a part of the plan.

The second phase of the reporting process begins after the later of the two 180-day deadlines has passed. The USDOT field office should contact its Headquarters Program Office to confirm the information about each Federal agency decision that has not been completed and to identify any new information affecting the ability of the Federal agency to complete its decisionmaking. This second report also should indicate when the Federal agency expects to make its final decision. The USDOT field offices should submit updates on the status of project decisionmaking every 60 days thereafter until all Federal agency decisions are complete.

When the USDOT Headquarters Program Office receives the second phase field office report confirming that the applicable 180-day deadline has been missed, the Program Office will coordinate with the affected Federal agency's headquarters office and prepare the required report to the Senate Committee on Environment and Public Works and the House of Representative's Committee on Transportation and Infrastructure. The report to Congress should identify each Federal agency decision that remains outstanding, the reasons that the decision is not complete, and the expected completion date. The report should reflect any results from the USDOT coordination process with the affected Federal agency about the deadlines. Headquarters should update and resubmit this report to Congress every 60 days until all Federal agency decisions are complete. The USDOT Headquarters Program Office will provide a copy of any USDOT report to Congress under this SAFETEA-LU provision to the affected Federal agency headquarters office, joint lead agencies, and to the project sponsor and the State (if not joint lead agencies).

CONCURRENT REVIEWS ([Link to SAFETEA-LU](#))

Question 60: For transportation projects, SAFETEA-LU directs that, to the maximum extent practicable and consistent with statutory obligations, *each Federal agency* (a) carry out its obligations under other Federal laws concurrently and in conjunction with the USDOT environmental review process required by NEPA; and (b) formulate and implement mechanisms to ensure the completion of the environmental review process in a timely, coordinated, and environmentally responsible manner. How is USDOT approaching this directive to other Federal agencies?

Answer: Lead and participating agencies have legal and general governmental obligations to work cooperatively to improve the environmental review process. The roles and responsibilities specified in Section 6002 for lead agencies and participating agencies form a part of those obligations. The USDOT is working with other Federal agencies to help them understand their obligations under Section 6002 and to encourage actions to meet those obligations.

At the individual project level, USDOT, as the Federal lead agency, will work on developing and implementing coordination plans that ensure concurrent reviews and facilitate productive interaction to the maximum extent practical. USDOT will ensure the early involvement of other

Federal agencies through the designation of, and interaction with, participating and cooperating agencies. As issues arise during the environmental review process, USDOT will intervene with the appropriate parties to facilitate a resolution.

ISSUE IDENTIFICATION AND RESOLUTION([Link to SAFETEA-LU](#))

For minor disagreements, the lead agencies may, after due consideration of the concerns of the participating agencies, decide to proceed without resort to any dispute resolution process. When there is disagreement on important issues of concern, the lead agencies may decide that the most effective approach would be to work out the disagreement in some formal or informal way. In 2002, FHWA issued [guidance](#) to facilitate the resolution of interagency disputes at lower levels of decisionmaking. The methods presented in that guidance, such as the use of qualified neutral mediators, remain valid and should be considered by the lead agencies when appropriate. The FHWA will develop updated procedures to guide FHWA-initiated dispute resolution efforts on projects subject to Section 6002. The lead agencies may find it useful to address dispute resolution procedures in the coordination plan.

SAFETEA-LU provides a formal process for resolving serious issues that may delay the project or result in a denial of a required approval for the project. The project sponsor or the Governor of the State in which the project is located may invoke the Section 6002 process for issue resolution at any time. While the Section 6002 process is a tool available to States and project sponsors for resolving issues of concern, there are other options that are available to lead and participating agencies. Those options include procedures embodied in a coordination plan, and the CEQ referral process under [40 CFR Part 1504](#).

Question 61: What is involved in the SAFETEA-LU issue resolution process?

Answer: When there is a serious disagreement that may delay the project or result in denial of a required approval for the project, SAFETEA-LU provides that the project sponsor or State Governor may initiate the issue resolution process illustrated in the flow chart below. In order to help assure an effective process, each party invited to a meeting convened under the SAFETEA-LU dispute resolution provision should be represented by a person of sufficient rank and authority to make binding commitments on behalf of that party. Accordingly, the organizational level of the persons invited to such meetings by the Federal lead agency may vary depending upon the issues in dispute.

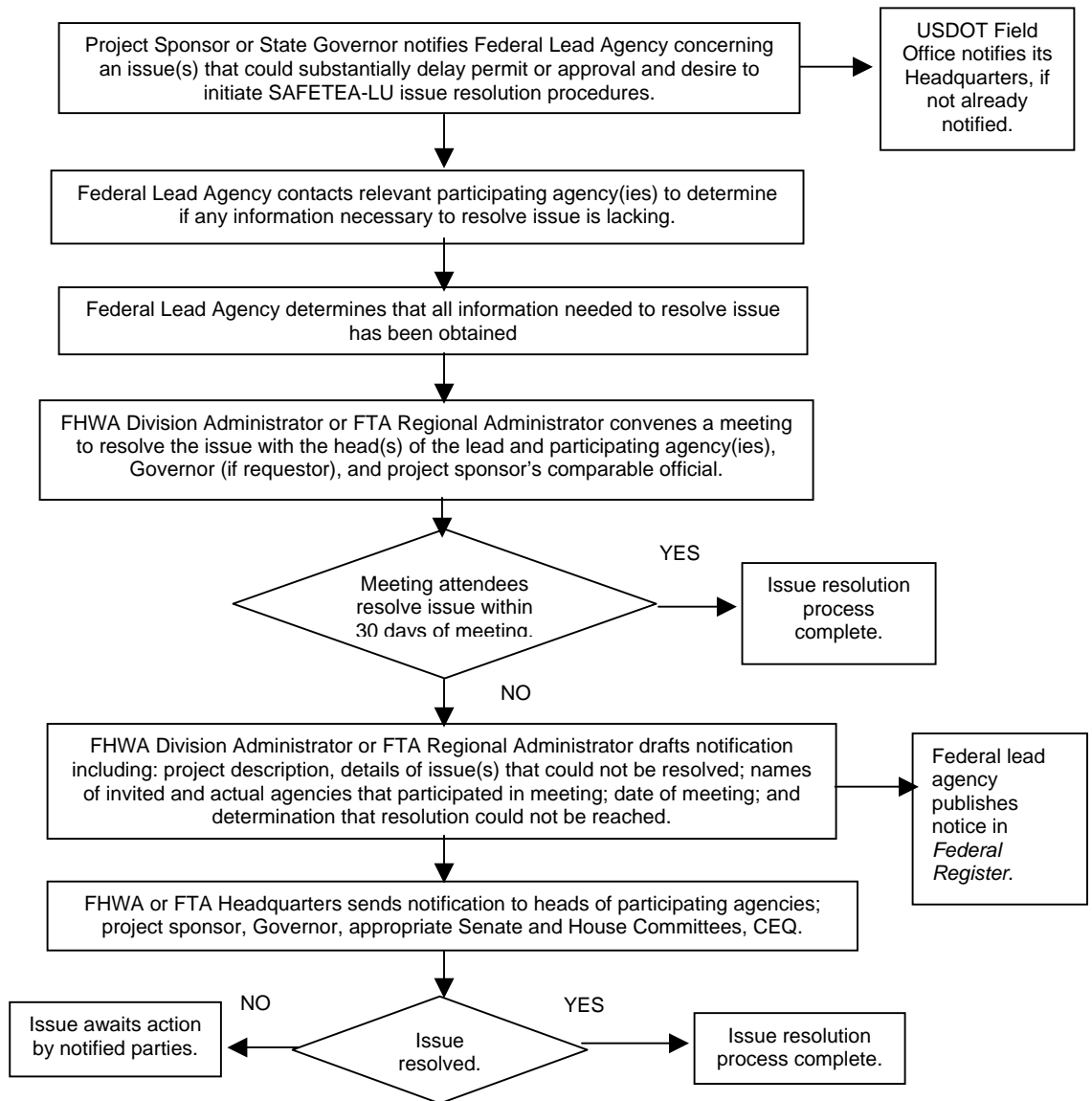


Figure 1. The SAFETEA-LU issue resolution process. Note that where two steps are not separated by a “yes” or “no” decision diamond, both steps must be taken.

Question 62: What is an “issue of concern” that may trigger the issue resolution process?

Answer: An issue of concern that may trigger the issue resolution process in SAFETEA-LU is any issue that could delay the project or could prevent an agency from granting a permit or other approval that is needed for the project.

Question 63: What is meant by resolution of the issue of concern?

Answer: Resolution of the issue of concern means that the agencies involved agree on how to proceed so that they are able to reach decisions on matters within their authority. For example, the resolution may be an agreed upon framework or process for proceeding with the issuance of the permit or other approval needed for a project. This agreement should be in the form of a signed document.

ADOPTION AND USE OF ENVIRONMENTAL DOCUMENTS ([Link to SAFETEA-LU](#))

Question 64: Does SAFETEA-LU change anything regarding the adoption and use of environmental documents?

Answer: Any environmental document prepared in accordance with SAFETEA-LU must receive the same consideration for adoption by another Federal agency that the agency would give to a document prepared solely by a Federal lead agency. The adopting agency remains responsible for independently evaluating the document to ensure its adequacy under CEQ’s and the adopting agency’s NEPA procedures ([40 CFR 1506.5](#)).

PERFORMANCE MEASUREMENT ([Link to SAFETEA-LU](#))

Question 65: SAFETEA-LU requires USDOT to (1) establish a program for measuring progress in improving the planning and environmental review process for transportation projects, and (2) report on the findings and results of the elements of the process that are measured. How will this requirement be implemented?

Answer: FHWA will rely primarily on existing performance measures to fulfill the performance measurement mandate in SAFETEA-LU. FHWA’s Strategic Implementation Plan currently includes the [Vital Few Goal of Environmental Stewardship and Environmental Streamlining](#). Progress toward this goal is measured by evaluating the median processing times for EAs and EISs, whether Negotiated Timeframes are met, and the implementation of integrated approaches and context sensitive solutions. FTA also plans to address performance measurements through its strategic planning process.

Question 66: Are other measurements of the environmental review process being considered?

Answer: In addition to the existing measurements, FHWA intends to use the results of the upcoming second round of the Gallup survey, “Implementing Performance Measurement in Environmental Streamlining.” Initially conducted in 2003, the survey captured the current state of relations and perceptions between different agencies that are involved in transportation development and review, and created a standard against which the quality of future interagency coordination can be compared. USDOT may develop other measures in the future.

FUNDING OF ADDITIONAL AGENCY RESOURCES ([Link to SAFETEA-LU](#))

Question 67: What does SAFETEA-LU say about the use of USDOT funding by participating agencies to expedite environmental reviews?

Answer: SAFETEA-LU establishes a process for early and continuous engagement by other agencies in the environmental review process that may create an additional strain on existing resources and staff. Therefore, SAFETEA-LU allows USDOT to approve the request of a State to provide Federal-aid highway or Federal transit funds to a Federal or State agency or federally recognized Indian tribe participating in the environmental review process, to support activities by that agency or tribe that directly and meaningfully contribute to expediting and improving the planning and delivery of transportation projects in that State. USDOT encourages the use of this authority where agency resources are a constraint on the environmental review process.

SAFETEA-LU does not provide any additional funding for this purpose. The State proposing to use this authority must take the funds out of its normal allocation of Federal transportation funds.

SAFETEA-LU does not extend this authority to transit agencies that are not State agencies. A transit agency that is not a State agency and that seeks to invest FTA funding in expeditious reviews by particular Federal or State agencies or Indian tribes must work through the State DOT in order to accomplish this objective in accordance with SAFETEA-LU.

Question 68: What changes does SAFETEA-LU make to the similar funding provision in TEA-21?

Answer: SAFETEA-LU makes several changes to the former funding provision in TEA-21. SAFETEA-LU makes this funding available for additional activities, such as transportation planning activities that precede the initiation of the environmental review process, training of agency personnel, information gathering and mapping, and the development of programmatic agreements. SAFETEA-LU also enables the State to provide such funding to additional agencies. The State can now provide funds to Federal agencies, State agencies, and federally recognized Indian tribes that are participating in the environmental review process for one or more transportation projects in the State. In addition, SAFETEA-LU explicitly recognizes that USDOT can receive funds to expedite and improve the environmental review process. The FHWA guidance *Interagency Guidance: Transportation Funding for Federal Agency Coordination Associated with Environmental Streamlining Activities* has been revised to reflect the changes from TEA-21 to SAFETEA-LU. The revised guidance is found in [Appendix C](#).

Under TEA-21, Federal transit funds granted to a transit agency could have been provided to a natural resource agency to expedite an environmental review. Transit agencies used the TEA-21 provision very rarely, if at all. Under SAFETEA-LU, only a State agency may request the Federal transit funds to be used for this purpose. In the unlikely event that a transit agency that is not a State agency seeks to use Federal transit funds in this manner, FTA will work with that agency and with the relevant State DOT to see if an accommodation in accordance with SAFETEA-LU can be reached.

Question 69: How must the agency that receives such funds from a State use the funds?

Answer: Federal or State agencies or federally recognized Indian tribes that receive Federal-aid highway or Federal transit funds from a State can only use the funds to pay for the *additional* resources needed to meet the time limits established for environmental reviews of transportation projects. Those time limits must be less than the customary time necessary for such reviews.

The funds must be used for activities that directly and meaningfully contribute to expediting and improving the planning and delivery of transportation projects in that State. These activities are

beyond the normal and ordinary capabilities of the receiving agency when operating under its general appropriation. Where a State wishes to fund activities that are not project-specific, such as process improvements or development of programmatic agreements, the criteria relating to environmental review time limits will be deemed satisfied so long as the efforts are designed to produce a reduction in the customary time for environmental reviews. "Customary time" is defined as the time typically required for environmental reviews as of the date of the adoption of SAFETEA-LU (August 10, 2005).

3. Statute of Limitations

Section 6002 establishes a 180-day statute of limitations (SOL) on claims against USDOT and other Federal agencies for certain environmental and other approval actions. The [SOL established by SAFETEA-LU](#) applies to a permit, license, or approval action by a Federal agency if:

1. The action relates to a transportation project (as [defined above](#)); and
2. A SOL notification is published in the *Federal Register* (FR) announcing that a Federal agency has taken an action on a transportation project that is final under the Federal law pursuant to which the action was taken.

If no SOL notice is published, the period for filing claims is not shortened from what is provided by other parts of Federal law. If other Federal laws do not specify a statute of limitations, then a 6-year claims period applies.

Because FHWA and FTA programs differ, FHWA and FTA have developed slightly different processes for implementing the Section 6002 SOL provision. Part A of this Section 3 covers the FHWA process, and Part B covers the FTA process. **Appendix E, which contains detailed guidance on implementing the SOL provisions, applies only to FHWA and projects for which it is the Federal lead agency.**

The Federal lead agencies expect to handle the publication of all SOL notices under Section 6002. On intermodal projects, FHWA and FTA typically will issue separate SOL notices. However, on a case-by-case basis, the notices may be combined for efficiency purposes or other reasons.

Despite the differences in the implementation procedures between the FTA and FHWA, the agencies stress that they interpret the scope and intent of the SAFETEA-LU SOL provision in the same way and that their implementation decisions are based solely on administrative differences between the FTA and FHWA programs.

PART A: FHWA Process for Implementing the Statute of Limitations

This FHWA portion of the SOL guidance discusses publication of SOL notices for Federal agency actions on Federal-aid highway projects. The information is based on current perspectives on the law and its administration. As experience with the application of the law provides new insights or presents new issues, FHWA will update its guidance on implementation of the SOL provision in SAFETEA-LU.

The SOL provision is intended to expedite the resolution of issues affecting transportation projects. Whether a SOL notice is needed or is the best way to achieve such resolution on a project is a risk management decision. A determination should include consideration of the nature of the Federal laws under which decisions were made for the project, the actual risk of litigation, and the potential effects if litigation were to occur several years after the FHWA NEPA decision or other Federal agency decisions. A SOL notice can be used for a highway project regardless of the category of documentation used under NEPA. FHWA anticipates that it will publish notices for most EIS projects and many EA projects. FHWA does not expect SOL notices to be used for projects that are CEs under 23 CFR 771.117(c). FHWA anticipates that the notice may be appropriate for documented CE projects under 23 CFR.771.117(d).

FHWA encourages efforts to help stakeholders and the public to understand this change in the law. For that reason, FHWA believes that it would be useful to include a statement summarizing the SOL provision in future NEPA documents (See [Appendix E, Question E-23](#)).

Detailed guidance on FHWA SOL notices is contained in [Appendix E](#). This guidance replaces interim guidance issued by FHWA on December 1, 2005. This guidance includes sample forms and examples to

assist the FHWA Division Offices in preparing notices for FR publication ([Appendix E](#)). FHWA recommends that the Division Offices coordinate with FHWA field counsel when preparing the notices.

Part B: FTA Process for Implementing the Statute of Limitations

To implement this provision, FTA intends to use rolling publication of FR notices announcing its environmental approvals. When a ROD, FONSI, separate Section 4(f) determination, or other final environmental approval is signed by an FTA Regional Administrator, copies will be transmitted to the project sponsor and to the FTA Office of Planning and Environment (TPE). TPE will notify all FTA regional offices of the impending FR publication of a NEPA SOL notice. If any FTA regional office indicates that another environmental approval action is expected within one week to 10 days, FR publication of the SOL notice will be postponed in order to include the forthcoming environmental approval in the notice; otherwise, the SOL notice for the one approval action will be processed immediately.

In addition, FTA or the project sponsor will post the FTA approval document (ROD, FONSI, etc.), including any attachments, on the Internet. The FR notice will direct any interested party to the web site where the FTA approval document of interest is posted. The FR notice also will name an FTA contact person who can provide a copy of any FTA approval document upon request by a party who does not have Internet access.

Acronym List

CE	categorical exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CSS	context sensitive solutions
DEIS	draft environmental impact statement
DOT	Department of Transportation
EA	environmental assessment
EIS	environmental impact statement
EPA	United States Environmental Protection Agency
FEIS	final environmental impact statement
FHWA	Federal Highway Administration
FONSI	finding of no significant impact
FR	Federal Register
FTA	Federal Transit Administration
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organizations as defined in 23 CFR part 450
NEPA	National Environmental Policy Act of 1969
NOI	Notice of Intent
PDA	Project Development Agreement
PMP	Project Management Plan
ROD	Record of Decision
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SEIS	Supplemental Environmental Impact Statement
SOL	Statute of Limitations
STIP	Statewide Transportation Improvement Program

TEA-21	Transportation Equity Act for the 21 st Century
TPE	FTA Office of Planning and Environment
USC, U.S.C.	United States Code
USDOT	As defined in Question 2

Appendix A: Section 6002 - Efficient Environmental Reviews for Project Decisionmaking.

(a) In General- Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 138 the following:

Sec. 139. Efficient environmental reviews for project decisionmaking

(a) Definitions- In this section, the following definitions apply:

(1) AGENCY- The term 'agency' means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) ENVIRONMENTAL IMPACT STATEMENT- The term 'environmental impact statement' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) ENVIRONMENTAL REVIEW PROCESS-

(A) IN GENERAL- The term 'environmental review process' means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS- The term 'environmental review process' includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) LEAD AGENCY- The term 'lead agency' means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(5) MULTIMODAL PROJECT- The term 'multimodal project' means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

(6) PROJECT- The term 'project' means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

(7) PROJECT SPONSOR- The term 'project sponsor' means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(8) STATE TRANSPORTATION DEPARTMENT- The term 'State transportation department' means any statewide agency of a State with responsibility for one or more modes of transportation.

(b) Applicability-

(1) IN GENERAL- The project development procedures in this section are applicable to all projects for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 and may be applied, to the extent determined appropriate by the Secretary, to other projects for which an environmental document is prepared pursuant to such Act.

(2) FLEXIBILITY- Any authorities granted in this section may be exercised for a project, class of projects, or program of projects.

(c) Lead Agencies-

(1) FEDERAL LEAD AGENCY- The Department of Transportation shall be the Federal lead agency in the environmental review process for a project.

(2) JOINT LEAD AGENCIES- Nothing in this section precludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969.

`(3) PROJECT SPONSOR AS JOINT LEAD AGENCY- Any project sponsor that is a State or local governmental entity receiving funds under this title or chapter 53 of title 49 for the project shall serve as a joint lead agency with the Department for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

`(4) ENSURING COMPLIANCE- The Secretary shall ensure that the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection and that such document is appropriately supplemented if project changes become necessary.

`(5) ADOPTION AND USE OF DOCUMENTS- Any environmental document prepared in accordance with this subsection may be adopted or used by any Federal agency making any approval to the same extent that such Federal agency could adopt or use a document prepared by another Federal agency.

`(6) ROLES AND RESPONSIBILITY OF LEAD AGENCY- With respect to the environmental review process for any project, the lead agency shall have authority and responsibility--

`(A) to take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project; and

`(B) to prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 is completed in accordance with this section and applicable Federal law.

`(d) Participating Agencies-

`(1) IN GENERAL- The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

`(2) INVITATION- The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

`(3) FEDERAL PARTICIPATING AGENCIES- Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency--

`(A) has no jurisdiction or authority with respect to the project;

`(B) has no expertise or information relevant to the project; and

`(C) does not intend to submit comments on the project.

`(4) EFFECT OF DESIGNATION- Designation as a participating agency under this subsection shall not imply that the participating agency--

`(A) supports a proposed project; or

`(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

`(5) COOPERATING AGENCY- A participating agency may also be designated by a lead agency as a `cooperating agency' under the regulations contained in [part 1500 of title 40, Code of Federal Regulations](#).

`(6) DESIGNATIONS FOR CATEGORIES OF PROJECTS- The Secretary may exercise the authorities granted under this subsection for a project, class of projects, or program of projects.

`(7) CONCURRENT REVIEWS- Each Federal agency shall, to the maximum extent practicable--

- `(A) carry out obligations of the Federal agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to carry out those obligations; and
- `(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

`(e) Project Initiation- The project sponsor shall notify the Secretary of the type of work, termini, length and general location of the proposed project, together with a statement of any Federal approvals anticipated to be necessary for the proposed project, for the purpose of informing the Secretary that the environmental review process should be initiated.

`(f) Purpose and Need-

`(1) PARTICIPATION- As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

`(2) DEFINITION- Following participation under paragraph (1), the lead agency shall define the project's purpose and need for purposes of any document which the lead agency is responsible for preparing for the project.

`(3) OBJECTIVES- The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include--

- `(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;
- `(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and
- `(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

`(4) ALTERNATIVES ANALYSIS-

`(A) PARTICIPATION- As early as practicable during the environmental review process, the lead agency shall provide an opportunity for involvement by participating agencies and the public in determining the range of alternatives to be considered for a project.

`(B) RANGE OF ALTERNATIVES- Following participation under paragraph (1), the lead agency shall determine the range of alternatives for consideration in any document which the lead agency is responsible for preparing for the project.

`(C) METHODOLOGIES- The lead agency also shall determine, in collaboration with participating agencies at appropriate times during the study process, the methodologies to be used and the level of detail required in the analysis of each alternative for a project.

`(D) PREFERRED ALTERNATIVE- At the discretion of the lead agency, the preferred alternative for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws if the lead agency determines that the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process.

`(g) Coordination and Scheduling-

`(1) COORDINATION PLAN-

`(A) IN GENERAL- The lead agency shall establish a plan for coordinating public and agency participation in and comment on the environmental review process for a project or category of projects. The coordination plan may be incorporated into a memorandum of understanding.

`(B) SCHEDULE-

`(i) IN GENERAL- The lead agency may establish as part of the coordination plan, after consultation with each participating agency for the project and with the State in which the project is located (and, if the State is not the project sponsor, with the project sponsor), a schedule for completion of the environmental review process for the project.

`(ii) FACTORS FOR CONSIDERATION- In establishing the schedule, the lead agency shall consider factors such as--

`(I) the responsibilities of participating agencies under applicable laws;

`(II) resources available to the cooperating agencies;

`(III) overall size and complexity of the project;

`(IV) the overall schedule for and cost of the project; and

`(V) the sensitivity of the natural and historic resources that could be affected by the project.

`(C) CONSISTENCY WITH OTHER TIME PERIODS- A schedule under subparagraph (B) shall be consistent with any other relevant time periods established under Federal law.

`(D) MODIFICATION- The lead agency may--

`(i) lengthen a schedule established under subparagraph (B) for good cause; and

`(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

`(E) DISSEMINATION- A copy of a schedule under subparagraph (B), and of any modifications to the schedule, shall be--

`(i) provided to all participating agencies and to the State transportation department of the State in which the project is located (and, if the State is not the project sponsor, to the project sponsor); and

`(ii) made available to the public.

`(2) COMMENT DEADLINES- The lead agency shall establish the following deadlines for comment during the environmental review process for a project:

`(A) For comments by agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of such document, unless--

`(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

`(ii) the deadline is extended by the lead agency for good cause.

`(B) For all other comment periods established by the lead agency for agency or public comments in the environmental review process, a period of no more than 30 days from availability of the materials on which comment is requested, unless--

`(i) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or

`(ii) the deadline is extended by the lead agency for good cause.

`(3) DEADLINES FOR DECISIONS UNDER OTHER LAWS- In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the later of the date that is 180 days after the date on which the Secretary made all final decisions of the lead agency with respect to the project, or 180 days after the date on which an application was submitted for the permit or license, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives--

`(A) as soon as practicable after the 180-day period, an initial notice of the failure of the Federal agency to make the decision; and

`(B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

`(4) INVOLVEMENT OF THE PUBLIC- Nothing in this subsection shall reduce any time period provided for public comment in the environmental review process under existing Federal law, including a regulation.

`(h) Issue Identification and Resolution-

`(1) COOPERATION- The lead agency and the participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

`(2) LEAD AGENCY RESPONSIBILITIES- The lead agency shall make information available to the participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration. Such information may be based on existing data sources, including geographic information systems mapping.

`(3) PARTICIPATING AGENCY RESPONSIBILITIES- Based on information received from the lead agency, participating agencies shall identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts. In this paragraph, issues of concern include any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.

`(4) ISSUE RESOLUTION-

`(A) MEETING OF PARTICIPATING AGENCIES- At any time upon request of a project sponsor or the Governor of a State in which the project is located, the lead agency shall promptly convene a meeting with the relevant participating agencies, the project sponsor, and the Governor (if the meeting was requested by the Governor) to resolve issues that could delay completion of the environmental review process or could result in denial of any approvals required for the project under applicable laws.

`(B) NOTICE THAT RESOLUTION CANNOT BE ACHIEVED- If a resolution cannot be achieved within 30 days following such a meeting and a determination by the lead agency that all information necessary to resolve the issue has been obtained, the lead agency shall notify the heads of all participating agencies, the project sponsor, the Governor, the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Council on Environmental Quality, and shall publish such notification in the Federal Register.

`(i) Performance Measurement- The Secretary shall establish a program to measure and report on progress toward improving and expediting the planning and environmental review process.

`(j) Assistance to Affected State and Federal Agencies-

`(1) IN GENERAL- For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully

contribute to expediting and improving transportation project planning and delivery for projects in that State.

`(2) ACTIVITIES ELIGIBLE FOR FUNDING- Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

`(3) USE OF FEDERAL LANDS HIGHWAY FUNDS- The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

`(4) AMOUNTS- Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

`(5) CONDITION- A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

`(k) Judicial Review and Savings Clause-

`(1) JUDICIAL REVIEW- Except as set forth under subsection (l), nothing in this section shall affect the reviewability of any final Federal agency action in a court of the United States or in the court of any State.

`(2) SAVINGS CLAUSE- Nothing in this section shall be construed as superseding, amending, or modifying the National Environmental Policy Act of 1969 or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

`(3) LIMITATIONS- Nothing in this section shall preempt or interfere with--

`(A) any practice of seeking, considering, or responding to public comment; or

`(B) any power, jurisdiction, responsibility, or authority that a Federal, State, or local government agency, metropolitan planning organization, Indian tribe, or project sponsor has with respect to carrying out a project or any other provisions of law applicable to projects, plans, or programs.

`(l) Limitations on Claims-

`(1) IN GENERAL- Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed. Nothing in this subsection shall create a right to judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

`(2) NEW INFORMATION- The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations. The preparation of a supplemental environmental impact statement when required shall be considered a separate final agency action and the deadline for filing a claim for judicial review of such action shall be 180 days after the date of publication of a notice in the Federal Register announcing such action.'

] (b) Existing Environmental Review Process- Nothing in this section affects any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary under section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232; 23 U.S.C. 109 note) as such section was in effect on the day preceding the date of enactment of the SAFETEA-LU.

(c) Conforming Amendment- The analysis for such subchapter is amended by inserting after the item relating to section 138 the following:

 `139. Efficient environmental reviews for project decisionmaking.'.

(d) Repeal- Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232) is repealed.

Appendix B: Sample Invitation Letters

Sample letters of invitation to a potential participating or cooperating agency are provided separately for FHWA and FTA below.

FHWA Sample Letter of Invitation



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

Insert Division Address

[Insert Date]

[Insert Agency Representative]
[Insert Agency Address]

Dear *[Agency Representative]*:

Re: Invitation to Become Participating Agency *[and Cooperating Agency, if applicable]* on *[Insert Project Name]*

The Federal Highway Administration (FHWA), in cooperation with the *[Insert State Name]* Department of Transportation *[Insert Abbreviation]* is initiating a *[Insert Type of Environmental Document]* for proposed *[Insert Project Name]*. The project limits are *[Insert Project Description, including general map location]*. The purpose of the project, as currently defined, is to *[Insert Basic Statement of the Project's Purpose and Need]*.

Your agency has been identified as an agency that may have an interest in the project *[Insert why the agency may have an interest]*. With this letter, we extend your agency an invitation to become a participating agency *[and cooperating agency, if applicable]* with the FHWA in the development of the *[Type of Environmental Document]* for the subject project. This designation does not imply that your agency either supports the proposal or has any special expertise with respect to evaluation of the project.

[FHWA also request the participation of the *[Insert Agency Name]* as a cooperating agency in the preparation of the DEIS and FEIS, in accordance with 40 CFR 1501.6 of the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provision of the National Environmental Policy Act.]

Pursuant to Section 6002 of SAFETEA-LU, participating agencies are responsible to identify, as early as practicable, any issues of concern regarding the project's potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project. We suggest that your agency's role in the development of the above project should include the following as they relate to your area of expertise:

- 1) Provide meaningful and early input on defining the purpose and need, determining the range of alternatives to be considered, and the methodologies and level of detail required in the alternatives analysis.
- 2) Participate in coordination meetings and joint field reviews as appropriate.

- 3) Timely review and comment on the pre-draft or pre-final environmental documents to reflect the views and concerns of your agency on the adequacy of the document, alternatives considered, and the anticipated impacts and mitigation.

Please respond to FHWA in writing with an acceptance or denial of the invitation prior to *[Insert Deadline]* (*Suggested Deadline - No More Than 30 From Date Of Letter*). If your agency declines, the response should state your reason for declining the invitation. Pursuant to SAFETEA-LU Sec. 6002, any Federal agency that chooses to decline the invitation to be a participating agency must specifically state in its response that it:

- Has no jurisdiction or authority with respect to the project;
- Has no expertise or information relevant to the project; and
- Does not intend to submit comments on the project.

If you have any questions or would like to discuss in more detail the project or our agencies' respective roles and responsibilities during the preparation of this *[Insert Type of Document]*, please contact *[Insert Contact Name and Phone Number]*.

Thank you for your cooperation and interest in this project.

Sincerely,

Division Administrator

Enclosure *Attach Project NOI if applicable*

cc:

FTA Sample Letter of Invitation



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

[Insert Date]

[Insert Agency Representative]
[Insert Agency Name and Address]

Re: Invitation to Participate in the Environmental Review Process for *[Insert Project Name]*

Dear *[Agency Representative]*:

The Federal Transit Administration (FTA), in cooperation with *[Insert Sponsoring Transit Agency]* is initiating the preparation of an Environmental Impact Statement for the proposed *[Insert Project Name]*. The proposed project is *[briefly describe action]* in *[describe project location]*. The purpose of the project, as currently defined, is to *[insert preliminary statement of the project's purpose and need]*. The enclosed scoping information packet provides more details. A preliminary coordination plan and schedule *[if available]* are also enclosed.

Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users establishes an enhanced environmental review process for certain FTA projects, increasing the transparency of the process, as well as opportunities for participation. The requirements of Section 6002 apply to the project that is the subject of this letter. As part of the environmental review process for this project, the lead agencies must identify, as early as practicable, any other Federal and non-Federal agencies that may have an interest in the project, and invite such agencies to become participating agencies in the environmental review process.¹⁰ Your agency has been identified preliminarily as one that may have an interest in this project, because *[give reasons, such as adverse impacts, resources affected, etc., why agency may be interested]*; accordingly, you are being extended this invitation to become actively involved as a participating agency in the environmental review process for the project.

As a participating agency, you will be afforded the opportunity, together with the public, to be involved in defining the purpose of and need for the project, as well as in determining the range of alternatives to be considered for the project. In addition, you will be asked to:

- Provide input on the impact assessment methodologies and level of detail in your agency's area of expertise;
- Participate in coordination meetings, conference calls, and joint field reviews, as appropriate; and
- Review and comment on sections of the pre-draft or pre-final environmental documents to communicate any concerns of your agency on the adequacy of the document, the alternatives considered, and the anticipated impacts and mitigation.

¹⁰ Designation as a "participation agency" does not imply that the participating agency supports the proposed project or has any jurisdiction over, or special expertise concerning the proposed project or its potential impacts. A "participating agency" differs from a "cooperating agency," which is defined in regulations implementing the National Environmental Policy Act as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." [40 C.F.R. § 1508.5](#).

<Insert one of the following two paragraphs, for invitations to Federal and non-Federal agencies, respectively.>

Federal agencies:

Your agency does not have to accept this invitation. If, however, you elect not to become a participating agency, you must decline this invitation in writing, indicating that your agency has no jurisdiction or authority with respect to the project, no expertise or information relevant to the project, and does not intend to submit comments on the project. The declination may be transmitted electronically to *[insert e-mail address]*; please include the title of the official responding. In order to give your agency adequate opportunity to weigh the relevance of your participation in this environmental review process, written response to this invitation are not due until after the interagency scoping meeting scheduled for *[insert date/time] at [insert location]*. You or your delegate is invited to represent your agency at this meeting. Your agency will be treated as participating agency unless your written response declining such designation as outlined above is transmitted to this office not later than *[insert date]*.

Non-Federal agencies:

If you elect to become a participating agency, you must accept this invitation in writing. The acceptance may be transmitted electronically to *[insert e-mail address]*; please include the title of the official responding. In order to give your agency adequate opportunity to weigh the relevance of your participation in this environmental review process, written responses to this invitation are not due until after the interagency scoping meeting, scheduled for *[insert date] at [insert location]*. You or your delegate is invited to represent your agency at this meeting. Written responses accepting designation as participating agencies should be transmitted to this office not later than *[insert date]*.

Additional information will be forthcoming during the scoping process. If you have questions regarding this invitation, please contact *[insert name and telephone number]*.

Sincerely,

[Insert FTA Regional Planning Director]

Attachments: Scoping Information Packet
Draft Coordination Plan
Draft Schedule

cc: *[Sponsoring Transit Agency]*

Appendix C: Interagency Guidance: Transportation Funding for Federal Agency Coordination Associated with Environmental Streamlining Activities

This guidance can be found at <http://www.environment.fhwa.dot.gov/strmlng/igdocs/index.asp>.

Appendix D: Linking the Transportation Planning and National Environmental Policy Act (NEPA) Processes

This guidance can be found at <http://www.fhwa.dot.gov/hep/plannepa050222.pdf>.

Appendix E: FHWA Guidance on Limitation on Claims Notices, 23 U.S.C. Section 139(j)

This guidance provides information on FHWA administration of the [statute of limitations \(SOL\) provisions in SAFETEA-LU](#). This guidance does not apply to FTA. The goal of the SAFETEA-LU SOL provision is to expedite project delivery, which includes avoiding delayed or unexpected litigation and avoiding unnecessary litigation. The FHWA Divisions should work closely with their FHWA field counsel when determining whether and when to publish a SOL notice, and when preparing SOL notices. Attached to this guidance are sample notice forms and examples for a single project notice, a multiple projects notice, a post-ROD Section 404 permit notice, and a Tier 1 EIS notice ([Attachments 1-7](#)).

Question E-1: What is the “limitations on claims” provision in SAFETEA-LU?

Answer: The limitation on claims provision establishes a category of final action by Federal agencies that can be made subject to a 180-day time limitation for seeking judicial review. The law applies to Federal agency decisions on highway projects. The law will provide certainty and predictability in the transportation decisionmaking process and for transportation program implementation. If a SOL notice is published in the *Federal Register* (FR) that declares that there have been final Federal agency actions, then claims covered by the notice must be filed within 180 days after the date of the FR notice. A decision not to publish a SOL notice does not prevent an action from being final for other purposes.

Question E-2: What if the Federal law under which the action is taken sets a different length of time for filing an appeal?

Answer: If the statute in question has a judicial review provision that contains a time period of less than 180 days, then the shorter time limit applies. If the statute in question has a judicial review provision that contains a time period greater than 180 days, then the 180-day time limit applies.

Question E-3: What if no SOL notice is published in the FR?

Answer: If the claim is for review of a Federal action under NEPA, then the limitation on claims that applies is [28 USC §2401](#). That law provides a claims period of six (6) years. The limitations on claims periods vary under other Federal laws.

In addition, sometimes the failure to act on a claim in a timely manner may prevent individuals from obtaining judicial review regardless of the time period for claims provided by statute. This principle, known as laches, may apply in cases where someone has acted on the Federal agency decision in a way that makes it unfair to change the outcome of the decisionmaking process (e.g., if physical construction of the project is underway).

Question E-4: Which Federal agency actions are included under the “permit, license, or approval” language of [23 USC §139\(j\)](#)?

Answer: A SOL notice can be used for any final action by a Federal agency that is required for a highway project and is subject to judicial review. This includes decisions of other Federal agencies, such as the U.S. Army Corps of Engineers, that apply to the project. It also includes Federal agency decisions that FHWA considers when making its own decisions in accordance with NEPA.

Question E-5: How does FHWA determine whether a decision is “final” within the meaning of the SOL provision?

Answer: Generally, a Federal agency action is considered final if the agency has completed its decisionmaking process under the relevant law and the action is one that determines rights or obligations, or is an action from which legal consequences will flow. For example, when FHWA signs a ROD, that is the final action in FHWA’s decisionmaking process under NEPA with respect to issues such as project alternatives, potential environmental effects of the project, and the avoidance and minimization of impacts. Under Section 6002, “final” includes decisions in Tier 1 EIS proceedings that the deciding agency does not expect to revisit during Tier 2 proceedings in the absence of substantial new and relevant information that may affect the outcome of the agency’s decision.

In most instances, staff at the FHWA Division Office will be able to determine finality for purposes of the SOL provision based on their knowledge of the project and the Federal agencies’ decisionmaking processes. If questions arise in this area, the Division Office should consult with the FHWA Office of Chief Counsel before making a determination. Guidance will be issued if needed.

Question E-6: What is required for the notice to apply to claims under Federal laws other than NEPA?

Answer: While there is a presumption that a notice covers all Federal agencies’ actions that relate to the project and are within the scope of the SOL provision, the notice should expressly state that other Federal agencies have taken actions that are final. The notice should include the key laws under which the Federal agencies took final action. The sample forms and examples that accompany this guidance illustrate these points ([Attachments 1 to 4](#)).

Question E-7: Does assignment of CE responsibilities under SAFETEA-LU Sections 6004 or 6005, or assignment of other environmental responsibilities under Section 6005, change the process for the use of the limitation on claims provision?

Answer: Because the SAFETEA-LU delegations substitute the State for the FHWA in the NEPA process, the SOL notice will reflect the fact that the NEPA decision is was issued by the State. Otherwise, the basic content requirements for the notice remain unchanged in the event of a Section 6004 or 6005 assignment. . Where a State has assumed FHWA responsibilities under Section 6004 or Section 6005, the State will be responsible for the coordination process with affected Federal agencies.

Unless otherwise indicated in future guidance, FHWA will continue to be the party that arranges for publication of the notice in the FR for States operating under a Section 6004 or Section 6005 assignment. (See Question E-25).

Question E-8: Can a Federal agency publish a SOL notice for a project that has no Federal funding, but does require decisions by Federal agencies as part of its permitting or review process?

Answer: Yes, but only if there is a legal requirement for approval of the project by the USDOT Secretary and the project is a highway project, a public transportation capital project, or a multimodal project. These requirements are set forth in the definition of “project” in Section 6002 of SAFETEA-LU. The Federal agency serving as the lead agency for NEPA would be the agency that would determine whether to publish a SOL notice for such project.

Question E-9: Does the SOL provision apply to permits, licenses, or approvals issued by State agencies that administer other Federal programs, such as the Floodplain Permit program?

Answer: The SOL provision applies only to Federal agency actions. If a State agency is acting as a Federal agency or on behalf of a Federal agency, then the SOL provision applies. If the State agency is acting as a State agency under the authority of State laws, then the SOL provision does not apply.

Question E-10: Can the SOL notice be used if project decisionmaking was completed prior to the effective date of SAFETEA-LU on August 10, 2005?

Answer: Yes. Because publishing the notice will establish a reasonable period of time (180 days) prospectively for filing claims, it may be used for projects on which the NEPA decision was made prior to August 10, 2005. The 180-day period will run from the date the notice is published. As stated previously, the Division Office should work with FHWA field counsel to decide whether publication of a notice is a good choice for the project(s) in question.

If a Division Office wants to publish notices for several projects that were approved before August 10, 2005, it may wish to use the multiproject sample form as a guide for consolidating the projects under a single notice. (See [Attachment 3](#).)

Question E-11: Does the limitation on claims provision apply to all NEPA categories of projects?

Answer: The process can be used for any category of NEPA project that generates a documented decision. This includes documented CEs, EAs, and EISs. Before deciding to publish a notice, the FHWA Division Office, in consultation with the State, should consider whether publication is justified. This is further discussed below. (See Questions [E-12](#) and [E-13](#).)

Question E-12: How does the project's NEPA category (CE, EA, EIS) affect whether the notice should be used?

Answer: The likely benefits of public notice, as well as the risk and potential effects of litigation, generally are different for each NEPA category. FHWA anticipates that all EIS projects will merit use of the SOL notice. EIS projects typically are substantial in size and complexity, and the potential effects of delay due to litigation will be the greatest. EA projects also may be likely candidates for a SOL notice, depending upon the nature of the project, the types of issues decided, the estimated likelihood of future litigation, and the potential effects of litigation. For example, publication of a SOL notice might be appropriate if an EA is used on a project involving an action that is listed in 23 CFR 771.115(a) as normally requiring an EIS. By contrast, the use of a SOL notice for a CE should be relatively rare. FHWA does not expect SOL notices to be used for projects that are CEs under 23 CFR 771.117(c). FHWA anticipates that the notice may be appropriate for documented CE projects under 23 CFR 771.117(d). Because of the potential volume of notices where they are used for CE projects, FHWA urges use of the consolidated notice approach for CE projects. (See Question E-15.)

Question E-13: What kinds of factors should be considered when deciding whether to publish a SOL notice?

Answer: In all cases, it is important to consider the facts of the project when deciding whether to publish a notice. The FHWA Division Office must determine whether publication of the notice, which starts its own 180-day clock for claims, is the best course in light of all factors affecting the project. FHWA recommends that Division Offices work with their field counsel as they make these determinations.

For practitioners considering whether to publish a SOL notice, it will be useful to examine the potential for litigation from several perspectives. The laws and procedures under which Federal agency decisions were made for the project may affect the decision whether to publish a SOL notice. For example, if the project involves an individual permit under Section 404 of the Clean Water Act, or a formal or informal consultation process under the Endangered Species Act, publication of a notice would be appropriate.

Disputes affecting the project also may have an effect on the use of a SOL notice. If there are known interested parties threatening to file a lawsuit, then the notice may serve to ensure that such action occurs quickly. On the other hand, a notice may prompt some parties to sue merely to preserve their claims until they are more certain whether their interests are adversely affected by the Federal action, or until they know whether dispute resolution efforts will be successful. For projects with these kinds of circumstances, the Division should consider how a SOL should be timed in order to avoid unnecessary litigation.

A notice may be very useful in cases where there are no known potential litigants, but where there is a desire to ensure that the project can move into implementation without the risk of unexpected claims against it. A SOL notice will define the time period during which “newly” interested parties must act on their views. If a project has no substantial known or likely opposition, or if the timeline for implementation does not require the protection afforded by the SOL notice, then there may be little benefit from publication of a SOL notice.

Question E-14: Can the limitation on claims process be used for tiered EISs?

Answer: Yes, the SOL notice provision does apply to a tiered EIS to the extent that the tiered EIS results in final decisions. Because Tier 1 proceedings decide a narrower range of issues than a regular EIS process, it is important that the ROD clearly describe which decisions are being made that are considered final within the meaning of the SOL provision of SAFETEA-LU. Among the kinds of decisions that might be made in Tier 1 proceedings, and could be covered by a SOL notice, are corridor location, modal choice, alternatives to be eliminated from detailed analysis, alternatives to be carried forward for Tier 2 analysis, and jurisdictional determinations made under Federal law.

A sample form for a Tier 1 notice, and an example of a Tier 1 notice, appear as Attachments 6 and 7 to this guidance. The Tier 1 SOL notice may refer generally to the Tier 1 FEIS and ROD for detailed discussions of the decisions made. However, because of the “phased” nature of tiered proceedings, the notice also should include information informing the public of the specific decisions covered by the Tier 1 notice. The objective is to advise the public of the issues that will not be open for further analysis or discussion in the Tier 2 proceedings absent substantial changes in the proposed action or significant new and relevant information. For example, it is appropriate to list the Tier 1 alternatives eliminated from Tier 2 analysis, using the same names and alternative numbers that are used in the FEIS.

The most effective practice may be to include a section in the Tier 1 ROD that summarizes the specific final decisions made in Tier 1 and references where those final decisions are discussed in the ROD. Such listing in the ROD will help those reading the ROD to understand the status of decision-making at the conclusion of the Tier 1 proceedings. A list also will expedite the preparation of a SOL notice on the final actions in Tier 1. (See also Question E-20 for a discussion of interagency coordination on decisions to be included in SOL notices.)

Question E-15: Can SOL notices for several projects be consolidated for publishing as a single notice in the FR to save time and costs?

Answer: Nothing prohibits the consolidation of notices for multiple projects into a single FR notice. This may be a cost effective approach if the Division Office is publishing several notices in the same timeframe, and especially if notices are published for CE projects. To help readers

identify the key laws involved with each project, FHWA suggests that each individual project description reference the primary laws applicable to that project. A sample form for a consolidated notice accompanies this guidance ([Attachment 3](#)) as well as an example of a consolidated notice ([Attachment 6](#)). The example shows one way that the individual project references can be done when a notice covers multiple projects.

Question E-16: Who decides whether a limitation on claims notice gets published in the FR? Can agencies other than FHWA publish the SOL notice, especially when there is a considerable amount of time between the FHWA ROD/FONSI and the other agency's action?

Answer: The decision whether to use the SOL notice process is one that the FHWA Division Office will make in consultation with the other lead agencies. For existing Federal Lands Highway projects, consultation should take place with the lead agency for NEPA, if it is an agency other than FHWA. If Federal Lands has assumed joint lead agency responsibilities, the two agencies will decide together.

Federal agencies other than FHWA may publish the notices. However, as a practical matter it is preferable for FHWA, as Federal lead agency, to handle the publication for all affected Federal agencies regardless of the amount of time that may pass between the FHWA ROD/FONSI and the last Federal agency decision.

As discussed in detail in Question E-20, the FHWA Division also should ensure that there is coordination with other Federal agencies whose decisions are covered by a notice. It is important for those agencies to be aware of the intention to publish a notice, especially if the notice directs readers to those other agencies for information about their actions on the project. Such coordination also is important because it permits the FHWA to confirm that there are no other pending actions or proceedings at the other Federal agency that might affect that agency's project decision.

Question E-17: What information should be included in a SOL notice?

Answer: The notice must provide enough information to give the public reasonable notice of the general nature and location of the project and of the fact that there has been action by one or more Federal agencies that is final and subject to the 180-day limitation period. The notice should specify that claims will be barred at the end of the 180-day period, and state the legal authority for agency action and for the 180-day limitation.

FHWA notices often will cover actions by several Federal agencies and an array of agency decisions, rather than just the FHWA's NEPA action. In such cases, the notice should state that it applies to the actions of those other Federal agencies and to all laws under which Federal agencies took action. It is not necessary to list in the notice every agency whose decision is covered, so long as the project documents that are referenced in the notice contain the information about the individual agencies and their decisions. However, it makes sense to specifically name those agencies that made major decisions covered by the notice, and to direct the reader's attention to the records of that agency that relate to the agency's decision. One example of this concept would be to include the Corps of Engineers explicitly in the notice when the notice covers a Section 404 permit decision as well as FHWA's decisions. The sample forms and examples that accompany this guidance contain language covering these points ([Attachments 1 to 7](#)). The notice should refer readers to project records for detailed information on Federal actions and related laws.

Other factors to consider in drafting a notice include how to identify the project in a way that the general public will understand, and how best to direct readers to one or more sources for detailed information about the project and the decisions made by the Federal agencies. The notice contains only very abbreviated information about the project and the Federal actions take. The burden is placed on the readers to seek detailed information. For these reasons, the instructions

for obtaining detailed information are especially important. Web sites are an excellent resource for this purpose, although alternative means for obtaining information still will be important for those who do not have easy access to the Internet. Contact information for other Federal agencies that made a project decision may be included in the notice, but is not required as long as the information about the decisions of those Federal agencies is available from the FHWA or State contacts.

The SOL notices must comply with FR technical requirements, as discussed in FHWA guidance at <http://www.environment.fhwa.dot.gov/guidebook/fedRegDocs.asp> and in the “Federal Register Document Drafting Handbook,” available online at <http://www.archives.gov/federal-register/write/handbook/ddh.pdf>. The sample forms reflect the necessary format ([Attachments 1 to 4](#)). Some important points to remember:

1. An FHWA official with appropriate delegated authority must sign the notice. This is usually the Division Administrator.
2. The “issuance date” must be the same date as when the notice actually is signed. Pre- and post-dating are not acceptable.
3. The person whose name is inserted in the signature block must be the person who signs the notice. It is not permissible to sign for another person.
4. The signatory must sign three (3) originals of the notice.
5. There should not be a page number on the first page of the notice.
6. There should be two spaces between the period at the end of one sentence and the first letter at the beginning of the next sentence.

Question E-18: How do the SOL sample forms work?

Answer: The Division Offices can use the sample forms as models when they prepare SOL notices under this guidance. The sample forms include instructions (in bold and bracketed text) for inserting project-specific information into the notice. When using a sample form, the Division Offices will need to exercise professional judgment about how to adapt the form to meet the needs of the project. FHWA encourages the Division Offices to work with their environmental specialist and their field counsel when questions arise about the appropriate content for a particular project notice. Those individuals, in turn, can consult with FHWA Headquarters representatives as needed.

One example of the judgment required is in completing the section that lists the primary Federal laws under which the Federal agencies have made final decisions on the project. The purpose of the notice is to advise the public that actions have been taken that trigger the limitation period. The list of laws is intended to help inform readers about the types of matters decided by the Federal agencies. It is *not* intended to be an all-inclusive list of the laws relevant to Federal agency decisionmaking. For many projects, it may be appropriate to list only the key laws under which Federal agencies took their actions, such as the Federal-aid Highway Act, NEPA, 4(f), Section 106, and the Clean Air Act. In some situations, a more extensive list may be useful if other laws create the authority (or the obligation) for decisions that are potentially controversial, or are of high interest to major stakeholders or the general public. As a resource, FHWA offers [a list of laws that affect transportation](#). That resource may assist Division Offices in preparing the SOL notice list of the laws that apply to the project. Division Offices should be careful to include in the SOL notice only those laws under which a documented Federal agency decision was made on the project.

This guidance includes the following four types of FHWA sample forms: a single EIS project where all Federal agency decisions have been made; a notice covering a Federal agency decision made after FHWA acted and issued an initial SOL notice; a consolidated notice to cover multiple projects of varying NEPA categories, and a Tier 1 EIS notice. Examples also are provided, showing mock-ups of actual notices for a single project ([Attachment 5](#)), multiple projects ([Attachment 6](#)), and a Tier 1 EIS (Attachment 7). As needed, FHWA will issue additional sample forms to cover other types of situations.

Question E-19: How much detail should be included in the SOL notice’s description of the project?

Answer: The description of the project should be very brief and contain only the information that is critical to a reader’s comprehension of the general nature of the project. For example, it is not necessary to recite the history of the project or details about how or why decisions were made. The following examples illustrate an appropriate level of detail for project descriptions:

Example 1: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: U.S. Route 20 from Galena to Freeport in Jo Daviess and Stephenson Counties. The project will be a 79.8 km (49.7 mi) long, four-lane freeway with grade separations at all intersecting roadways (i.e. a fully access-controlled facility). It will begin northwest of Galena near the existing intersection of IL Route 84 and U.S. Route 20. It will then proceed to the north and east of Galena, south of the Galena Territory, along the north side of Tapley Woods, north of Elizabeth and Woodbine, north of Stockton and south of Lena. It will end northwest of Freeport, tying into the western end of the U.S. Route 20 Freeport Bypass. Except for the termini, which tie in along the existing U.S. Route 20, the entire proposed freeway will be on new alignment.

Example 2: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Wisconsin: WI-26 State Trunk Highway (STH) Improvements, Janesville at IH-90 to STH-60-East north of Watertown Road in Rock, Jefferson, and Dodge Counties. The project begins on the north side of Janesville at IH 90 and extends north about 77 km (48 mi) to about 15 km (9 mi) north of Watertown at STH 60-East. The proposed action involves upgrading the existing two-lane STH 26 corridor to a four-lane divided rural highway.

Question E-20: How should publication of SOL notices be timed if Section 404 or other permits or approvals remain outstanding as of the date of the FHWA ROD, FONSI, or documented CE? What kind of coordination or concurrence is required in order for FHWA to publish a notice that covers another Federal agency’s decision?

Answer: A SOL notice will not be effective unless the Federal agency action covered by the notice qualifies as “final” within the meaning of the SOL provision in SAFETEA-LU. Usually, it will make sense to publish the SOL notice only when all Federal agency permits, licenses, and approvals are in place.

Exceptions may occur. For example, it may make sense to proceed with publication of the SOL notice immediately after FHWA issues its ROD if the remaining Federal decisions are not expected to occur within a reasonable period of time. Another reason not to wait might be if the remaining Federal decisions pertain to noncontroversial matters that no one is likely to litigate. Once the other Federal agencies have completed their decisionmaking processes, a decision can be made whether to publish an additional SOL notice.

If more than one notice is published for a project, the 180-day claims period will run separately for the Federal agency actions covered by each notice. For example, if a notice were published for a FHWA ROD on December 1, 2005, and for the project's Section 404 permit on August 1, 2006, the 180-day period for the NEPA claim would be measured starting on December 1, 2005. The limitation period for the Section 404 permit would start on August 1, 2006.

Interagency coordination on the notices is critically important. FHWA Divisions should work with their counterparts in other Federal agencies to ensure that there is agreement on which decisions are complete and ready for inclusion in the notice. Formal concurrence is not required, but the agency making the decision should clearly acknowledge that the decision is final within the meaning of the SOL provision. For Tier 1 EIS notices, this means that the deciding agency does not plan to revisit the issue later, in the Tier 2 environmental review process, unless substantial new information arises that is material to the agency's decision.

A deciding agency may acknowledge that it has made a final decision within the meaning of the SOL provision by means of interagency discussions or via e-mail. However, it will be easiest for lead agencies to track and verify the acknowledgement later if the acknowledgement is contained in the deciding agency's comments on the project. As circumstances warrant, the FHWA will work with other Federal agencies to develop guidance or memoranda of understanding to increase the understanding of the SOL notice provision, outline the types of decisions likely to be covered in regular and tiered notices, and to detail the process for issuing notices for multiple agencies.

The FHWA encourages efforts by the States and/or FHWA Divisions to reach out to Federal and State agencies to educate them about the SOL provision and its potential use on Federal-aid projects. Effective outreach activities should reduce the likelihood of confusion or misunderstandings when the SOL notices are used on a project.

Question E-21: If a later SOL notice is published for a separate permit (such as a Section 404 permit) or for a SEIS, and someone files a lawsuit challenging that permit or SEIS, will that lawsuit open up the previous FHWA NEPA document for review even though an earlier SOL notice covered it?

Answer: FHWA does not think so, but this is likely to be the subject of debate until decided through litigation. In light of the language in the SOL provision, a prudent person contesting an action would assume that the Federal agency decisions covered in the first SOL notice could not be challenged in litigation following a Section 404 decision made more than 180 days after the first SOL notice. For SEISs, the effect of a SOL notice on decisions covered by a SOL notice published for an earlier ROD will depend on the circumstances. FHWA believes that litigation of earlier decisions that are unrelated to topics addressed by the SEIS will be foreclosed by the expiration of the 180-day period after the publication of the SOL notice covering those earlier decisions. Any issues addressed in the SEIS proceedings, and the Federal agency decisions that rely on the information developed during the SEIS proceedings, would be subject to the SOL notice(s) published after the SEIS and related ROD.

Question E-22: How does the SOL notice provision apply to a supplemental environmental impact statement (SEIS)?

Answer: The [SOL provision in SAFETEA-LU](#) makes it clear that a SEIS requires a separate SOL notice. A notice published for earlier NEPA documents or for earlier Federal agency decisions would not suffice for matters contained in the SEIS or for decisions made based on the SEIS. For a discussion of the foreclosure effects of a SOL notice on the original FEIS and ROD, see Question E-21.

Question E-23: Should a reference to the SOL provision be included in NEPA documents?

Answer: FHWA recommends, but will not require, that future NEPA documents include a statement setting forth the SOL provisions so that readers of the NEPA documentation are aware of the statutory provision and its effects. A sample SOL statement appears below.

A Federal agency may publish a notice in the Federal Register, pursuant to 23 USC §139(l), indicating that one or more Federal agencies have taken final action on permits, licenses, or approvals for a transportation project. If such notice is published, claims seeking judicial review of those Federal agency actions will be barred unless such claims are filed within 180 days after the date of publication of the notice, or within such shorter time period as is specified in the Federal laws pursuant to which judicial review of the Federal agency action is allowed. If no notice is published, then the periods of time that otherwise are provided by the Federal laws governing such claims will apply.

Question E-24: Does the SOL provision affect how a project’s administrative record is compiled?

Answer: No. However, the limitation on claims provision increases the importance of effective documentation and tracking of agency decisions. It also will be important to ensure that copies of the decisions and supporting documents for actions taken by other Federal agencies are included in the FHWA project documents, even if those agencies acted after the FHWA NEPA decision. This is because the SOL notice will direct readers to FHWA and the State for information on all of the decisions relating to the project. For this reason, it will be very important that both agencies have project documents readily available for public inspection as of the date of the publication of the SOL notice.

In some cases, it may be useful to consider ways to make it easier for readers of NEPA documents to understand what Federal decisions are made in connection with the project. It also will be helpful to evaluate how effectively the NEPA documentation informs readers of the status of various Federal agency decisions as of the time the NEPA documents are issued.

Question E-25: How is publication in the FR handled? How does FR publication work in States that receive assigned powers under SAFETEA-LU Sections 6004 or 6005?

Answer: The publication of the SOL notice should follow the same process used for authorization and publication of a notice of intent under NEPA. This applies regardless of a State’s Section 6004 or 6005 status. At the present time, FHWA must handle publication of the notice in the FR because of Government Printing Office requirements. FHWA is working to streamline the publication process and may issue additional guidance on this topic.

Question E-26: Who pays for the notices?

Answer: Until a system is in place for State reimbursement of the costs of publishing SOL notices as an eligible project cost, the FHWA will pay for the publication of the notices. Notices should use billing code 4910-RY, as shown on the attached sample forms and examples.

Attachments:

- Attachment 1 – Sample Form: Single Project SOL Notice**
- Attachment 2 – Sample Form: Post-ROD Single Project 404 SOL Notice**
- Attachment 3 – Sample Form: Multiple Projects Consolidated SOL Notice**
- Attachment 4 – Sample Form: Tier 1 EIS SOL Notice**
- Attachment 5 – Example: Single Project SOL Notice**
- Attachment 6 – Example: Multiple Projects Consolidated SOL Notice**
- Attachment 7 – Example: Tier 1 EIS SOL Notice**

ATTACHMENT 1
FHWA SAMPLE FORM: SINGLE PROJECT SOL NOTICE

[Scenario: All Federal agency decisions, including §404, have been completed.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in [fill in state name]

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE), DoD, and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. §139(l)(1). The actions relate to a proposed highway project, *[fill in highway name/number and starting and ending cities or other points]* in the County *[fill in county name(s)]*, State of *[fill in state name]*. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. §139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register] *[previous phrase must be included as written, including the brackets, since it is an instruction to the Federal Register]*. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: *[fill in FHWA contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For USACE: *[fill in USACE contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For *[fill in name of state agency]*: *[fill in State contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, USACE, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of *[fill in state name]*: *[Fill in very brief description of project (target is no more than 3-5 sentences): project location, project/construction type, length of project, general purpose, FHWA project reference number]*. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on *[fill in date]*, in the FHWA Record of Decision (ROD) issued on *[fill in date]*, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting FHWA or the *[fill in name of State agency]* at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *[fill in the link]*, or viewed at public libraries in the project area *[delete text on electronic and library access if not applicable]*. The USACE decision and permit (USACE Permit *[fill in permit reference]*) are available by contacting USACE at the address provided above, and

can be viewed and downloaded from [*fill in the link to USACE or project web site, or delete this electronic availability text if not applicable*], or viewed at public libraries in the project area [*delete text on library access if not applicable*].

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to [*Insert the key laws and Executive Orders under which Federal agencies have made final, documented decisions about the project; drafters should not list any law or Executive Order that does not apply to the project, or for which the Federal agency decision is not final.*]:

- 1.
- 2.
- 3.
- 4.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. §139(l)(1)

Issued on: **[date signed]**

[Signatory Name]
[Signatory Title]
[City]

ATTACHMENT 2

FHWA SAMPLE FORM: POST-ROD 404 DECISION SOL NOTICE

[Scenario: FHWA previously published a notice for its NEPA and other decisions, this notice covers USACE and other Federal agency decisions made after the publication of the first notice.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in [fill in state name]

AGENCIES: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by Army Corps of Engineers, (USACE), DoD, and Other Federal Agencies

SUMMARY: This notice announces actions taken by the USACE and other Federal agencies that are final within the meaning of 23 U.S.C. §139(l)(1). The actions relate to a proposed highway project, *[fill in highway name/number and starting and ending cities or other points]* in the County of *[fill in county name(s)]*, State of *[fill in state name]*. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. §139(l)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register] *[previous phrase must be included as written, including the brackets, since it is an instruction to the Federal Register]*. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: *[fill in FHWA contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For USACE: *[fill in USACE contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For *[fill in name of state agency]*: *[fill in State contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*.

SUPPLEMENTARY INFORMATION: On *[fill in date]*, the FHWA published a "Notice of Final Federal Agency Actions on Proposed Highway in *[fill in state name]*" in the Federal Register at *[fill in FR reference]* for the following highway project: *[Fill in very brief description of project (target is no more than 3-5 sentences): project location, project/construction type, length of project, general purpose, FHWA project reference number, type(s) of FHWA NEPA document(s), and date(s) issued]*. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. §139(l)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as *[fill in USACE permit number(s)]*. That information is available by contacting the USACE at the address provided above.

Information about the project and project records also are available from the FHWA and the *[fill in name of State agency]* at the addresses provided above. The FHWA *[insert references to FHWA NEPA documents, such as FEIS and ROD or*

EA and FONSI] can be viewed and downloaded from the project Web site at [*fill in the link*], or viewed at public libraries in the project area [*delete text on electronic and library access if not applicable*]. The USACE decision can be viewed and downloaded from the project Web site at [*fill in the link*] or viewed at public libraries in the project area [*delete text on electronic and library access if not applicable*].

This notice applies to all USACE and other Federal agency final actions taken after the issuance date of the FHWA Federal Register notice described above. The laws under which actions were taken include, but are not limited to [*Insert the key laws and Executive Orders under which Federal agencies have made final, documented decisions about the project since the date of the first §139(l) notice; drafters should list key law(s) and Executive Orders under which USACE or another Federal agency made decisions or determinations on the project after the issuance date of the first §139(l) Federal Register notice; drafters should not list any law or Executive Order that does not apply to the project, or for which the Federal agency decision is not final.*]:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. §139(*l*)(1)

Issued on: **[date signed]**

[FHWA Signatory Name]

[FHWA Signatory Title]

[City]

ATTACHMENT 3
FHWA SAMPLE FORM: MULTIPLE PROJECTS SOL NOTICE
[Scenario: Projects involve a variety of NEPA categories and some have not yet received final decisions on permits from other Federal agencies.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in [fill in state name]

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. §139(l)(1)-(2) *[delete the “-(2)” if the notice does not cover any SEIS projects]*. The actions relate to various proposed highway projects in the State of *[fill in state name]*. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. §139(l)(1)-(2) *[delete the “-(2)” if the notice does not cover any SEIS projects]*. A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register] *[previous phrase must be included as written, including the brackets, since it is an instruction to the Federal Register]*. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: *[fill in FHWA contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For *[fill in name of state agency]*: *[fill in State contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of *[fill in state name]* that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented categorical exclusion (CE), environmental assessment (EA), environmental impact statement (EIS), or supplemental EIS (SEIS) issued in connection with the project *[delete here, and elsewhere, references to any document types that are not included in this notice]*, and in other project records. The CE, EA, FEIS, Findings of No Significant Impact (FONSI), Record of Decision (ROD), or SEIS, and other project records for the listed projects are available by contacting the FHWA or the *[fill in name of State agency]* at the addresses provided above. For some of the projects, the FEIS, SEIS, EA, ROD, and FONSI documents *[delete references to any document types that do not apply to projects in this notice]* also can be viewed and downloaded electronically, or viewed at public libraries in the relevant project area, as specified below *[delete text on electronic and library access if not applicable; if applicable, fill in information under individual project entries below]*.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken. The laws under which Federal agency decisions were made on the projects listed in this notice include, but are not limited to ***[insert the key laws and Executive Orders under which Federal agencies have made final, documented decisions about the projects subject to this notice; drafters should list the key laws and Executive Orders under which a Federal agency made a final decision for at least one (or more) of the projects covered by this notice; drafters should not list any law or Executive Order that does not apply to at least one of the projects, or for which the Federal agency decision is not final. Include abbreviated forms of reference for each law listed in this section (e.g., Section 404, Section 106) to facilitate cross-referencing the laws within the project description. That step will help readers rapidly identify which key Federal laws applied to a particular project]***:

- 1.
- 2.
- 3.
- 4.

The projects subject to this notice are:

1. Project location: ***[fill in city name, county name, highway number]***. Project reference number: ***[fill in FHWA project number]***. Project type: ***[fill in very brief description of project (target is no more than 3-5 sentences): project location, project/construction type, length of project, general purpose,]***. Final actions taken under: ***[fill in the references to the key laws (listed above) under***

which Federal agencies have taken final action on this project; in the case of a nationwide Section 404 permit, include the permit number]. FHWA NEPA documents: [fill in NEPA document type and ROD/FONSI (if applicable), date of issuance, and Web address/library location if applicable].

2. Project location: *[fill in city name, county name, highway number]*. Project reference number: *[fill in FHWA project number]*. Project type: *[fill in very brief description of project (target is no more than 3-5 sentences): project location, project/construction type, length of project, general purpose,]*. Final actions taken under: *[fill in the references to the key laws (listed above) under which Federal agencies have taken final action on this project; in the case of a nationwide Section 404 permit, include the permit number]*. FHWA NEPA documents: *[fill in NEPA document type and ROD/FONSI (if applicable), date of issuance, and Web address/library location if applicable]*.
3. Project location: *[fill in city name, county name, highway number]*. Project reference number: *[fill in FHWA project number]*. Project type: *[fill in very brief description of project (target is no more than 3-5 sentences): project location, project/construction type, length of project, general purpose,]*. Final actions taken under: *[fill in the references to the key laws (listed above) under which Federal agencies have taken final action on this project; in the case of a nationwide Section 404 permit, include the permit number]*. FHWA NEPA documents: *[fill in NEPA document type and ROD/FONSI (if applicable), date of issuance, and Web address/library location if applicable]*.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. §139(l)(1)-(2) [*strike “-(2)” if no SEIS project is listed*]

Issued on: **[date signed]**

[Signatory Name]
[Signatory Title]
[City]

ATTACHMENT 4

FHWA SAMPLE FORM: TIER 1 EIS SOL NOTICE

[Scenario: FHWA has completed a Tier 1 EIS and ROD, which specify issues decided and issues to be carried over to Tier 2 proceedings.]

DEPARTMENT OF TRANSPORTATION

[4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in *[fill in state name]*

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project *[fill corridor location description or highway name/number, including starting and ending cities or other points]* in the County *[fill in county name(s)]*, State of *[fill in state name]*. The Federal actions, taken as a result of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321-4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20, 40 CFR 1508.28, and 23 CFR Part 771, determined certain issues relating to the proposed project. Those Tier 1 decisions will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits, and approvals for the highway project. Tier 1 decisions also may be relied upon by State and local agencies in proceedings on the proposed project.

DATES: By this notice, the FHWA is advising the public that it has made decisions that are subject to 23 U.S.C. 139(I)(1) and are final within the meaning of that law. A

claim seeking judicial review of the Tier 1 Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register]. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: *[fill in FHWA contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*. For *[fill in name of state agency]*: *[fill in State contact information, including name, title, agency name, office address and regular office hours, telephone, and e-mail]*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has issued a Tier 1 Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) in connection with a proposed highway project in the State of *[fill in state name]*: *[Fill in very brief description of project (target is no more than 3-5 sentences): corridor area or project location, general purpose, FHWA project reference number]*. Decisions in the Tier 1 ROD include, but are not limited to, the following:

1. Purpose and need for the project, including the need for actions to *[insert description]*.
2. Reasonable alternatives that will be carried forward for further evaluation in the Tier 2 proceedings.
3. Alternatives that have been eliminated from further consideration and study, including but not limited to *[insert a list of the alternatives that have been*

eliminated from further review; this list may use the names or references used in the Tier 1 EIS and ROD).

4. *[Insert any other decisions described in the Tier 1 ROD, but do not include preliminary decisions that are subject to a commitment in the Tier 1 ROD for further analysis during Tier 2 proceedings; this list should include decisions by other Federal agencies that, after consultation with those agencies, are deemed final within the meaning of 139(l)].*

Interested parties may consult the ROD and FEIS for further information on each of the decisions described above.

The Tier 1 actions by the Federal agencies, and the laws under which such actions were taken, are described in the Tier 1 Final Environmental Impact Statement (FEIS), approved on *[fill in date]*, in the FHWA Record of Decision (ROD) issued on *[fill in date]*, and in other documents in the FHWA project records. The scope and purpose of the Tier 1 FEIS are described in Sections *[fill in references]* of the FEIS. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the *[fill in name of State agency]* at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *[fill in the link]*, or viewed at public libraries in the project area *[delete text on electronic and library access if not applicable]*.

This notice applies to all Federal agency Tier 1 decisions that are final within the meaning of 23 U.S.C. 139(l)(1) as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to: *[Insert the key laws and Executive Orders under which Federal agencies have made final,*

documented decisions about the project; drafters should not list any law or Executive Order that does not apply to the project, or for which the Federal agency decision is not final within the meaning of 139(l).]:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: **[date signed]**

[Signatory Name]
[Signatory Title]
[City]

ATTACHMENT 5
FHWA EXAMPLE: SINGLE PROJECT SOL NOTICE

[Scenario: EIS project, all Federal agency decisions have been completed.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Yourstate

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE), DoD, and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. §139(l)(1). The actions relate to a proposed highway project, U.S. Route 10, Milo to Freeport, in Washington, Jefferson, and Lincoln Counties in the State of Yourstate. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register]. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Arthur Davis, Division Administrator, Federal Highway Administration, 3000 Federal Drive, Capital City, Yourstate 00000-0000; telephone: (888) 888-0000; e-mail:

Arthur.Davis@fhwa.dot.gov. The FHWA Yourstate Division Office's normal

business hours are 7:45 a.m. to 4:15 p.m. (eastern time). For USACE: Robert Agee, Chief, Regulatory Branch, U.S. Army Corps of Engineers, Yourstate District, Murphy Federal Building, Capital City, Yourstate 00000-0000; telephone (888) 888-1111.

For Yourstate: Mr. Benjamin Smith, P.E., Yourstate Department of Transportation, 10000 State Street, Capital City, Yourstate 00000-0000; telephone: (888) 888-1111.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, USACE, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Yourstate: U.S. Route 10 from Milo to Freeport in Washington, Jefferson, and Lincoln Counties. The project will be a 79.8 km (49.7 mi) long, four-lane freeway with grade separations at all intersecting roadways (i.e. a fully access-controlled facility). It will begin northwest of Milo near the existing intersection of YS Route 64 and U.S. Route 10. It will then proceed to the north and east of Milo, north of Berlin and south of Darby. It will end northwest of Freeport, tying into the western end of the U.S. Route 10 Freeport Bypass. The proposed freeway will be on new alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on August 10, 2005, in the FHWA Record of Decision (ROD) issued on November 18, 2005, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the Yourstate Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at www.dot.yourstate.gov/env/us10feis.htm or viewed at public

libraries in the project area. The USACE decision and permit (USACE Permit 200400204) are available by contacting USACE at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401-7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251-1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Safe Drinking Water Act (SDWA) [42 U.S.C.

300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001-4128.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. §139(*l*)(1)

Issued on: **[date signed]**

Arthur Davis
Division Administrator
Capital City

ATTACHMENT 6
FHWA EXAMPLE: MULTIPLE PROJECTS SOL NOTICE

[Scenario: Projects involve a variety of NEPA categories and some have not yet received final decisions on permits from other Federal agencies.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Yourstate

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. §139(l)(1). The actions relate to various proposed highway projects in the State of Yourstate. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. §139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register]. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Arthur Davis, Division Administrator, Federal Highway Administration, 3000 Federal Drive, Capital City, Yourstate 00000-0000; telephone: (888) 888-0000; e-mail:

Arthur.Davis@fhwa.dot.gov. The FHWA Yourstate Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (eastern time). For Yourstate: Mr.

Benjamin Smith, P.E., Yourstate Department of Transportation, 10000 State Street, Capital City, Yourstate 00000-0000; telephone: (888) 888-1111.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Yourstate that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) issued in connection with the project, and in other project records. The CE, EA, FEIS, Findings of No Significant Impact (FONSI), Record of Decision (ROD), and other project records for the listed projects are available by contacting the FHWA or the Yourstate Department of Transportation at the addresses provided above. For some of the projects, the FEIS, EA, ROD, and FONSI documents also can be viewed and downloaded electronically as specified below.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].
4. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and Section 1536]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703-712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469-469(c)].
6. Social and Economic: Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)-2000(d)(1)].
7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251-1377]; Rivers and Harbors Act of 1899 (RHA) [33 U.S.C. 401-406]; Wetlands Mitigation (Sections 103 and 133) [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

The projects subject to this notice are:

1. Project location: U.S. Route 10 from Milo to Freeport in Washington, Jefferson, and Lincoln Counties. Project reference number: FHWA-YS-EIS-01-01-F.
Project type: The project will be a 49.7 mile long, four-lane freeway with grade separations at all intersecting roadways (i.e. a fully access-controlled facility). It will begin northwest of Milo near the existing intersection of YS Route 64 and U.S. Route 10. It will then proceed to the north and east of Milo, north of Berlin and south of Darby. It will end northwest of Freeport, tying into the western end

of the U.S. Route 10 Freeport Bypass. The proposed freeway will be on new alignment. Final agency action(s) taken under: NEPA, FAHA, CAA, 4f, 106, ESA, MBTA, ARPA, AHPA, Civil Rights, Section 404, Section 401, Sections 103 and 133, E.O. 11990, E.O. 11514, E.O. 12898. FHWA NEPA documents: FEIS approved on August 1, 2005; ROD issued on November 18, 2005, both available at www.dot.yourstate.gov/env/us10feis.htm.

2. Project location: Rich County, U.S. 450 Bridge Replacements. Project reference number: BR-BR88(042). Project type: The project proposes to provide for the replacement of the U.S. Route 450 bridge over the Suwanee River and three overflow bridges including pavement resurfacing. The section of U.S. 450 proposed for pavement resurfacing and replacement of the four bridges extends from near the intersection of U.S. Route 450/YS Route 24 to a point just beyond the Suwanee River, a distance of approximately 5.4 miles. Final agency action(s) taken under: NEPA, FAHA, CAA, 4f, 106, MBTA, ARPA, AHPA, Civil Rights, Section 404, Section 401, Section 319, Sections 103 and 133, RHA, E.O. 11990, E.O. 11988, E.O. 11514. FHWA NEPA documents: EA approved on September 23, 2004, FONSI issued on March 12, 2005, both available at www.dot.yourstate.gov/env/us450ea.htm.
3. Project location: Taylor County, U.S. 111 Bridge Replacement. Project reference number: BR-BR91(051). Project type: The project proposes to provide for the replacement of the U.S. Route 111 bridge over the south fork of the Kent River, including pavement resurfacing. The proposed project involves the construction of a new bridge downstream from the existing bridge. The

section of U.S. 111 proposed for pavement resurfacing and replacement of the bridge extends from the intersection of U.S. Route 111 and YS Route 133 to the intersection of U.S. Route 111 and YS Route 18, a distance of approximately 7 miles. Final agency action(s) taken under: NEPA, FAHA, CAA, 4f, 106, MBTA, ARPA, AHPA, Civil Rights, E.O. 11990, E.O. 11988, E.O. 11514. FHWA NEPA documents: EA approved on October 10, 2005, FONSI issued on January 14, 2006.

4. Project Location: Waterford County, U.S. 12 Highway Reconstruction. Project Reference Number: NH-1562(10). Project type: The project includes the reconstruction of the existing two-lane U.S. 12 from Parkville, where U.S. 12 intersects with State Street, to the intersection of U.S. 12 with Main Street in Crestview. The proposed project involves widening the traffic lanes to 16', relocating utilities, and adding a bike lane. All work will be within existing right-of-way. Total length of the project is 4.3 miles. Final agency action(s) taken under: NEPA, FAHA, CAA, 4f, 106, ARPA, AHPA, Civil Rights, Section 404 (nationwide permit 14), Section 401, E.O. 11990, E.O. 11988, E.O. 11514. FHWA NEPA documents: CE approved on August 29, 2005.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. §139(*l*)(1)

Issued on: **[date signed]**

Arthur Davis
Division Administrator
Capital City

ATTACHMENT 7
FHWA EXAMPLE: TIER 1 EIS SOL NOTICE

[Scenario: FHWA has completed a Tier 1 EIS and ROD, which specify issues decided and issues to be carried over to Tier 2 proceedings.]

DEPARTMENT OF TRANSPORTATION [4910-RY]

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Projects in

Yourstate

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies

SUMMARY: This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to proposed highway and transit projects within the area known as the Skyline Corridor, which is a 150 square mile area in the Bigcity metropolitan area that extends from the Freeport Central Business District and Clearwater River redevelopment area in Washington County, east to the I-300 outerbelt corridor in Madison County, near the communities of Adams, Jefferson, and Franklin, in the State of Yourstate. The Federal actions, taken as a result of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321-4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20, 40 CFR 1508.28, and 23 CFR Part 771, determined certain issues relating to the proposed projects. Those Tier 1 decisions will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits, and approvals for highway and

transit projects. Tier 1 decisions also may be relied upon by State and local agencies in proceedings on the proposed projects.

DATES: By this notice, the FHWA is advising the public that it has made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of the Tier 1 Federal agency decisions on the proposed highway and transit projects will be barred unless the claim is filed on or before [Insert date 180 days after publication in the Federal Register]. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Arthur Davis, Division Administrator, Federal Highway Administration, 3000 Federal Drive, Capital City, Yourstate 00000-0000; telephone: (888) 888-0000; e-mail: Arthur.Davis@fhwa.dot.gov. The FHWA Yourstate Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (eastern time). For Yourstate: Mr. Benjamin Smith, P.E., Yourstate Department of Transportation, 10000 State Street, Capital City, Yourstate 00000-0000; telephone: (888) 888-1111.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has issued a Tier 1 Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) in connection with proposed highway and transit projects within the Skyline Corridor of the City of Bigcity in the State of Yourstate. Decisions in the Tier 1 ROD include, but are not limited to, the following:

- a. Purpose and need for the projects, including the need for actions to increase highway capacity, reduce congestion and delay, improve safety and increase transportation connectivity in the region.
- b. Reasonable alternatives that will be carried forward for further evaluation in the Tier 2 proceedings.
- c. Alternatives that have been eliminated from further consideration and study, including but not limited to the no-build alternative; the Metro Light Rail Transit alternative; the Sanderson Corridor alternative; and individual or combined measures involving high occupancy vehicle lanes, bus rapid transit, ferry boats, and expanded Clearwater River crossings on I-300 and I-500.
- d. The Clearwater River will be clear spanned, thereby precluding the proposed highway and transit crossing from being designated as a water resources project within the meaning of Section 7 of the Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.

Interested parties may consult the ROD and FEIS for further information on each of the decisions described above.

The Tier 1 actions by the Federal agencies, and the laws under which such actions were taken, are described in the FEIS approved March 15, 2006, the ROD approved September 1, 2006, and in other documents in the FHWA project records. The scope and purpose of the Tier 1 FEIS are described in Sections 1.1 and 1.3 of the FEIS. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Yourstate Department of Transportation at the addresses

provided above. The FEIS and ROD also are available online at <http://www.skylinecorridor.org/default.asp>.

This notice applies to all Federal agency Tier 1 decisions that are final within the meaning of 23 U.S.C. 139(l)(1) as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401-7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].
4. Wetlands and Water Resources: Safe Drinking Water Act [42 U.S.C. 300(f)-300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq].
6. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: **[date signed]**

Arthur Davis
Division Administrator
Capital City