

## STAFF REPORT

**SUBJECT:** Update on Programming and Funding Issues

**AGENDA ITEM: Sept. 05**

**RECOMMENDATION:**

Information report to TTAC on SAFETEA-LU implementation in California, 2005/06 STIP Allocation Progress, and Notice of federal Rule Making: Inactive Obligations.

**STAFF CONTACT:** Steve VanDenburgh

**DISCUSSION:**

SAFETEA-LU

The new \$286.5 billion federal transportation bill, SAFETEA-LU, was signed into law by President Bush on August 10. SBCAG staff has received inquiries about the amount of funding that will be available and how and when funding will begin flowing to local agencies, transit districts and Metropolitan Planning Organizations (MPO's).

Funding estimates for SAFETEA-LU's programs are being prepared by Caltrans and will probably be released in August or September. As with TEA 21, most of the funds authorized are distributed on a formula basis to states (and in some cases suballocated to regions) or are made available through discretionary competitive grant programs.

A working group from around the State has begun to analyze the 1,700 page law to prepare a legislative proposal addressing how it will be implemented in California. The group will also be making suggestions on clean-up legislation that Congress will take up this fall to correct technical errors in SAFETEA-LU. The group includes the League of Cities, the California State Association of Counties, MPO's, RTPA's, and Caltrans. So far, they have identified 20 programs related to highway safety, goods movement, transit, toll programs, and CMAQ that will potentially require implementing legislation or new regulations. This group is scheduled to have draft legislation finalized for when the State Legislature reconvenes in January 2006. The break-out of programs they are working on, and their schedule, is attached.

Among its many charges, the group will discuss whether the formula that determines how STP is distributed in the State should be changed. The group will also include in their legislative proposal an additional 2-3 years of funding (perhaps STP) that will be voluntarily contributed by RTPA's around the state to the coastal RTPA's that are no longer eligible for CMAQ. Creation of a CMAQ phase-out program has been agreed upon in concept so that the coastal RTPA's, including Santa Barbara, would drop their efforts to get a phase-out program included in SAFETEA-LU. A phase-out program at the federal level, it was determined by California's reauthorization working group, would have had the net effect of reducing CMAQ funding to California.

SAFETEA-LU also includes 6,400 earmarks which amount to \$24.2 billion. Five projects are in Santa Barbara County:

Reconstruct and deep lift asphalt on various roads throughout the district in Santa Barbara County.	\$4.0 million	County of Santa Barbara
Reconstruct segments of Hollister Avenue between San Antonio Road and State Route 154 in Santa Barbara County	\$2.0 million	County of Santa Barbara
Operations and management improvements, including ITS technologies, on U.S. Highway 101	\$800,000	SBCAG
Widen Santa Maria River Bridge on Highway 101 in Santa Barbara and San Luis Obispo County	\$2.7 million	SLOCOG-SBCAG
Project to evaluate air quality and congestion mitigation benefits of a hybrid utility vehicle in Santa Barbara County	\$80,000	Private Entity--unidentified

A summary of the SAFETEA-LU, prepared by the Metropolitan Transportation Commission (MTC) in the San Francisco Bay Area is attached.

#### 2005/06 STIP Allocation Progress

In July, CTC established three STIP project priority categories to guide their FY 2005/06 funding allocations. First priority projects include STIP mitigation projects, STIP-TE projects, and projects that match federal bridge (HBRR) funds. Second priority projects include, among others, capacity increasing highway and local road projects, interregional projects, and operational improvement projects. Third priority projects include local road rehab projects, ridesharing programs, bike and pedestrian projects, and landscaping, among others. Funds are available for the top priority projects throughout the fiscal year as allocation requests are submitted. Up to \$500 million will be allocated to projects in the second priority category on a first come, first-served bases until September 2005. Through the August CTC meeting, approximately \$450 million had been allocated. An additional \$150 million in second priority allocation requests are scheduled to be on the CTC's September agenda. It's unclear how the CTC will select which projects should receive the \$50 million in funding.

Through August 2005, here's the status of the SBCAG region's projects in the first and second priority categories:

CTC Priority	AGENCY	PROJECT	TOTAL	R/W	Const	E&P	PS&E	Con Sup	Allocated?
1	Goleta	Rt. 101 Ellwood Overhead	\$111k	\$111k					No allocation request submitted
1	Carpinteria	Bailard Ave Park and Ride	\$104k	\$104k					No allocation request submitted
2	Caltrans	Santa Maria Six-Lane	\$23.9 mil.		\$22.1 mil.			\$1.8 mil.	Yes
2	SB County	Hummel Drive Ext., Orcutt	\$141k	\$141k					Yes
2	Santa Maria	Blosser Rd., Donovan-Cox	\$1.016 mil.		\$ 1.016 mil.				Yes
2	Santa Maria	Blosser Rd., Cox-Taylor	\$625k	\$625					Yes
2	SB County	Ortega Hill Rd., Ortega Ridge-Greenwell	\$407k			\$129k	\$278k		No allocation request submitted

### Inactive Obligations: Notice of Proposed Rule Making

The Federal Highway Administration is proposing new rules related to “inactive obligations”. An inactive obligation is defined as a project that has no activity in the FHWA Financial Management Information System for 12 months or more. This means funds have been obligated on a project, no billings have been received, the project hasn’t been closed, or funds have not been modified for a year or more. All FHWA managed funds will be affected by the proposed rule, including HBRR and CMAQ projects. The rule will eventually be extended to address FHWA funds (CMAQ) flexed to FTA for transit purposes. The U.S. Department of Transportation Inspector General has been focusing on the huge balance of federal aid funds dedicated to inactive projects. California has been included in the IG’s audit reports for the last six years. California has consistently represented 40% of the national total in both level of funds and number of projects (over 3,000). Projects are at the State and local levels. Local government agencies currently have the most projects on the list. There is an on-going effort by FHWA to contact local government officials to discuss inactive projects. FHWA-California has visited six Caltrans districts as part of spreading the word and taking input on what is delaying local agencies from drawing down these funds.

The proposed new rule would do the following:

- Require the State to adjust the federal funds on a project if the estimated costs decrease by either 10% or \$100,000.
- Adjust funds on inactive projects if no activity is expected to take place in the next year.
- Require that modified project agreements be revised to reflect a project completion date, and require a project completion date on all new agreements.
- Require that the State close-out a project within 90 days after this date and de-obligate excess funds.
- Require that claims for the project be submitted in a timely manner, and not at the end of the project.
- A delay in the billing process will not be an adequate justification to modify the project completion date.
- A revision to the project completion date will only be permitted with adequate justification and support for the unexpended balance of federal funds on the project.
- Allow federal funds de-obligated to be re-obligated by the MPO to new or active projects.
- Allow FHWA to act unilaterally if the State fails to act.
- The proposed rule would have no effect on congressional earmark projects.

Comments on the proposed rule are due by to the U.S. Department of Transportation by September 9, 2005.

**SAFETEA LU Statewide Implementation  
Issues and Process Proposal  
August 16, 2005**

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**1) Identification of Issues**

- a) **New Programs:** Some of these programs can be handled within existing state law. However, in some cases, state law will need to be amended either to correct changed references in federal law, or to reflect agreements on internal state fund distribution. In other cases, fund distribution may be an administrative process and local consensus will be needed to agree to ensure that the process is equitable.
  - i) Highway Safety
    - (1) Highway Safety Improvement Program
    - (2) High Risk Rural Roads Safety
    - (3) Strategic Highway Safety Plan
    - (4) Safe Routes to School
  - ii) Goods Movement:
    - (1) Coordinated Border Infrastructure Program
    - (2) Truck Parking Facility Grants
    - (3) Freight Intermodal Pilot Grants
    - (4) Earmark implementation
  - iii) Transit
    - (1) New Freedoms Initiative
    - (2) Growing State's Program
    - (3) 5310 Operating Assistance Pilot Program
    - (4) Alternative Transportation in Public Parks
    - (5) Small Intensive Urban Areas Program
    - (6) Clean School Bus Program
    - (7) Jobs Access Reverse Commute
  - iv) Toll Programs
    - (1) Interstate Construction
    - (2) Value Pricing Program
    - (3) Express Lanes Demonstration Program
  - v) CMAQ
    - (1) Phase out for attainment areas
    - (2) Diesel retrofit priority
- b) **Planning and Programming Changes**
  - i) RTP Cycles
  - ii) Conformity Analysis
- c) **State Funding**
  - i) Equity Bonus Distribution
  - ii) Local streets and roads hold harmless
  - iii) Increase distribution to regions
  - iv) High Priority Project Borrowing Program
  - v) Funding Flexibility Provisions
  - vi) Inactive obligation authority and apportionment use
- d) **Project Delivery Issues**
  - i) NEPA Delegation Program

**SAFETEA LU Statewide Implementation  
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**2) Process**

- a) **Prioritization:** What can we agree upon quickly and possibly implement in the remainder of the legislative cycle versus what issues do we not have enough information on to act quickly or will require?
  - i) Only one identified so far – RTP Cycle) but recognize that there probably will not be enough time in the remainder of the cycle to enact anything.
- b) **Education:** Create a balanced and informed analysis representing the viewpoints of those most affected by the issue.
  - i) Drafted by small teams that include appropriate Caltrans Staff and Consensus Group partners
  - ii) Identify issues and propose alternative solutions for implementation that can be vetted by the larger group.
- c) **Consensus Building:** Convene larger group to discuss papers and agree to a single approach on each issue.
  - i) For some issues, there may be sufficient consensus to go directly from the paper to either a legislative or administrative process change.
- d) **Legislative Language Changes**
  - i) Coordinated through Caltrans Legislative Unit

**3) Timeline**

- a) **Education**
  - i) Complete by October 30, 2005
- b) **Consensus Building**
  - i) Mid-November meeting or meetings
- c) **Legislative Language Changes**
  - i) Begin drafting in mid-November
  - ii) Finalize for January 2006 when the State Legislature reconvenes
  - iii) Probably include urgency clauses so that changes can be made effective in the current State fiscal year.

August 2005



### SAFETEA-LU — Title I: Highways

Highway programs — including the core programs of Interstate Maintenance, National Highway System, Highway Bridge Replacement and Rehabilitation, Surface Transportation, Congestion Mitigation and Air Quality Improvement, and Equity Bonus (replacing the “Minimum Guarantee” in TEA 21) and a new Safety program — total approximately \$210.2 billion. Average annual highway funding totals \$42 billion in SAFETEA-LU as compared to \$29.5 billion in TEA 21, a 42.5 percent boost.

The bill authorizes the appropriation of approximately \$18.5 billion for Projects of National and Regional Significance, and approximately \$15 billion for High Priority projects over the life of the bill.

#### **Congestion Pricing/Tolling**

SAFETEA-LU (Sec. 1604) provides states with increased flexibility to use tolling to manage congestion and finance infrastructure improvements. The legislation maintains the Value Pricing Pilot Program and allocates \$11 million in fiscal 2005, plus \$12 million annually from fiscal year 2006 through 2009, for congestion pricing pilot projects designed to ease congestion, improve air quality, reduce energy use and/or enhance efficiency. One-quarter of the funds in the final four years will be reserved for congestion pricing projects that do not involve highway tolls.

The bill calls upon the U.S. Department of Transportation to carry out 15 demonstration projects involving variable-rate, automated tolling on bridges, tunnels and highways (including Interstates) to manage high levels of congestion, reduce emissions and/or finance the expansion of a highway to ease congestion. Federal money will cover up to 80 percent of total costs on these projects.

SAFETEA-LU also establishes an Interstate System Construction Toll Pilot Program, which would allow a state or a compact of states to collect tolls for the purpose of building Interstate highways. This program will cover three toll facilities on the Interstate System. The pilot program prohibits non-compete agreements under which the state would be prevented from improving or expanding public roads adjacent to the toll facility; and during the course of the pilot program, regular Interstate highway maintenance funds cannot be used on the toll facility.

#### **Congestion Relief**

**SAFETEA-LU establishes several new programs to support congestion relief projects.** These include the Projects of National and Regional Significance Program (Sec. 1301) and the National Corridor Infrastructure Improvement Program (Sec. 1302).

#### **Real-Time System Management**

SAFETEA-LU also establishes a Real-Time System Management Information Program (Section 1201) to promote the monitoring of traffic conditions on major highways and the sharing of this information to help ease congestion; improve response to severe weather, accidents and other incidents; and enhance security on the transportation system. This program includes no new funds, but allows states to obligate federal funds apportioned to them for investment in real-time traffic information systems. The U.S. Department of Transportation must within two years establish data exchange formats to ensure that information can be readily exchanged across jurisdictional boundaries.

#### **High-Occupancy Vehicles, Hybrids and Tolling**

SAFETEA-LU (Sec. 1121) explicitly allows states to implement variable-priced, high-occupancy/toll (HOT) lane programs, including HOT lane programs on Interstate highways. The agency that controls the HOT lane must establish an enrollment program, an automated toll-collection system, policies and procedures for variable-rate tolling, and policies and procedures for violation enforcement. If the HOT lanes generate more revenue than is needed to maintain and operate them, priority for the excess toll funds will be given to projects that promote alternatives to solo driving and/or improve highway safety.

The legislation authorizes states to allow vehicles certified as inherently low-emission to use high-occupancy (HOV) lanes if the state establishes procedures for enforcing restrictions on the use of HOV lanes by these vehicles. SAFETEA-LU also allows the free or discounted use of HOT lanes by certified low-emission and

energy-efficient vehicles. This paves the way for implementation of the California law (AB 2628, Chapter 725, 2004 Statutes) that allows single-occupant hybrid vehicles to travel on certain HOV lanes.

SAFETEA-LU allows states to set a miles-per-gallon standard that hybrids must achieve to use HOV lanes (45 m.p.g. under California Assembly Bill 2628). But the federal law is silent on the emissions standards a hybrid must meet. AB 2628 spells out very strict emissions rules. Only the Toyota Prius, Honda Civic hybrid and Honda Insight currently meet both the mileage and emission requirements of AB 2628. SAFETEA-LU requires the federal EPA Administrator within six months to issue a final rule establishing both emissions and energy-efficiency standards for single-occupant vehicles' entry into HOV lanes. The state Department of Motor Vehicles is issuing the decals necessary for single-occupant hybrids to travel lawfully in HOV lanes while the California Air Resources Board, Caltrans and federal agencies such as the U.S. Department of Transportation and the Environmental Protection Agency review the program.

### **Equity Bonus**

Federal highway funds for individual programs are apportioned via complex formulas. After calculations are made, additional funds are distributed to ensure that all states receive a minimum rate of return on their residents' contribution in the form of federal excise gasoline taxes. Each state's share of apportionments from the Interstate Maintenance (IM), National Highway System (NHS), Bridge, Surface Transportation Program (STP), Highway Safety Improvement (HSIP), Congestion Mitigation and Air Quality Improvement (CMAQ), Metropolitan Planning, numerous other programs, and the Equity Bonus itself, along with High Priority Projects, will be at least a specified percentage of that state's share of the Highway Account of the Federal Highway Trust Fund. The specified percentage, referred to as a relative rate of return, is 90.5 percent for 2005 and 2006, 91.5 percent for 2007, and 92 percent for 2008 and 2009.

### **CMAQ Project Priority, Eligibility**

Congress added (Sec. 1808) truck stop electrification systems, emergency communications equipment, system management projects that reduce congestion, and diesel engine retrofits to the projects that are eligible to receive Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds. SAFETEA-LU directs states and metropolitan planning organizations (MPOs) such as MTC to prioritize funding for congestion-relief and diesel retrofit projects, while also including a clause stating that this language is not intended to disturb existing authorities and roles of agencies in selecting projects.

## **New Programs**

### **Highway Safety Improvement Program**

SAFETEA-LU (Sec. 1401) creates a new Highway Safety Improvement Program, which is authorized to receive approximately \$5.1 billion. Safety projects were previously funded from a set-aside of 10 percent funding out of the Surface Transportation Program. The new safety program, which includes a High-Risk Rural Roads Program, is intended to fund projects in state plans that address a range of safety concerns. Eligible projects include intersection safety improvements, pavement and shoulder widenings, installation of rumble strips or other warning devices, installation of skid-resistant surfaces, improved safety for bicyclists, pedestrians and persons with disabilities, elimination of hazards at railway-highway crossings, traffic calming features, improved signage or pavement markings, and improvement in the collection and analysis of crash data.

### **Safe Routes to School**

SAFETEA-LU (Sec. 1404) authorizes a new Safe Routes to School Program of some \$612 million through fiscal 2009. The goal of the program is to enable and encourage primary and middle-school children to walk and bicycle to school by making it a safer and more appealing alternative and also to facilitate planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools. Eligible projects include those related to infrastructure (planning, design, and construction) and non-infrastructure (such as public awareness campaigns). Funds will be apportioned to states based on total student enrollment in primary and middle schools factored against total student enrollment in primary and middle schools in all states, with no state receiving under \$1 million.

### **Nonmotorized Transportation Pilot Program**

Congress also created a new Nonmotorized Transportation Pilot Program (Sec. 1807) to determine the extent to which bicycling and walking can carry a significant part of the transportation load in four selected communities — including the Bay Area's Marin County. A total of \$25 million is authorized for each of the

four communities to construct a network of nonmotorized transportation infrastructure, including sidewalks, bicycle lanes, and pedestrian and bicycle trails to connect directly with transit, schools, homes, businesses, recreation areas and other community centers.

## **Miscellaneous Provisions**

### **Truck Parking Facilities**

SAFETEA-LU (Sec. 1305) provides \$6.25 million each year from fiscal 2006 through 2009 for a pilot program to address the shortage of long-term parking for commercial trucks along the National Highway System. Funds can be allocated to MPOs as well as states or local governments. Eligible projects include:

- construction of safety rest areas and highway turnouts
- building truck parking lots next to commercial truck stops
- opening weigh stations, inspection stations, park-and-rides, etc. for truck parking
- using ITS methods (e.g. 511 or changeable message signs) to promote available truck parking, and
- improving the design of freeway interchanges for better access to truck parking facilities.

### **Roadway Safety Improvements for Older Drivers and Pedestrians**

The U.S. Transportation Secretary is directed (Sec. 1405) to implement a program to improve traffic signs and pavement markings consistent with published recommendations by the Federal Highway Administration to accommodate older drivers and pedestrians.

### **Metropolitan Planning Funds**

SAFETEA-LU (Sec. 1107) boosts funding for metropolitan planning organizations such as MTC, from a set-aside of 1 percent of specified highway funds to 1.25 percent.

### **Highways for LIFE Pilot Program**

To foster use of new technologies and more efficient ways of building highways, SAFETEA-LU creates a Highways for LIFE pilot to promote (Sec. 1502) state-of-the-art technologies, elevated performance standards and new business practices that result in improved safety, faster construction and fewer associated delays for highway users. A total of \$75 million is authorized through 2009 for incentive grants, to fund up to 20 percent but not more than \$5 million of the total cost of a qualifying project. Up to 15 projects may receive incentive funds annually.

### **National Surface Transportation Policy and Revenue Commission**

SAFETEA-LU creates (Sec. 1909) a 12-member panel to conduct a comprehensive examination of the current condition and future needs of America's surface transportation system and develop a plan, with alternative approaches, to ensure that the surface transportation system will continue to meet the nation's needs. A similar infrastructure financing commission is created under Sec. 1142 of the Revenue Title (XI) of SAFETEA-LU to review current and anticipated transportation revenues in the Highway Trust Fund, how those revenues flow among the various accounts, and whether total revenues are likely to increase, decline or hold constant absent statutory changes.

## **SAFETEA-LU — Title 3: Public Transportation**

SAFETEA-LU provides \$45.3 billion in federal transit funding over five years (through Fiscal Year 2009). This translates to an average annual increase of 33 percent over transit funding in TEA 21. The bill provides the nation's transit systems with \$8.6 billion in Fiscal Year 2006, \$9 billion in Fiscal Year 2007, \$9.7 billion in Fiscal Year 2008, and \$10.3 billion in Fiscal Year 2009.

### **New "Small Starts" Program**

The Federal Transit Administration will now offer a Small Starts Program (Sec. 3011) of capital grants of up to \$75 million for fixed-guideway systems. Small Starts projects may not total more than \$250 million in capital costs. The fixed-guideway definition now includes bus lines if one of the following conditions are met: (1) a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations, or (2) the project represents a substantial investment in a "defined corridor" as evidenced by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology and other features that support the long-term corridor investment. A total of \$600 million is set

aside for the small starts program out of the overall New Starts Program (the federal transit program for major capital expansion projects).

### **New Freedom Program**

Congress established a New Freedom Program (sec. 3019) of formula funding for new transportation services and public transit alternatives beyond those required under the federal Americans with Disabilities Act. The program would be allocated using a formula based on the disabled population in a state, with 60 percent of the funds allocated to designated recipients in urbanized areas with populations over 200,000, 20 percent to states for use in urbanized areas of less than 200,000 and 20 percent to states for use in rural areas. The program contains language requiring coordination of transportation services with other federal human service programs.

### **Criteria for Large Capital Grants**

Recipients of major capital grants (over \$75 million) — the typical “New Start” transit project requiring a full-funding grant agreement (FFGA) to proceed to construction — may receive funding only if they are able to “maintain and operate the entire public transportation system without requiring a reduction in existing public transportation services or level of service to operate the proposed project.” The minimum local match requirement remains 20 percent, although the FFGA evaluation must favorably consider “the extent to which the project has a local financial commitment that exceeds the required non-federal share of the cost of the project.”

### **Bus/Bus Facilities Earmark for Ferries**

SAFETEA-LU earmarks \$10 million from the federal Bus and Bus Facilities Program to the San Francisco Water Transit Authority for ferry boats or ferry terminal facilities. (View the [Bay Area SAFETEA-LU Earmarks Table](#) for a complete listing of bus and transit earmarks.)

### **Cost-effectiveness Exemptions**

The BART-to-San Jose/Santa Clara extension and San Francisco Muni 3rd Street light-rail project need not meet the FTA’s “medium” cost effectiveness rating in order to qualify for federal funding.

### **Job Access and Reverse Commute Program**

SAFETEA-LU makes the Job Access and Reverse Commute Program (Sec. 3018), also known as JARC, a formula program rather than discretionary. Funds are allocated in proportion to the number of eligible low-income individuals and welfare recipients in an urban area, with 60 percent of the funds going to designated recipients in urban areas with more than 200,000 population, 20 percent to states for urban areas with less than 200,000 population, and 20 percent to states for rural areas. The bill requires coordination between private, nonprofit, and public transportation providers and other federal programs.

### **National Research and Technology Programs**

The U.S. Department of Transportation is directed to undertake a number of transit research initiatives in SAFETEA-LU (Sec. 3046), including:

- A public transportation national security study done in cooperation with the National Academy of Sciences. The study is intended to measure the value of public transportation in the nation’s urban areas to national security, and gauge the ability of transit to respond to emergency situations.
- Establishment and operation of a Center for Transit-Oriented Development to, among other things, generate standards and definitions for transit-oriented development. The center is also tasked with providing research assistance and technical support to metropolitan planning agencies and public transit operators.
- Transportation Equity Research to study impacts that transportation planning, investments and operations have on transit-dependent minority and low-income populations.
- Human Services Transportation Coordination to improve and harmonize the federal human services transportation resources with those of the Department of Transportation.
- A Public Transportation Participation Pilot Program to support planning and public participation activities related to public transportation projects.

## **SAFETEA-LU — Title 6: Planning and Project Delivery**

### **Long-range Plans, Transportation Improvement Programs**

Under SAFETEA-LU (Sec. 6001) Metropolitan Planning Organizations (MPOs) must update long-range plans and transportation improvement programs at least every four years (rather than the current three-year cycle) if the MPO is or was in nonattainment for federal air quality standards (MPOs in attainment areas must prepare and update their plans and programs every five years). Likewise, certification of MPOs as the designated regional planning agency and recipient of federal funds by the U.S. Department of Transportation must take place at least every four years rather than the current three years. Similar provisions are included in Sec. 3005 of SAFETEA-LU's Transit Title.

### **Public Participation**

MPOs must develop a public participation plan in consultation with interested parties to provide an opportunity to comment on the transportation plan (Sec. 6001). To do so, the MPO must hold easily accessible meetings at convenient times/locations, use visualization techniques, and make information available electronically as appropriate and to the maximum extent practicable. Similar provisions are included in Sec. 3005 of SAFETEA-LU's Transit Title.

### **State Assumption of Environmental Review**

Under SAFETEA-LU (Sec. 6004), states may, after entering into an agreement with the U.S. Department of Transportation, assume responsibility for determining whether certain designated activities are categorically excluded from requirements for environmental assessments or environmental impact statements. Such state-issued determinations must be done in accordance with criteria established by the U.S. Transportation Secretary and must include provisions for public access to information consistent with the National Environmental Policy Act (NEPA).

### **Surface Transportation Project Delivery Pilot Program**

SAFETEA-LU (Sec. 6005) directs the U.S. Department of Transportation to implement a pilot program on surface transportation project delivery in which five states — including California — may assume certain responsibilities, such as environmental review and consultation, that normally rest with the U.S. Department of Transportation with respect to one or more highway projects within the state under the National Environmental Policy Act of 1969 (NEPA).

### **Environmental Review of Intelligent Transportation Systems**

The legislation also requires the U.S. Department of Transportation to establish, to the extent feasible, categorical exclusions from NEPA for activities that support deployment of intelligent transportation infrastructure and systems (Sec. 6010).

### **Transportation Conformity**

SAFETEA-LU (Sec. 6011) directs regions to “redetermine,” within two years after the U.S. Environmental Protection Agency takes certain actions, whether transportation investments in any local/regional long-range transportation plan and transportation improvement program, or TIP, are consistent with federal air quality goals. Motor vehicle emissions from travel on existing and planned highway and transit facilities in the region must be equal to or lower than the total allowable emissions (“motor vehicle emissions budgets” or MVEBs) established in the federal air quality plan for a given area (also known as the “State Implementation Plan” or SIP). Conformity determination on updated plans and programs must be done at least every four years (versus the current three-year cycle), or more frequently under certain circumstances.

Transportation Control Measures (TCMs) — strategies to reduce driving or smooth traffic in order to curb vehicle emissions and resulting air pollution — in a SIP may be replaced with alternate TCMs if certain conditions are met, including that the substitute measures achieve equivalent or greater emission reductions than the measures being replaced, and are implemented on a consistent schedule with the original measures, or as soon as practicable if the original date has passed.

(b) You must propose a reasonable ending date for your PASS. If necessary, we can help you establish an ending date, which may be different than the ending date you propose. Once the ending date is set and you begin your PASS, we may adjust or extend the ending date of your PASS based on your progress towards your goal and earnings level reached.

(c) If your employment goal is self-employment, you must include a business plan that defines the business, provides a marketing strategy, details financial data, outlines the operational procedures, and describes the management plan.

(d) Your progress will be reviewed at least annually to determine if you are following the provisions of your plan.

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 630

[FHWA Docket No. FHWA-2005-20764]

RIN 2125-AF05

#### Project Authorization and Agreements

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to revise its regulations relating to project authorization and agreements and the effect on obligations of Federal-aid highway funds under these requirements. The proposed changes would: (1) Require the deobligation of Federal funds that remain committed to inactive projects as well as the deobligation of unneeded or excess project funding; (2) reduce the occurrences where Federal funds are committed to inactive projects or where an obligation is in excess of the amount needed to complete the project; (3) establish a project completion date that would be annotated in all new project agreements and modifications to existing project agreements; and (4) require States to assure that third party contracts and agreements are processed and billed promptly when the work is completed. These proposed changes would also assist the States and the FHWA in monitoring Federal-aid highway projects and provide better assurance that the Federal funds obligated reflect the current estimated costs of the project. Federal funds

deobligated may then be obligated for new or other active projects needing additional funding to the extent permitted by law. The proposed changes would have no effect on obligated funds that are needed for projects that are congressionally mandated.

**DATES:** Comments must be received on or before September 9, 2005.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-2251. Alternatively, comments may be submitted via the eRulemaking Portal at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form on all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Gray, Federal-aid Financial Management Division, (202) 366-0978, or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366-1395, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

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#### Background

The State and FHWA must enter into a formal project agreement for each Federal-aid highway project that the State requests an authorization of work to be performed (23 CFR 630.106(a)(2)). The project agreement includes the work to be undertaken, project costs, and other conditions related to the project, and its execution constitutes a contractual obligation of the Federal government under Section 106 of Title 23 United States Code (*see also* 31 U.S.C. 1501(a)(5)(B); 23 CFR 630.106(c)).

The amount of Federal funds obligated on a Federal-aid highway project is based on a cost estimate. In some cases, as work progresses, the amount of Federal funds obligated is not revised to reflect a change in the cost estimate or to reflect an adjustment in the cost of the project. In other cases, an amount remains obligated on a project although no longer needed, sometimes for a substantial period of time after a project has been completed, and in some cases, where a project has been cancelled.

The FHWA and the States have monitored inactive projects for a number of years to identify projects where the amounts obligated could be reduced. During this time, the FHWA has issued additional guidance, and identified best practices to help validate the amounts obligated.<sup>1</sup> Notwithstanding these practices and actions, it is apparent that inactive projects with excess obligations have not been addressed in a timely fashion.

In March 2004, the Inspector General of the Department of Transportation issued a report on inactive obligations.<sup>2</sup> The results of the Inspector General audit revealed that some amounts obligated were unneeded, primarily

<sup>1</sup> Examples of FHWA policies and guidance are available in the docket. (*See*: Federal Highway Administration National Quality Financial Management Initiative, Project Funds Management, March 1999; Financial Management Improvement Program; Project Funds Management Process Improvement Review, December 2002).

<sup>2</sup> The DOT Inspector General Report, Report Number FI-2004-039, entitled "Inactive Obligations, Federal Highway Administration," dated March 31, 2004, is available at the following URL: [http://www.oig.dot.gov/show\\_pdf.php?id=1282](http://www.oig.dot.gov/show_pdf.php?id=1282).

because they were associated with cancelled, reduced scope, or completed projects. The report stated, "the success of efforts by FHWA to ensure obligated amounts continue to represent valid liabilities is a critical measure of the effectiveness of its financial management practices. When unneeded obligations for grants are identified, the funds should be deobligated and reapplied to other projects."

The purpose of this NPRM is to revise the FHWA's regulations on project agreements, 23 CFR 630, establish a systematic process that will assist the States and the FHWA to monitor projects, provide greater assurance that the amount of Federal funds obligated on a project reflects the current cost estimate, and that funds no longer needed are timely deobligated and reapplied to other eligible projects.

The FHWA also proposes to reduce amounts obligated on inactive projects when it determines that the project is not advancing or the amount of Federal funds obligated exceeds the amount needed to complete the project. A project is considered inactive when no expenditures have been charged against Federal funds during the previous twelve months.

The FHWA proposes to require a project completion date in all new project agreements and modifications of existing projects agreements. The project completion date may be revised by the State with adequate written justification for the extension. When the project completion date occurs, the State will be required to close the project and release any unexpended obligations. If the State fails to close the project within 90 days, the FHWA shall take appropriate action to assure that the amount obligated is properly adjusted. The 90-day period is consistent with the closeout requirements in section 18.50(b) of 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments which requires a grantee to submit all financial reports within 90 days after the expiration or termination of a grant.

When a State enters into a contract or agreement with a third party to conduct certain types of work on a project, the third party must submit a billing or claim to the State as the work progresses. The State cannot receive reimbursement of Federal funds until the third party submits a billing or claim to the State for payment. Therefore, the FHWA proposes to require States to assure that third party billings are submitted and processed promptly when the work is completed.

### Proposed Changes

The FHWA proposes to revise its regulation as it relates to the project agreements and the effect on obligation of Federal funds.

In § 630.106, we propose to add paragraph (a)(3) that would require a State to (1) adjust the Federal funds obligated on any project, active or inactive, when the estimated costs decrease by more than 10 percent or \$100,000, and (2) adjust the Federal funds obligated on an inactive project when no activity is expected in the next year or the amount obligated is in excess of the funds needed to complete the project based on the estimated cost of the project as documented. An inactive project means that no expenditures were charged against Federal funds during the previous twelve months. We also propose to add paragraph (a)(4) that would allow the FHWA to revise the obligations or take other actions if a State fails to take prompt actions to reduce Federal obligations.

In § 630.108, we propose to add paragraph (b)(9) that would require a project completion date be included in the project agreement for project costs billed to FHWA. When the project completion date occurs, the State will be required to close the project and release any unexpended obligations within 90 days. A project completion date will ensure that the States engage in prompt billing and timely processing of claims of work done by a third party. We also propose to add paragraph (b)(10) that would require FHWA to reduce the Federal obligation to the amount expended unless justification is provided by the State for maintaining a certain amount of unexpended obligation necessary to complete the project.

In § 630.108, we propose to add paragraph (e) that would outline the States responsibility relating to third party contracts and agreements when inactive projects involve work done by a third party. The State is responsible for ensuring that the third party processes and submits a claim for reimbursement to the State for the work it has done in a timely manner. A delay in receiving or processing of billings or claims is not a valid reason for the State to request an extension of the project completion date.

In § 630.110, we propose to add paragraph (d) that would advise States to provide support that the remaining unexpended obligations are still needed if a revision to the project completion date is requested.

### Rulemaking Analyses and Notices

All comments received before close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 nor is it significant within the meaning of the Department of Transportation regulatory policies and procedures. We anticipate that the economic impact of this rulemaking would be minimal. In fact, funds released as a result of a deobligation under the proposed rule would be credited to the same program category and would be immediately available for obligation and expenditure on eligible projects in accordance with 23 U.S.C. 118(d).

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses obligation of Federal funds to States for Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, tribal governments, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532 *et seq.*).

Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector. Additionally, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

### Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this proposed action would not preempt any State law or regulation or affect the States’ ability to discharge traditional State governmental functions.

### Executive Order 12372 (Intergovernmental Review)

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.

### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), the FHWA must obtain approval from the Office of Management and Budget (OMB) for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain a collection of information requirement for purposes of the PRA.

### National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment.

### Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that might disproportionately affect children.

### Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

### Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that

order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 23 CFR Part 630

Reimbursement, Grant Programs-transportation, Highways and roads.

Issued on: July 1, 2005.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend part 630 of title 23, Code of Federal Regulations, as follows:

## PART 630—PRECONSTRUCTION PROCEDURES

### Subpart A—Project Authorization and Agreements

1. The authority citation for part 630 continues to read as follows:

**Authority:** 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 31 U.S.C. 1501(a)(5)(B); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Amend § 630.106 by adding paragraphs (a)(3) and (4) to read as follows:

#### § 630.106 Authorization to proceed.

(a) \* \* \*

(3) The State shall monitor all projects and shall promptly revise the Federal funds obligated for a project when the cost estimate has decreased by more than ten percent or \$100,000. For inactive projects (for purposes of this subpart an “inactive project” means a project in which no expenditures have been charged against Federal funds during the past twelve consecutive months), the State shall promptly revise the Federal funds obligated for the project to reflect the amount of Federal funds expended on the project or the Federal share of the current documented cost estimate if:

(i) The project is unlikely to be advanced within the next twelve months; or

(ii) The amount obligated for the project exceeds the current estimated cost of the project.

(4) If the State fails to take prompt action to reduce Federal obligations as required in paragraph (a)(3) of this section, then FHWA shall revise the obligations or take such other action as authorized by 23 CFR 1.36.

\* \* \* \* \*

3. Amend § 630.108 by adding paragraphs (b)(9) and (10) and (e) to read as follows:

**§ 630.108 Preparation of agreement.**

(b) \* \* \*

(9) The agreement shall specify a project completion date. The project completion date will be the date when work on the project is expected to be completed. Within 90 days after the project completion date, the State shall submit a request to FHWA to close the project and release any unexpended obligations on the project.

(10) If the State does not close the project within 90 days after the project completion date, then the FHWA shall reduce the Federal obligation to the amount expended unless justification is provided by the State for maintaining a certain amount of unexpended obligation necessary to complete the project.

\* \* \* \* \*

(e) The State is responsible for assuring that third party contracts and agreements provide for the timely billing and processing of final claims following the completion of work by the third party. A delay in receiving or processing third party claims will not be justification for extending the project completion date as permitted in § 630.110(d) of this subpart unless the delay is the result of an unusual circumstance beyond the control of the State and the third party.

4. Amend § 630.110 by adding paragraph (d) to read as follows:

**§ 630.110 Modification of the original agreement.**

\* \* \* \* \*

(d) The modification may include a revised project completion date provided the State submits a revised project schedule and support that the remaining unexpended obligation amount is still needed.

[FR Doc. 05-13514 Filed 7-8-05; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-102144-04]

RIN 1545-BD10

**Dual Consolidated Loss Regulations; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29868). The proposed regulations provide guidance regarding dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

**FOR FURTHER INFORMATION CONTACT:** Kathryn T. Holman, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice of proposed rulemaking (REG-102144-04) that is the subject of these corrections are under sections 1503, 953 and 367 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking and notice of public hearing (REG-102144-04) contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG-102144-04), that was the subject of FR Doc. 05-10160, is corrected as follows:

1. On page 29869, column 1, in the preamble under the paragraph heading "Background", paragraph 3 from the top of the column, line 5, the language "as if such unit were a wholly owned" is corrected to read "as if such unit were a wholly owned"

**§ 1.1503(d)-4 [Corrected]**

2. On page 29897, column 2, "§ 1503(d)-4 (i)(1), line 6, the language, "through (ix) of this section, including" is corrected to read "through (viii) of this section, including"

**§ 1.1503(d)-5 [Corrected]**

3. On page 29903, column 2, § 1.1503(d)-5(c), paragraph (i), of *Example 34.*, the language, "its worldwide income F<sub>x</sub>, a an unrelated" is corrected to read "its worldwide income, F<sub>x</sub>, an unrelated"

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 05-13381 Filed 7-8-05; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-100420-03]

RIN 1545-BB90

**Safe Harbor for Valuation Under Section 475; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29663). The proposed regulations provide guidance regarding elective safe harbor for dealers and traders in securities and commodities.

**FOR FURTHER INFORMATION CONTACT:** Marsha A. Sabin or John W. Rogers III (202) 622-3950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice of proposed rulemaking (REG-100420-03) that is the subject of these corrections is under section 475 of the Internal Revenue Code.

**Need for Correction**

The notice of proposed rulemaking (REG-100420-03) contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the notice proposed rulemaking (REG-100420-03), that was the subject of FR Doc. 05-10167, is corrected as follows:

1. On page 29666, column 2, under paragraph heading Record Retention and Production; Use of Different Values, first paragraph, lines 15 through 18 from