



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

Washington, DC 20515

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Chairman

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Ranking Member

February 11, 2011

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**MEMORANDUM**

**TO:** Members of the Subcommittee on Highways and Transit  
**FROM:** Subcommittee on Highways and Transit Staff  
**SUBJECT:** Hearing on "Accelerating the Project Delivery Process: Eliminating Bureaucratic Red Tape and Making Every Dollar Count"

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**PURPOSE**

The Subcommittee on Highways and Transit will meet on Tuesday, February 15, 2011, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building to receive testimony related to improving the existing laws and regulations governing project delivery in order to accelerate the delivery process for surface transportation projects and save the American taxpayer money. This hearing is part of the Subcommittee's effort to reauthorize Federal surface transportation programs under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These programs expired on September 30, 2009, but have been extended through March 4, 2011. The Subcommittee will hear from the Administrator of the Federal Highway Administration (FHWA), the Secretary of the Kansas Department of Transportation (KDOT), the Chief Executive Officer of the Orange County Transportation Authority, the Chief Executive Officer of the Transportation Corridor Agencies, and the Policy Director and Founder of the Institute for Transportation and Development Policy.

**BACKGROUND**

SAFETEA-LU, enacted in August of 2005, reauthorized Federal surface transportation programs through September 30, 2009. On September 30, 2009, SAFETEA-LU expired; however, a series of extensions were enacted in the 111<sup>th</sup> Congress to continue funding authority under SAFETEA-LU program structures.

As the reauthorization of the Federal surface transportation programs moves forward the Committee will be looking at potential reforms to the project delivery process. The Committee will determine what improvements can be made to existing rules and regulations governing

project delivery in order to expedite the delivery process for all projects and reduce the cost of transportation projects.

Limited financial resources for transportation infrastructure can be more effectively utilized by speeding up the process for project approval. According to the "Highway Planning and Project Development Process" timeline put together by the Federal Highway Administration, the Federal project delivery process can take up to 15 years from planning through construction.<sup>1</sup> An analysis conducted by the National Surface Transportation Policy and Revenue Committee found that a \$500 million project that took 14 years to complete would see its cost double due to the impact of delays and inflation.<sup>2</sup>

### **The Role of NEPA in the Project Delivery Process**

As State Departments of Transportation work to deliver Federal-aid transportation projects, they must meet complex legal, technical, and analytical requirements at the Federal and state level during every stage of the project development process. The environmental review and permitting process is a major component of surface transportation project delivery. At the Federal level, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and its accompanying regulations are a means to consider the effects of a wide range of human and natural environmental issues.

NEPA establishes a national environmental policy and provides a framework for environmental planning and decision-making by Federal agencies. The NEPA process consists of a set of fundamental objectives that include interagency coordination and cooperation and public participation in planning and project development decision-making.

NEPA is only applicable to Federal actions, including projects and programs entirely or partially financed by Federal agencies and that require a Federal permit or other regulatory decision. NEPA does not apply when actions by a state or local government or private entity do not require Federal review.

The Council on Environmental Quality (CEQ) is charged with the implementation of NEPA. In 1978, CEQ issued regulations providing the procedures for implementing NEPA.<sup>3</sup> FHWA and the Federal Transit Administration (FTA) issued regulations to address these NEPA responsibilities established by CEQ.<sup>4</sup> The FHWA guidance complementing the regulations was issued in the form of a Technical Advisory and provides detailed information on the contents and processing of environmental documents.<sup>5</sup>

For transportation projects, NEPA requires FHWA and other transportation agencies to consider potential impacts to the social and natural environment. If a federally funded project

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<sup>1</sup> Federal Highway Administration, November 2008.

<sup>2</sup> "Transportation for Tomorrow," Report of the National Surface Transportation Policy and Revenue Commission, p. 12, December 2007.

<sup>3</sup> 40 CFR §§ 1500-1508.

<sup>4</sup> 23 CFR § 771.

<sup>5</sup> T.6640.8A

significantly impacts the quality of the human environment, the agency must prepare an Environmental Impact Statement (EIS). If the significance of the impact of a proposed project is unclear, the agency must prepare an Environmental Assessment (EA) in order to make that determination. The agency processes as Categorical Exclusions (CE) projects that do not individually or cumulatively have a significant impact, and which USDOT has determined from past experience have no significant impact. In addition to evaluating the potential environmental and social impacts of a proposed transportation project, FHWA must take into account the transportation needs of the public in reaching a decision that is in the best overall public interest.<sup>6</sup> NEPA may be the only formal opportunity for the public, including impacted communities and businesses, to learn about and comment on proposed projects.

Another requirement generally carried out within the context of the NEPA process is compliance with Section 4(f) of the Department of Transportation Act of 1966. Section 4(f) requirements apply to the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites of national, state, or local significance. The law prohibits the use of a Section 4(f) resource for a transportation project unless there is no "prudent and feasible" alternative, and requires all possible planning to minimize harm to the resource. When a proposed project would use a Section 4(f) resource, a separate Section 4(f) evaluation must be prepared and included with the appropriate NEPA documentation.

Other requirements carried out within the context of NEPA includes compliance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), Section 106 of the National Historic Preservation Act (16 U.S.C. 460 et seq.) and Section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.). This may require diverse agencies, such as the U.S. Fish and Wildlife Service, the Advisory Council on Historic Preservation, the U.S. Army Corps of Engineers, or the Environmental Protection Agency, to participate in the NEPA process, further adding to the complexity of the project delivery process. It is important to note that if the requirements to comply with NEPA were eliminated, project sponsors would still be subject to other Federal environmental requirements.

### **Federal Streamlining Efforts**

The Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, included provisions aimed at improving the coordination of Federal agency involvement in major highway projects under the project delivery process. The provisions were intended to address concerns about delays in implementing projects, unnecessary duplication of effort, and added costs often associated with the conventional process for reviewing and approving surface transportation projects.

SAFETEA-LU built upon the work in TEA-21 and included numerous environmental provisions, including measures to further streamline reviews and encourage environmental stewardship for transportation projects. Section 6002 of SAFETEA-LU established a new environmental review process for highway, transit, and intermodal projects, repealing the environmental streamlining provisions established under TEA-21.

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<sup>6</sup> 23 USC § 109(h).

This new review process applies to projects that require USDOT approval and involve preparation of an EIS, but is optional for projects involving an EA. These requirements were 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. Under the Section 6002 process, USDOT as lead agency is responsible for defining the project's purpose and need, and after public comments and interagency participation, for developing a range of alternatives to be considered for the project. Section 6002 also established a 180-day statute of limitations for legal challenges to Federal agency approval and authorized expenditure of transportation dollars to fund positions at resource and permitting agencies in order to expedite transportation project reviews.

In addition to section 6002, a number of other SAFETEA-LU provisions were aimed at improving efficiency in highway program and project delivery, including the following:

- Section 6001 requires transportation agencies to consult with resource agencies in statewide and metropolitan planning. Agencies must discuss potential environmental mitigation activities during the transportation planning process.
- Section 6004 allows all states to assume Federal authority for CEs and recreational trails.
- Section 6005 established a pilot program for up to five states to assume all environmental responsibilities of the Secretary under the National Environmental Policy Act and other environmental laws, except for conformity determination under the Clean Air Act and transportation planning requirements.
- Section 6007 exempts most of the Interstate Highway System from consideration as a historic property under existing Section 4(f) legislation.
- Section 6009 simplifies the processing and approval of projects that have only de minimis impacts on lands protected by Section 4(f) of the Department of Transportation Act (i.e., public parks, recreation lands, wildlife and waterfowl refuges, and historic sites).

While NEPA has a role in the transportation decision making process, including providing the opportunity for community engagement in the project, there are real concerns with delays caused by this process. A variety of organizations involved in the project delivery process have proposals that build on efforts made in past surface transportation authorizations to improve the delivery process. These organizations point to issues as diverse as restrictions on early right-of-way procurement, inefficient utility coordination, demanding environmental review and permitting processes, limitations on innovative contracting, and duplicative administrative tasks as contributing to a lengthy project delivery process.

**WITNESS LIST**

The Honorable Victor M. Mendez  
Administrator  
Federal Highway Administration  
U.S. Department of Transportation

The Honorable Debra L. Miller  
Secretary  
Kansas Department of Transportation

Mr. Will Kempton  
Chief Executive Officer  
Orange County Transportation Authority (Orange County, California)  
*Accompanied by –*  
Mr. Peter Buffa  
Director  
Orange County Transportation Authority

Mr. Tom Margro  
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