

Changes in SAFETEA-LU

Promoting Efficient and Effective
Collaboration in the Environmental
Review Process

Changes in SAFETEA-LU -- Section 6002

- Defines an “environmental review process”
 - Must be used for all projects involving an EIS.
- Similar to existing practices, but . . .
 - Uses new terminology
 - May require changes in your State’s process
 - May create new opportunities

Section 6002 – Key Elements

■ Lead Agency

- USDOT must be lead agency for projects requiring its approval.

■ Participating Agencies

- USDOT must invite all agencies with interest in project to be “participating agencies”.
- If invited, Federal agencies must accept, unless they don’t want to participate at all.
- “Cooperating agencies” may also be named.

Section 6002 – Key Elements

- Issue Identification and Resolution
 - Lead agency must provide information about:
 - Environmental and socio-economic resources
 - General locations of alternatives
 - Participating agencies must identify any “issues of concern” – which are issues that could:
 - Substantially delay approval
 - Result in denial of permit
 - Issue resolution process can be invoked by project sponsor or Governor

Section 6002 – Key Elements

■ Purpose and Need

- Must provide “opportunity for involvement” by agencies and the public in defining P&N.
- Decision on P&N is made by lead agency.
 - Applies to its study only.
- Goals in P&N *may* include:
 - Achieving objective in a transportation plan
 - Supporting local land use and growth objectives
 - Serving national defense, security needs.

Section 6002 – Key Elements

■ Alternatives

■ Range of Alternatives:

- Similar to P&N – after providing “opportunity for involvement,” lead agency makes decision.

■ Methodologies and Level of Detail:

- Lead agency decides, in collaboration with participating agencies

■ Preferred Alternative

- May be developed to higher level of detail than other alternatives

Section 6002 – Key Elements

■ Coordination Plan

- Must be established by lead agency
- Must address agency, public coordination.
- *May* be incorporated into inter-agency MOU.
- *May* be program-wide or project-specific.
- *May* include a project schedule, in consultation with participating agencies.

Section 6002 – Key Elements

■ Deadlines

- Maximum 60 days for DEIS comments, 30 days for all other comment periods
- Longer time periods may be set by USDOT, “for good cause.”
- Savings clause: Nothing shall reduce any time period provided for public comment under existing federal law or regulation.

Section 6002 – Key Elements

- Assistance to Other Agencies
 - Activities are eligible for funding if they *“meaningfully contribute to expediting”* the process. Examples include:
 - pre-NEPA transportation planning activities
 - developing programmatic agreements
 - resource mapping
 - dedicated staffing; training
 - Agencies eligible to receive funds are:
 - Federal agencies (including USDOT)
 - State agencies and Tribes

Section 6002 – Key Elements

- Statute of Limitations
 - Applies to decisions by any Federal agency approving a highway or transit project.
 - Bars lawsuits unless filed within 180 days after Federal Register notice of decision
 - Each Federal agency decision is a separate action; may have separate 180-day periods.

Section 6002 – What It Means

- *So what does this all mean?*
 - How will Section 6002 affect the project development process?
 - How will it affect efforts to promote streamlining and stewardship?

Section 6002 – What It Means

- *Section 6002 Should:*
 - Give the lead agency greater responsibility for overall management of the process
 - Ensure all agencies are at the table
 - Ensure a role for agencies and the public in defining P&N and range of alternatives
 - Establish a “normal range” for comment periods – while allowing for longer periods

Section 6002 – What It Means

- *Section 6002 Should (cont'd)*
 - Support concurrent compliance with NEPA and other requirements, such as Sec. 404
 - By allowing more detail for Preferred Alternative
 - Allow funding for activities that expedite NEPA reviews but occur *outside* the NEPA process
 - Encourage faster resolution of any litigation after NEPA is complete.

Section 6002 – What It Means

- *What Section 6002 Doesn't Do:*
 - Doesn't reduce resource agencies' authority
 - Doesn't reduce public opportunities for comment
 - Doesn't require "rigid" comment deadlines
 - Doesn't alter other laws
 - Doesn't magically speed up the process

Conclusion

- *Section 6002:*
 - Promotes streamlining and stewardship.
 - Preserves existing authorities.
 - Leaves substantial flexibility for State DOTs.
 - Should be win-win for transportation project delivery and environmental protection.