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United States Government Accountability Office  
Washington, DC 20548

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April 25, 2008

The Honorable James M. Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

Subject: *Highways and Environment: Transportation Agencies Are Acting to Involve Others in Planning and Environmental Decisions*

Dear Senator Inhofe:

Meeting the nation's mobility needs requires constructing, improving, and repairing roads and bridges. However, these actions can have serious environmental impacts, such as harming water quality and wildlife and their habitats. The federal government's policy is to carry out federally funded highway projects in an environmentally responsible manner, as directed by the National Environmental Policy Act of 1969 (NEPA) and other environmental and natural resource protection laws. The environmental review of projects, as required by the act, involves identifying and assessing environmental impacts; evaluating alternatives; seeking input, and in some cases approvals, from federal and state agencies responsible for natural resources, environmental protection, and historic preservation (referred to hereafter as resource agencies); and obtaining approval from the Federal Highway Administration (FHWA). These reviews provide important environmental protections, yet it is generally agreed that it often takes too long to complete the most complex highway projects and the environmental review is the most time-consuming aspect.<sup>1</sup>

In 2005, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) made a number of changes to the planning and environmental review processes required of state and local transportation agencies. These changes were intended to facilitate more efficient reviews of transportation projects, allowing them to be completed more quickly without diminishing environmental protections. For example, since SAFETEA-LU was enacted, federal law has required that state departments of transportation and metropolitan

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<sup>1</sup>GAO, *Highway Infrastructure: Perceptions of Stakeholders on Approaches to Reduce Highway Project Completion Time*, [GAO-03-398](#) (Washington, D.C.: Apr. 9, 2003).

planning organizations<sup>2</sup> (MPO) consult with federal and state resource agencies, among other things, in developing their long-range transportation plans. The law also requires that agencies charged with gaining environmental approval (such as FHWA and the state departments of transportation that sponsor the projects—called lead agencies) of the most complex highway projects—those requiring environmental impact statements (EIS)—invite resource agencies that have an interest in the project to participate in defining the purpose and need for the project, the alternatives to be considered, and the methodology for conducting the environmental review. The law also imposes a limit of 180 days for the filing of a lawsuit challenging final federal agency decisions, including environmental decisions, on a highway project. These activities were not required before SAFETEA-LU was enacted.

You asked that we assess whether the changes Congress envisioned for transportation planning and the environmental review and approval of highway projects are being effectively carried out. Accordingly, we assessed (1) the progress that selected state departments of transportation, MPOs, and FHWA have made in incorporating environmental considerations in transportation planning and (2) the progress that selected states and FHWA have made in implementing changes in the environmental review of highway projects. We focused our work on six states, which we chose based on geographic diversity and their varying amounts of experience with implementing the new transportation planning and environmental review requirements. For the most part, our assessments were based on interviews of federal, state, and local agency officials responsible for the implementation of SAFETEA-LU changes within those states, since the agencies were still in the early stages of implementing these changes and little data were available.<sup>3</sup> In addition, as part of our work on changes in environmental reviews, we gathered information on the implementation of SAFETEA-LU's provisions which allow for state departments of transportation to assume responsibility for determining that certain highway projects that will not have a significant impact on the environment (e.g., maintenance of existing highways) as well as a pilot program which allows certain states the ability to assume all or part of FHWA's environmental review responsibilities.

We briefed your office on March 13, 2008, on the results of our work, which this report transmits. A copy of the briefing is enclosed. (See encl. I.) The slides have been updated to reflect current status.

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<sup>2</sup>MPOs are organizations that include representatives of local governments for the purpose of transportation planning and coordination of highway and transit projects. According to FHWA, there are almost 400 MPOs nationwide.

<sup>3</sup>We interviewed state department of transportation officials; one MPO in the most populous, urbanized area in each state; and officials of two to three federal and state resource agencies responsible for resources within each state. See the scope and methodology section at the end of this letter on why our work was limited to a small number of states and MPOs and for further information on how we selected states and agencies to cover.

## Results in Brief

All six state departments of transportation and the six MPOs that we contacted are taking or considering initial steps to incorporate environmental considerations into long-range transportation planning, and FHWA has carried out a number of implementation and educational activities to guide their efforts. Four of these agencies (two state departments of transportation and two MPOs) have issued long-range plans that comply with the post-SAFETEA-LU planning requirements, according to FHWA.<sup>4</sup> The others expect to do so by 2010, in line with their planning cycles. Several of the transportation planners and most of the resource agencies<sup>5</sup> told us that getting early input from resource agencies could be beneficial in identifying potentially affected resources at an early stage so that mitigation or avoidance measures, if needed, could be identified early. However, they cited several challenges in getting such input, most notably (1) the limited availability of funding and staff at resource agencies;<sup>6</sup> (2) limited incentives for resource agencies to contribute during planning, since early involvement is not part of these agencies' missions or experience; and (3) unfamiliarity on the part of resource agencies and planners with each other's roles and processes. State department of transportation and MPO planners' progress in developing consultation relationships with resource agencies has varied, and those that had strong prior relationships with resource agencies are advancing more quickly. For example, the North Carolina Department of Transportation told us it had started consulting with resource agencies as part of its planning process in 2004—before SAFETEA-LU was enacted. FHWA's implementation and educational activities include issuing regulations and guidance, disseminating leading practices, presenting Web-based seminars and other educational activities, and conducting oversight of state department of transportation and MPO transportation planning activities. State departments of transportation, MPOs, and other stakeholders that we contacted generally gave positive reviews of FHWA's efforts. According to FHWA officials, because of the long-term nature of the transportation planning process, it will likely take years before any benefits from these changes are apparent.

The six state departments of transportation that we contacted are implementing the revised environmental review requirements for all applicable highway projects, and FHWA has carried out a number of activities to promote and guide implementation.<sup>7</sup> Specifically, for the 24 new highway projects in these states that require EISs, these agencies are taking steps to enhance the involvement of resource agencies and develop plans to coordinate and schedule their involvement. State departments of

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<sup>4</sup>FHWA does not collect this information nationwide.

<sup>5</sup>Because we performed our work at a small number of states and MPOs (six of each), for the most part we did not attempt to quantify our findings.

<sup>6</sup>Federal funding is available for transportation-related positions at resource agencies and, if approved by FHWA, is taken out of the state's normal share of federal-aid highway funds. In 2005, the American Association of State Highway and Transportation Officials (AASHTO) surveyed all 50 states and reported that 68 percent of them fund positions at resource agencies. Two-thirds of these positions were at state resource agencies and the remainder were at federal resource agencies.

<sup>7</sup>According to FHWA, 109 projects nationwide fall under these requirements.

transportation, resource agencies, and other transportation stakeholders recognized potential benefits from the 2005 act, such as (1) improved project management, (2) an increased likelihood of weeding out flawed alternatives early, and (3) increased opportunities for resource agencies to be informed and involved. Challenges to implementing the post-SAFETEA-LU environmental review requirements in these six states include resource agencies' limited resources and limited knowledge about their changed role. Some state departments of transportation fund positions at resource agencies to help complete environmental reviews, using their federal-aid funds, and FHWA is studying best practices for doing so. FHWA's implementation and educational activities include issuing guidance; conducting outreach to federal, state, and local agencies to familiarize them with SAFETEA-LU's changes; disseminating leading practices through its Web site; and conducting oversight of the environmental review activities of state departments of transportation. As with the revised planning provisions, state officials we contacted generally viewed FHWA's activities positively. In addition, the agency is considering developing performance measures to monitor the implementation and impacts of changes made by SAFETEA-LU in environmental reviews. However, it will likely take at least 3 to 5 years before impacts can be determined.

We provided a draft of this report to the Department of Transportation and five federal resource agencies that have been involved in SAFETEA-LU implementation and that are responsible for resources important to the states we contacted. The department and two of the resource agencies agreed with the draft report, while the other three resource agencies did not express an overall opinion.

## **Background**

Federal funding for highway projects represents a large investment—about \$40 billion in fiscal year 2007. In addition, states will likely invest about \$8 billion in fiscal year 2007 for federally funded highway projects. Federally funded highway projects are typically completed in four phases:

- (1) *Planning.* State departments of transportation and MPOs assess the need for a project in relation to other potential highway project needs.
- (2) *Preliminary design and environmental review.* State departments of transportation identify potential solutions based on needs identified during planning, potential environmental and social effects, project cost, and construction location; identify the effect, if any, of the proposed project and of potential alternatives on the environment; and select the preferred alternative.
- (3) *Final design and right-of-way acquisition.* State departments of transportation finalize design plans, acquire property, and relocate residents and businesses.
- (4) *Construction.* State departments of transportation award construction contracts, oversee construction, and accept the completed project.

FHWA plays a key role in funding and overseeing the completion of highway projects. In addition to providing financial assistance for state departments of transportation to build and improve highways and roads, typically equal to about 80 percent of the cost, FHWA establishes standards for transportation planning, project design, environmental review, and construction. FHWA also provides state agencies with planning and design support for federally funded highway projects. State departments of transportation, in coordination with MPOs, are responsible for planning, designing, and completing these projects.

Federal law requires that state departments of transportation, along with MPOs, develop long-range plans, covering at least 20 years, for their vision of transportation needs for their states and metropolitan areas, respectively. Additionally, state departments of transportation and MPOs are required to develop shorter-term transportation plans (typically covering 4 years) that identify specific projects to be funded.<sup>8</sup>

The review of potential environmental impacts is an important step and must be completed before state departments of transportation begin building federally funded highway projects or projects that require a federal permit or approval.<sup>9</sup> Specifically, state departments of transportation must assess the consequences of transportation projects and possible alternatives on the natural and human (e.g., health and community impacts) environment and historic properties. For the small number of projects that FHWA deems to have a significant impact on the environment—about 7 percent of all highway projects in 2005 (latest data available)—the state department of transportation prepares an EIS, which FHWA must approve before the project can be built.<sup>10</sup> The EIS describes the project, characterizes the surrounding environment, analyzes the environmental impacts of a range of project alternatives, and indicates plans for complying with environmental laws and mitigating any environmental damage caused by the project. (See fig. 1.) Federal resource agencies, such as the Army Corps of Engineers, Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), and Advisory Council on Historic Preservation, and their state counterparts, participate in and review these detailed assessments of environmental impacts, in accordance with their responsibilities

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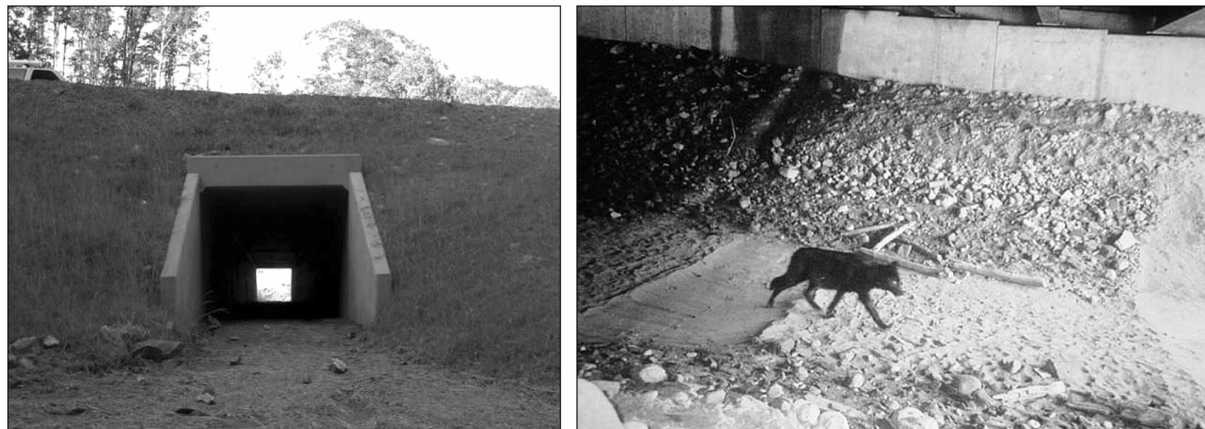
<sup>8</sup>The state departments of transportation develop Statewide Transportation Improvement Programs (STIP). MPOs develop similar short-term plans, called Transportation Improvement Programs, which feed into the STIPs.

<sup>9</sup>Permits are written approvals for projects which may impact the environment. For example, permits would be required for highway projects that potentially impact water quality.

<sup>10</sup>For highway projects for which there is no significant environmental impact, the time required for environmental approval is much less. A highway project that is expected to have a minimal environmental impact may qualify for a categorical exclusion, requiring a more limited environmental review. Categorical exclusions represent 84 percent of highway projects. If it is unclear whether a project will have a significant environmental impact, the state department of transportation must conduct an environmental assessment (9 percent of highway projects), which currently takes a median time of 26 months to complete, according to FHWA.

under federal or state laws. (See table 1 for examples of the responsibilities of resource agencies relating to the environmental review of federal highway projects.<sup>11</sup>)

**Figure 1: Examples of Efforts to Mitigate Potential Harm to Wildlife**



Sources: North Carolina DOT (bear tunnel photograph) and Dr. Tony Clevenger, Western Transportation Institute (wolf photograph).

Measures to mitigate effects on natural resources can be identified early during long-range highway planning or later during environmental review of projects. For example, wildlife—such as wolves, bear, and deer—may not be able to move safely from one area to another when their habitats are disrupted by roads. A passageway in the form of a box culvert under the road in an area likely to be used by wildlife was a mitigation measure that was used (photo on the left) during the construction of a portion of an interstate highway. In the photo on the right, a wolf travels safely through its natural habitat using a highway underpass.

**Table 1: Examples of Federal Resource Agency Responsibilities in Environmental Reviews of Highway Projects**

Agency	Responsibility
Advisory Council on Historic Preservation	Reviews and facilitates agreement on projects to ensure that preservation values are factored into projects
Army Corps of Engineers	Reviews and approves projects, through issuing a permit, that affect navigable waters, in coordination with NEPA reviews
Environmental Protection Agency	Reviews and comments on the environmental impacts of major federal actions for which an EIS is required
Fish and Wildlife Service	Provides technical assistance to help maintain the sustainability of fish and wildlife and their habitats

Source: GAO.

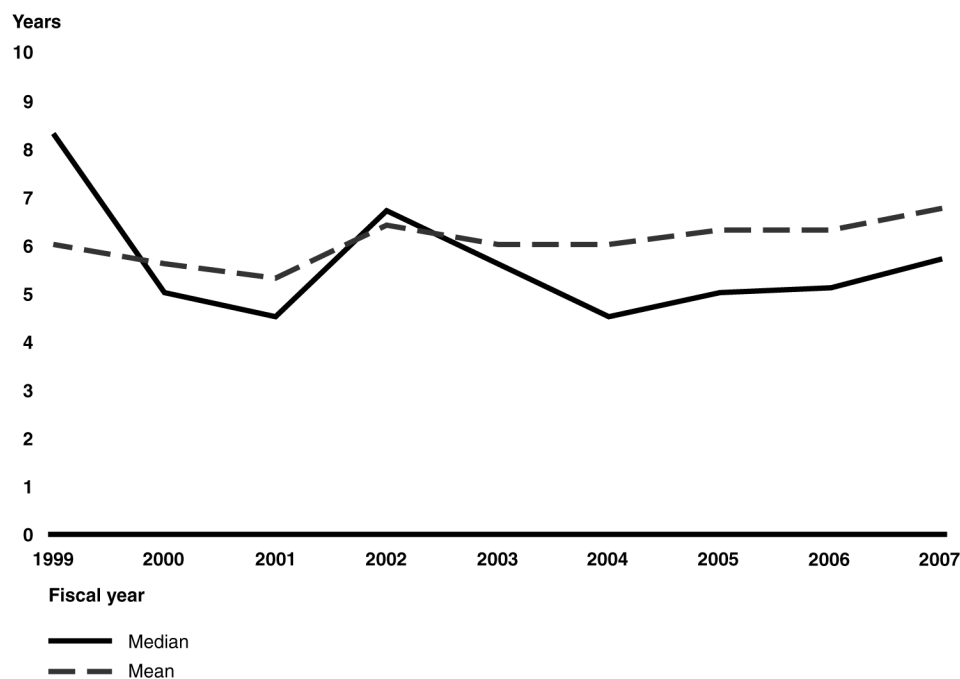
For federal highway projects requiring an EIS, FHWA is a steward of the process and responsible for ensuring that the statement is in compliance with applicable environmental laws and other requirements. FHWA is the lead federal agency and supports the project applicant—typically the state department of transportation—which participates as a joint lead agency. The state department of transportation is responsible for producing the environmental documentation for a highway project, whereas FHWA guides the process to ensure appropriate scope and the content of the documentation. FHWA also is responsible for ensuring that the EIS contains documentation on coordination with the appropriate federal, state, and local resource agencies and the public. EPA is responsible for reviewing and commenting on all major federal actions

<sup>11</sup>See app. II of GAO, *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects*, [GAO-03-534](#) (Washington, D.C.: May 23, 2003), for examples of other resource agencies that may play a role in the environmental review of highway projects.

for which an EIS is required and working with FHWA to ensure that environmental statutes are met. FHWA has the final approval and determines when the statement is in compliance with applicable environmental laws and other requirements.

Because of the complex and often controversial issues involved, the data that need to be analyzed, and the number of stakeholders involved, it typically takes years for an EIS to be completed and approved. According to FHWA, these reviews have taken an average of about 6 years since fiscal year 1999 and about 12 percent of them have taken longer than 10 years. (See fig. 2.) For EISs approved in 2007, the average time taken to complete the statements and gain approval was about 7 years, according to FHWA.<sup>12</sup>

**Figure 2: Completion Times for EISs by Fiscal Year**



Source: FHWA.

Note: Completion times are for the year in which the EIS was approved. This figure does not include any highway projects requiring EISs initiated after the enactment of SAFETEA-LU, because none have progressed to this point.

Concerns about the time taken to complete environmental reviews led to congressional and executive branch efforts to make environmental reviews more efficient and timely without diminishing environmental protections. Congress included provisions to make environmental reviews more efficient and timely in adopting the 1998 Transportation Equity Act for the 21st Century (TEA-21). For example, these provisions required FHWA to work cooperatively with federal resource agencies to establish project time frames

<sup>12</sup>We have reported on issues involving environmental reviews in transportation planning and the time taken to complete environmental reviews; see GAO, *Transportation Planning: State and Metropolitan Planning Agencies Report Using Varied Methods to Consider Ecosystem Conservation*, [GAO-04-536](#) (Washington, D.C.: May 17, 2004); [GAO-03-534](#); *Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked*, [GAO-03-581](#) (Washington, D.C.: Apr. 28, 2003); and [GAO-03-398](#).

and to meet these agreed-upon time frames. The law allows state agencies to participate in these efforts. Finally, FHWA may approve requests from states to use their federal-aid highway funds to provide additional resource agency personnel dedicated to conducting environmental reviews of transportation projects in order to expedite these reviews.<sup>13</sup>

SAFETEA-LU made further changes to expedite highway project decision making and completion while continuing to ensure environmental protection. In the transportation planning stage, the act made changes to enhance consideration of environmental issues by states and MPOs during planning in order to identify and potentially avoid or minimize impacts on resources and thereby facilitate more efficient environmental reviews of individual projects. Key changes include the following:

- State departments of transportation and MPOs must consult with federal, state and local resource agencies in developing their long-range transportation plans, using available resource plans and data.<sup>14</sup> Such consultation was not required before SAFETEA-LU, but some agencies may have done so.
- Consultation with resource agencies should include discussions of potential environmental mitigation activities, and the results of these discussions are to be included in long-range plans. Such consultation was not required before SAFETEA-LU.

In the environmental review stage, the act made changes to enhance the involvement of resource agencies, better define roles and responsibilities, and limit time frames for challenging agency decisions in order to facilitate more efficient and timely decision making about highway projects, while protecting environmental resources.<sup>15</sup> The legislation, however, did not change the mission of resource agencies.

Key changes, which state departments of transportation generally carry out with FHWA participation, include the following:

- Established a new category of involved resource agencies, known as participating agencies, which can be any agency with an interest in a highway project, allowing involvement from a broader range of interested parties. Prior to SAFETEA-LU, agencies with jurisdiction either through law or special expertise (called “cooperating agencies”) were to be involved; SAFETEA-LU broadened

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<sup>13</sup>In addition, Executive Order 13274 was issued in 2002 to promote the development and implementation of transportation infrastructure projects in an efficient and environmentally sound manner. An interagency task force oversees the implementation of the order and monitors the environmental reviews of certain high-priority projects. This task force is composed of officials from the Departments of Agriculture, Commerce, Interior, Defense, and Transportation; EPA; the Advisory Council on Historic Preservation; and the Council on Environmental Quality.

<sup>14</sup>States and MPOs are not required to update their long-range plans out of their normal planning cycles to comply with SAFETEA-LU changes, but must comply in any update of their plans after July 1, 2007.

<sup>15</sup>These changes apply to projects for which environmental impact statement reviews were initiated after the law was enacted.



participation to include those that may not qualify as cooperating agencies but may still have an interest in the project.

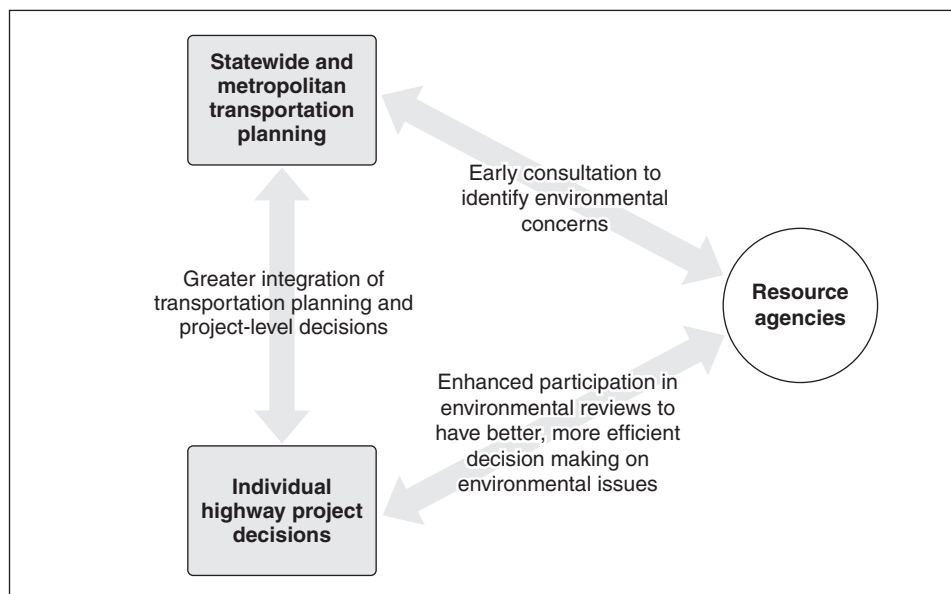
- Required plans for coordinating public and agency participation in and comment on environmental reviews of projects. Prior to SAFETEA-LU, coordination with the public and agencies with jurisdiction was required, but plans for this coordination were not required.
- Provided participating agencies and the public with an opportunity for early involvement in defining a project's purpose and need and in developing alternatives. This was not required prior to SAFETEA-LU although it may have occurred.
- Encouraged collaboration between state departments of transportation and participating agencies on methodologies for conducting environmental reviews. This was not required prior to SAFETEA-LU although it may have occurred.
- Imposed a 180-day limit on filing lawsuits that challenge final federal agency decisions, including environmental decisions.<sup>16</sup> Prior to SAFETEA-LU, lawsuits could be filed as much as 6 years after the decision.

Through these new transportation planning and environmental review requirements, SAFETEA-LU strengthened linkages between (1) transportation planning by states and MPOs and (2) environmental issues affecting decisions about individual highway projects resulting from environmental reviews. The new requirements also provided opportunities for resource agencies to play a greater role in these activities to achieve more efficient decision making on environmental issues related to transportation projects. Overall, these strengthened linkages promote a more integrated approach to transportation planning, environmental reviews, and the incorporation of resource agency input. (See fig. 3.)

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<sup>16</sup>The 180-day limitation is triggered by the publication of a notice in the *Federal Register* announcing a final federal agency action, such as the issuance of a permit or approval. FHWA division offices, in consultation with state departments of transportation and other joint lead agencies, decide whether to publish this notice. FHWA's interpretation of this provision gives it and state departments of transportation discretion in deciding whether, and when, to apply this limit to highway project decisions.

**Figure 3: Linkages Encouraged by SAFETEA-LU**



Source: GAO adaptation of FHWA graphic.

SAFETEA-LU added other requirements to make environmental reviews more efficient and allow state departments of transportation to assume greater responsibility for federal environmental requirements related to highway projects. These provisions, among others, include (1) allowing state departments of transportation, with FHWA approval and monitoring, and using criteria established by FHWA, to assume the responsibility for determining whether certain highway projects (designated in regulations or approved by FHWA) will not have a significant impact on the environment, referred to as categorical exclusions;<sup>17</sup> and (2) establishing a pilot program—called the surface transportation project delivery pilot program—that allows up to five designated states, with agreement from FHWA and subject to FHWA’s periodic review, to assume FHWA’s environmental responsibilities for highway projects under NEPA and other federal laws.<sup>18</sup> For a state’s assumption of categorical exclusion authority and the pilot program, the terms of the state’s authority are specified in a memorandum of understanding with FHWA. SAFETEA-LU further allows for financial

<sup>17</sup>To assume this responsibility, the state department of transportation must waive its sovereign immunity and enter into a memorandum of understanding with FHWA. Sovereign immunity refers to governments’, including state governments’, right not to be sued without consent.

<sup>18</sup>These states, if interested in participating in the pilot program, include Alaska, California, Ohio, Oklahoma, and Texas.

assistance to affected federal, state, or tribal agencies to support activities that expedite and improve transportation project planning and the completion of individual highway projects.<sup>19</sup>

## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Transportation and to five federal resource agencies that have been involved in SAFETEA-LU implementation and that are responsible for resources important to the states we contacted: the Advisory Council on Historic Preservation, the Army Corps of Engineers, the Department of the Interior, EPA, and the Forest Service. The Department of the Interior provided a response for FWS and other agencies of that department that we had dealt with. The Advisory Council, Interior, and the Forest Service agreed with the draft report, while the other three agencies did not express an overall opinion. The Department of Transportation and EPA provided several technical and clarifying comments, which we included where appropriate.

## Scope and Methodology

To determine the progress made in implementing key changes called for by SAFETEA-LU in transportation planning to incorporate environmental considerations and in environmental reviews of highway projects, we reviewed the act and its legislative history and FHWA regulations and other guidance and documentation. In addition, we interviewed officials of FHWA headquarters, organizations representing transportation and environmental interests, FHWA division offices, and state departments of transportation and MPOs<sup>20</sup> in six states—Alabama, Iowa, North Carolina, Ohio, Texas, and Utah. We chose these states based on geographic diversity and their varying amounts of experience with implementing the new transportation planning and environmental review requirements. To determine states' experience with these requirements, we considered their level of experience with the development of EISs since SAFETEA-LU was enacted, their usage of the 180-day limitation on lawsuits challenging highway project environmental approvals since the limitation became law, and the extent of the changes the state needed to carry out in order to comply with planning and environmental review requirements added by SAFETEA-LU.<sup>21</sup> We used

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<sup>19</sup>This requirement explicitly authorizes funding for a broader set of activities than did TEA-21, but retains similar conditions on the approval of funding. Funding may now be used for a variety of project-specific and more general activities—including transportation planning—as long as these activities contribute to expediting the review of projects that are subject to the revised environmental review process.

<sup>20</sup>We did not discuss the implementation of environmental review requirements added by SAFETEA-LU with MPOs, since they generally are not involved in these reviews.

<sup>21</sup>We excluded two leading states, California and Florida, from the above efforts. California has unique state requirements and procedures for planning and environmental reviews. FHWA exempted Florida from the new environmental review provisions. States that re-engineered their environmental review process to streamline transportation decision making under section 1309 of TEA-21 could request a “grandfathering” exemption to continue operating under their pre-SAFETEA-LU processes. Only Florida requested this exemption and this request was approved by FHWA.

information from the six states for illustrative purposes—we cannot generalize the experiences of these states to nationwide efforts. We obtained information from one MPO and two to three resource agencies responsible for natural and historic resources in each of the six states in our study. We chose the MPOs in the most populous, urbanized areas of each of the states, potentially with the highest volume of highway projects, for our review. We selected resource agencies responsible for resources important to the state and also considered their frequency of interaction with state departments of transportation and MPOs on transportation planning and environmental reviews and chose at least one federal resource agency in each of the states. Additionally, we interviewed headquarters officials of key federal resource agencies. We also interviewed a California Department of Transportation official about the department’s assumption of all federal environmental review responsibilities, since California is the only state to date to assume these responsibilities. See enclosure II for a list of organizations contacted.

We gathered much of the information for this report through interviews because data on the implementation of SAFETEA-LU’s changes are limited. In addition, it was not practical to gather information from a large number of states and MPOs and resource agencies that interact with them. Given that states and MPOs were not required to incorporate SAFETEA-LU’s transportation planning provisions until they amended or updated their transportation plans on or after July 1, 2007, many of the states are just starting to implement these provisions. We did not review the implementation of significant changes made by SAFETEA-LU in environmental review requirements specifically related to public parks and historic sites, mainly because the act required that FHWA evaluate the implementation of these changes and report to Congress.<sup>22</sup> As part of our overall work, we assessed how FHWA measures progress toward improving and expediting environmental review processes under SAFETEA-LU. To do this, we interviewed FHWA officials about how the agency is monitoring this progress and its plans for any future efforts in this area and reviewed agency documents.

We conducted this performance audit from April 2007 through April 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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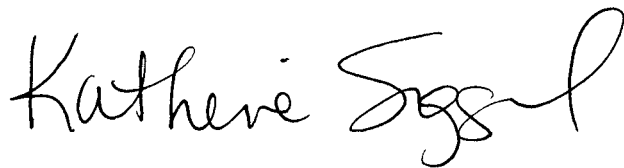
<sup>22</sup>FHWA is planning to provide its first such report to Congress in November 2008.

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We are sending copies of this report to congressional committees and subcommittees with responsibility for highway infrastructure and environmental issues; the Secretary of Transportation; the Secretary of Interior; the Administrator, Environmental Protection Agency; the Commander, U.S. Army Corps of Engineers; the Executive Director, Advisory Council on Historic Preservation; the Chief, Forest Service; the Administrator, FHWA; and the Director, Office of Management and Budget. We will also make copies available to others upon request. In addition, the report will be available at no charge on our Web site at <http://www.gao.gov>.

Should you or your staff have any questions on matters discussed in this report, please contact me at (202) 512-2834 or [siggerudk@gao.gov](mailto:siggerudk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Stephanie Fain, Jacqueline Garza, Judy Guillams-Tapia, Brandon Haller, Bert Japikse, Marietta Mayfield, Patricia McClure, Erica Miles, James Ratzenberger, and Ilga Semeiks.

Sincerely yours,

A handwritten signature in black ink that reads "Katherine Siggerud". The signature is written in a cursive style with a large, looping "S" for the last name.

Katherine A. Siggerud  
Director, Physical Infrastructure Issues

Enclosures



**Objectives**

With SAFETEA-LU, the Congress made a number of changes to how state DOTs and MPOs carry out transportation planning and conduct environmental reviews of transportation projects to facilitate quicker and more efficient project completion without diminishing environmental protections. A key concept was stronger linkages between long-range transportation planning and project-level decisions. (See graphic below.)

We determined (1) the progress that selected states, MPOs, and FHWA have made in incorporating environmental considerations in transportation planning and (2) the progress selected states and FHWA have made in implementing key changes in the environmental review of highway projects.

**Scope and Methodology**

Our work was mainly based on interviews of federal, state, and local agency officials, since the agencies were still in the early stages of implementing SAFETEA-LU changes and available data were limited. Overall, to carry out our work, we (1) reviewed surface transportation legal materials, including SAFETEA-LU and FHWA regulations; (2) interviewed officials of FHWA headquarters and key stakeholder organizations; and (3) interviewed officials of FHWA division offices, state DOTs, and MPOs in six states—Alabama, Iowa, North Carolina, Ohio, Texas, and Utah—as well as selected federal and state resource agency officials responsible for natural and historic resources in these states. In addition, we interviewed California DOT officials about California’s assumption of certain authorities for environmental reviews.

**Briefing for Congressional Staff**

**HIGHWAYS AND ENVIRONMENT**

**Transportation Agencies Are Acting to Involve Others in Planning and Environmental Decisions**

**Summary of Results**

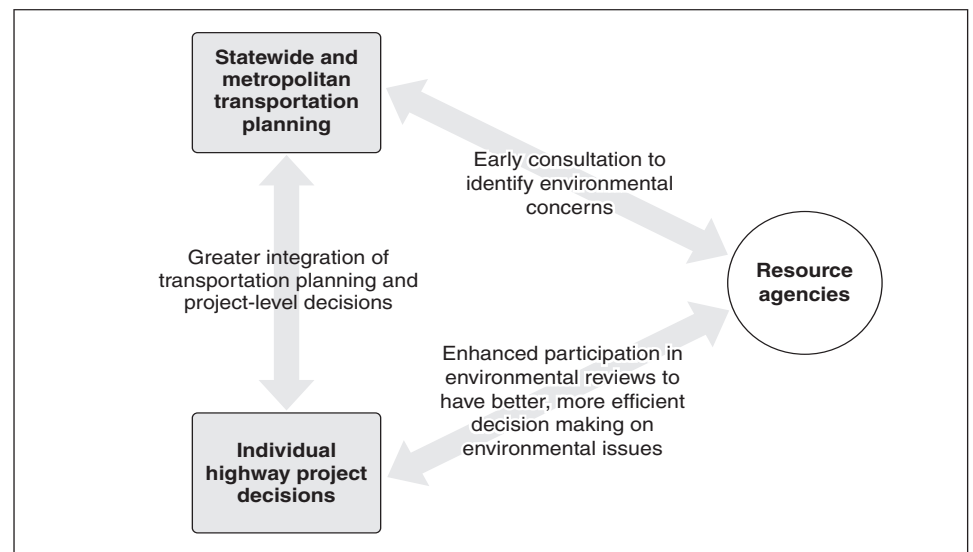
All six state DOTs and six MPOs that we contacted are taking or considering initial steps to incorporate environmental considerations into long-range transportation planning.

- Four have issued long-range plans that are compliant with the new requirements; the others expect to do so by 2010, in line with their planning cycles.
- Challenges include (1) resource agencies’ limited resources and limited incentive to contribute at the planning stage and (2) lack of knowledge by resource agencies and planners of each other’s roles and processes.
- FHWA has undertaken a variety of implementation efforts, such as issuing guidance and conducting outreach to affected agencies. State DOTs and others we contacted generally gave positive reviews of FHWA’s efforts.
- Because of the long-term nature of the planning process, it will likely take years before any benefits of these changes are apparent.

The six state DOTs are implementing the revised environmental review requirements for those new highway projects that require EISs.

- State DOTs are meeting the new requirements by increasing the involvement of resource agencies and the public and preparing plans to coordinate this involvement.
- Challenges include limited resource agency resources and knowledge about the revised requirements affecting them.
- As it has for the planning provisions, FHWA has undertaken a number of efforts to implement the environmental review provisions. The state officials we contacted generally viewed these efforts positively.
- In addition, the agency is considering developing performance measures to monitor the implementation and impacts of changes made by SAFETEA-LU in environmental reviews. However, it will likely take at least 3 to 5 years before impacts can be determined.

**Linkages Encouraged by SAFETEA-LU**



Source: GAO adaptation of FHWA graphic.

# Highways and Environment

## Key Changes

State DOTs and MPOs are now required to consult with resource agencies about avoiding or mitigating impacts of transportation projects on natural and historic resources in developing their long-range transportation plans, using available resource plans and data. Resource agencies include federal, state, tribal, and local agencies responsible for land-use management, natural resources, environmental protection, conservation, and historic preservation. Potential environmental impacts of transportation projects that are of concern include damage to wetlands, waterways, wildlife, and endangered or threatened species.

Consultation with resource agencies should include discussions of potential environmental mitigation activities, and results of these discussions are to be included in long-range plans.

State DOTs and MPOs are not required to update their plans outside of their normal planning cycles but must comply when preparing any updates of their plans issued after July 1, 2007.

These provisions were designed to enhance consideration of environmental issues in the planning stage to avoid or minimize impacts on resources and thereby facilitate more efficient environmental reviews of individual projects.

# Transportation Planning

## Overall Assessment of Progress

All six states and six MPOs we covered are taking or considering initial steps to fulfill transportation planning requirements.

- Some are further along than others:
  - Two states and two MPOs have issued long-range plans that comply with the new requirements, according to FHWA.
  - The others expect to update their plans over the next several years (2008-2010).
  - Progress depends on the planning update cycle of individual states and MPOs.

### Date of Issued or Expected Long-range Plan Update for the States and MPOs We Contacted

State	State DOT	MPO
Alabama	May 2008	June 2009
Iowa	September 2008	September 2009
North Carolina	2009 or 2010	June 2009
Ohio	July 2007*	May 2008
Texas	December 2008	June 2007*
Utah	June 2007*	June 2007*

Source: GAO analysis of information provided by state DOTs, MPOs, and FHWA.

\*Issued.

Progress also depends on the existence and strength of relationships between DOTs or MPOs and resource agencies. According to FHWA officials, since the planning process is lengthy, nationwide it could take until 2009-2010 for most states and MPOs to fulfill these requirements.

- According to FHWA, some DOTs and MPOs updated their plans before the July 2007 deadline in order to “start the clock over” and give themselves more time to meet the new planning requirements.
- FHWA does not have nationwide data on progress in fulfilling these requirements.

## Varied Progress in Consulting with Resource Agencies

State DOTs and MPOs we interviewed vary in their progress in developing relationships with resource agencies.

- Some DOTs with strong pre-SAFETEA-LU relationships with resource agencies reported not needing to make changes in their processes to comply.
  - For example, the North Carolina DOT told us it had begun modifying its planning process in 2004 to include consultation with resource agencies.
- Some agencies have already held one or more group meetings with resource agencies.
  - For example, the Des Moines Area MPO has recently formed a working group of stakeholders, including resource agencies, to discuss issues early in the planning process and provide advice.

# Highways and Environment

**Geographic information systems** are computer systems capable of capturing, storing, analyzing, and displaying geographic information and can be used to compare the location of natural resources to transportation plans.

**Mitigation banking** is a system in which unavoidable damage to wetlands, waterways, habitat, and other natural resources can be compensated for through the purchase of credits for the preservation, restoration, or creation of a comparable resource elsewhere. Transportation or other developers purchase credits from these banks, which assume responsibility for the long-term maintenance of these natural resources.

## Transportation Planning (con't.)

### Varied Progress in Consulting with Resource Agencies (con't.)

- Other agencies have only considered how they might consult with resource agencies.

Some environmental data are available, but data gaps are a concern.

- A key to incorporating environmental considerations into transportation planning is good data on the location of natural, historic, and archeological resources, such as wetlands locations.
- Some planners we contacted are working with resource agencies to get or improve maps of resources to be compared with transportation plans.
  - All six states reported some **geographic information systems** data available.
  - Most states said they needed better data or were improving their data.
- Data gaps occur because data are
  - scattered, unavailable, outdated, and incomplete or
  - withheld (e.g., archeological data withheld to protect sensitive sites). Withheld data can often be obtained by planners, but with additional effort.
- Federal resource agencies have data initiatives that may provide support for transportation planning efforts. For example, EPA has developed a Web-based geographic information system called “NEPAssist” that captures resource data throughout the United States in a single system and was created to assist agencies participating in environmental reviews with the preparation and review of NEPA documents. It also may be used by state and MPO transportation planners to identify resources that may be impacted by highway projects. A broad range of geographic resource information is included, such as the location of wetlands and other water resources, wildlife refuges, critical habitat for endangered species, federal and state forests, archeological sites, and EPA-regulated sites, such as Superfund sites and air quality nonattainment areas. EPA has piloted the system in several areas and plans to gradually roll it out nationally.

In addition, progress in developing mitigation strategies among planners we contacted is limited because consultations with resource agencies are generally in the beginning stages.

- Most DOTs and MPOs we contacted have not yet held discussions with resource agencies on potential mitigation activities.
- Two DOTs and two MPOs with long-range plans that FHWA has determined comply with the changes made by SAFETEA-LU have included these discussions in their plans.
- Planners are required to identify potential environmental mitigation activities with resource agencies but are not required to carry out these activities. However, some states already have **mitigation banks** that DOTs or MPOs have indicated they could utilize.



# Highways and Environment

## Federal funding for positions at resource agencies for transportation-related work is available.

- Since TEA-21, state DOTs have been allowed to use federal-aid highway funding for positions at federal and state resource agencies for the purpose of conducting environmental reviews of highway projects. State DOTs must obtain the approval of FHWA division offices for such uses of these funds. In 2005 (the latest data available), 34 states funded positions at resource agencies. Many of these positions were funded solely with state funds, according to FHWA. One-third of all positions were at federal agencies; two-thirds were at state agencies.
- SAFETEA-LU expanded the possible use of such funded positions to include consultation on long-range planning and the development of natural resource mapping systems, among other things, as long as these funded activities contribute to expediting environmental reviews.
- SAFETEA-LU did not authorize any additional funds specifically for this purpose, however. States proposing to use this authority must take the funds out of their normal allocation of federal-aid highway funds. As was the case previously, FHWA must approve such uses of these funds.

# Transportation Planning (con't.)

## Views on Planning Requirements

Some transportation planners and most resource agency officials told us that early input from resource agencies into planning could be beneficial by identifying potentially affected resources at an early stage so that mitigation or avoidance measures can be identified early.

According to FHWA, the changes to the planning process, especially consultations with resource agencies—including discussions of environmental mitigation—are intended to produce better and more inclusive transportation decision making. FHWA expects that these changes will result in better relationships between transportation and resource agencies, better transportation projects, more effective conservation of natural and cultural resources, and more efficient environmental reviews.

Planners and resource agencies generally cited three challenges in involving resource agencies in planning.

### (1) Resource agency resources are limited.

- The primary challenge is limited resource agency resources, including funding, staff, and time.
  - This challenge is exacerbated by the one-to-many relationship of resource agencies to MPOs.
    - Resource agencies may be inundated with new MPO requests to participate in planning.
    - For example, Texas has 25 MPOs, each of which may contact the same resource agency.

Number of MPOs in Each State

State	Number of MPOs
Alabama	11
Iowa	9
Ohio	17
North Carolina	17
Texas	25
Utah	4

Source: FHWA.

- States have mixed views on using **funded positions at resource agencies** for planning work.
  - North Carolina DOT, for example, funds 30 positions at resource agencies for environmental reviews of highways and hopes to use these staff for planning as well.
  - Some states, on the other hand, believe resource agencies should fund their own activities.
  - However, most resource agencies we spoke with said that they do not have enough resources to carry out their new roles.

## Highways and Environment



Source: © Harris County Flood Control District. Reproduced with permission.

Consideration of environmental resources in transportation planning can result in the early identification of possible adverse effects of projects and the identification and eventual implementation of mitigation measures to address them. For example, such consideration might indicate a need to mitigate runoff from new highways that could result in localized flooding or violation of water quality standards. One mitigation measure might be to retrofit storm water collection systems to capture and pass highway water runoff through a system of newly created wetlands. Such a retrofit is shown in the photograph above.

## Transportation Planning (con't.)

### Views on Planning Requirements (con't.)

- Also, like resource agencies, MPOs have limited resources to deal with their new duties.
  - FHWA recognizes that limited resources and competing priorities may hinder resource agencies' participation in transportation planning. Officials point out that state DOTs' use of federal-aid funds for resource agency positions could be helpful, but the actual use of funded positions for transportation planning activities could be controversial and remains to be seen, since such positions have been used for project-specific environmental review work. FHWA is sponsoring a study of how state DOTs manage the resource agency positions they fund; this study will cover whether DOTs are using or expect to use resource agency positions for transportation planning activities. FHWA anticipates that a report will be issued in August 2008.
- (2) Resource agencies may find it difficult to contribute at the planning stage.
- Transportation planning has not been a mission for resource agencies and may not be a priority.
    - The enactment of SAFETEA-LU changed agency relationships, but did not change resource agency missions.
  - Although state DOTs and MPOs are required to invite resource agencies to participate in transportation planning, their participation is not required.
    - Historically, resource agencies have been required by law to give input at the environmental review stage.
  - Resource agencies are not used to long-range transportation planning.
    - It is difficult for resource agencies to be definitive about possible impacts of long-term transportation plans, since these plans are broad in scope, covering whole metropolitan areas or states. These agencies are used to having project-specific information before signing off on a project during environmental review.
  - Some resource agencies do not see the added benefit of giving broader planning input when they are already required to give project-specific input at the environmental review stage.
  - FHWA officials told us they recognize that providing input into transportation planning takes time and may not be in harmony with resource agencies' missions and need to participate in environmental reviews of specific projects.

## Transportation Planning (con't.)

### Views on Planning Requirements (con't.)

(3) Planners sometimes lack knowledge of resource agencies' roles and processes, and resource agencies sometimes lack knowledge of planners' roles and processes.

- Some resource agency offices we contacted lack knowledge of the transportation planning process and participants.
  - FHWA has tried to educate resource agencies on changes made by SAFETEA-LU through various means, including correspondence, Web-based seminar presentations, and workshops. We recognize that it is a challenge for FHWA to reach all agency officials that could be affected by these changes, given their large number and existence at different levels of government.
  - State DOTs also have provided training, such as a forum in Colorado, to improve communication among the state's transportation planning agencies and resource agencies.
- Some planners we spoke with lack knowledge of who to contact at resource agencies.
  - MPOs, which do not generally play a role in environmental reviews, may not be familiar with resource agencies and their missions.
- Some MPOs have raised questions about how to incorporate resource agencies into planning, such as how much consultation is enough and what to do if resource agencies do not respond.
- However, the absence of prescriptive requirements provides flexibility, which some transportation officials welcome.
- FHWA has made a number of efforts to inform transportation planners, including MPOs, about how best to implement the revised planning requirements, as described in the next section.

## Highways and Environment

## Transportation Planning (con't.)

### FHWA Actions to Promote and Oversee Implementation

FHWA has taken a variety of actions to promote the implementation of the revised transportation planning requirements, including

- issuing regulations on statewide and metropolitan transportation planning in February 2007;
- providing additional guidance on its *Planning and Environmental Linkages* Web site;
- conducting outreach to state DOTs, MPOs, and resource agencies to familiarize them with the changes made by SAFETEA-LU. These activities have included
  - workshops held in 24 states in which state DOT, MPO, and resource agency staff discussed how to strengthen linkages between transportation planning and environmental reviews;
  - workshops, held in 5 states to date, that brought together and trained resource agencies and state transportation planners to improve collaboration and promote data sharing;
  - letters to federal resource agencies notifying them of their new role in planning; and
  - Web-based seminar presentations to EPA and FWS, with plans for additional presentations for other federal resource agencies.
- disseminating leading practices through its Web site as well as through funding of a grant program, called Eco-Logical, to support innovative efforts; and
- funding activities of AASHTO's Center for Environmental Excellence. These activities have included
  - educating transportation planners and resource agencies about each other's processes,
  - providing technical assistance to transportation planners, and
  - developing a practitioner's handbook for state DOTs and MPOs on incorporating environmental considerations into planning.

FHWA division offices mainly use two methods to oversee implementation:

- **Certification reviews** of the planning processes for transportation management areas (urbanized areas with populations of over 200,000) are FHWA's main method of determining progress in implementing the new planning requirements.
- Approval by division offices of STIPs is another key method of overseeing progress. According to FHWA, division offices determine whether states are making progress in complying with the revised planning requirements in making STIP approval decisions. FHWA does not maintain nationwide data on these approvals. However, determinations regarding compliance progress are documented in any findings about planning that accompany STIP approval.

We did not evaluate the adequacy of FHWA's actions to promote or oversee the implementation of these SAFETEA-LU provisions.

**Certification reviews** are used to determine whether aspects of the planning process are in compliance with the law and to identify areas needing improvement. The reviews are conducted every 4 years and cover planning by MPOs as well as states.

## Transportation Planning (con't.)

### **DOTs' and MPOs' Views on FHWA Actions**

DOTs and MPOs we contacted generally gave positive reviews of actions by FHWA headquarters and division offices.

- Generally, the DOTs and MPOs we contacted reported good communication or good relationships with FHWA headquarters and division offices.

State DOTs, MPOs, and resource agencies suggested some further actions to facilitate implementation:

- Expand funding of resource agencies.
- Provide additional training for resource agencies to familiarize them with the revised requirements that affect them.
- Further clarify what types of activities fulfill the requirement to consult with resource agencies.
- Disseminate more information on leading practices for MPOs.

As discussed, FHWA is taking a number of actions in these areas and recognizes the need for continued efforts to facilitate implementation.

### **Time Needed to Show Benefits of SAFETEA-LU Changes**

According to FHWA, since the transportation planning process is long term, it will take some time and a number of planning update efforts for the value of these changes to become apparent.

State and local transportation planners we contacted have mixed views on whether the changes made by SAFETEA-LU will improve planning outcomes, while resource agencies are generally positive. Some planners said that it will be many years before any potential benefits will be seen.

# Highways and Environment

## Key Changes

SAFETEA-LU defined roles and responsibilities and enhanced resource agency and public involvement during environmental reviews by

- establishing a new category of resource agency involvement, known as participating agencies;
- requiring plans for coordinating and scheduling agency and public participation, known as coordination plans;
- requiring opportunities for early involvement of resource agencies and the public in defining a project's purpose and need and in developing alternatives;
- requiring collaboration with resource agencies on methodologies for conducting environmental reviews.

These changes apply to projects requiring an EIS for which reviews were initiated after the law was enacted.

The overall intent of these provisions was to facilitate more efficient and timely project decision making while protecting environmental resources.

# Environmental Review

## Overall Assessment of Progress

From August 2005, when SAFETEA-LU was enacted, through December 2007, 109 new projects nationwide had been identified as requiring an EIS, according to FHWA. The environmental reviews for these projects must follow revised requirements. These projects are moving through the stages of preparing an EIS, which, on average, takes over 6 years.<sup>1</sup> As of December 2007, 2 projects had reached the final EIS stage and 2 more had reached the draft EIS stage.

In the six states that we contacted, 30 new projects were identified as requiring an EIS during this period.

- Of these, 24 are actively moving forward in the post-SAFETEA-LU environmental review process; the remaining 6 are on hold or are being cancelled.
- A draft EIS has been prepared for 1 of these projects.

**Number of Active EIS Projects Subject to SAFETEA-LU Requirements, as of December 2007**

State	Number
Alabama	2
Iowa	4
North Carolina	6
Ohio	2
Texas	5
Utah	5
<b>Total</b>	<b>24</b>

Source: State DOTs and FHWA.

## State DOTs Are Completing New Required Steps

The state DOTs that we contacted have taken a number of actions to complete required steps as they develop EISs for the 24 active projects.

- All six state DOTs have invited participating agencies to be involved in environmental reviews and have developed coordination plans.
- All six states also are working to provide opportunities for agencies and the public to be involved early in defining their projects' purpose and need and the alternatives to be considered and to collaborate with agencies in developing review methodologies.
- The 24 projects are at different stages, so a few have not yet completed each step, as shown in the following table.

<sup>1</sup>This figure applies to projects for which EIS reviews were completed in fiscal year 2007.

# Highways and Environment



Source: North Carolina DOT.

Early participation by resource agencies in environmental reviews of highway projects may help identify and mitigate possible harmful environmental effects. For example, resource agencies may identify the possibility of erosion and sedimentation into trout streams. Specific mitigation measures, such as sediment basins like this one to catch runoff, could be identified during environmental review and subsequently be implemented during construction.

## Environmental Review (con't.)

### State DOTs Are Completing New Required Steps (con't.)

Total Number of EIS Projects in Six States for Which Key Steps Required by SAFETEA-LU Have Been Completed, as of December 2007

Step	Total
Invite participating agencies	23
Develop coordination plan	23
Involve agencies and public in defining purpose and need	22
Involve agencies and public in developing the range of alternatives	20
Collaborate with agencies on review methodology	22
<b>Total number of active EIS projects subject to SAFETEA-LU requirements</b>	<b>24</b>

Source: GAO analysis of information provided by state DOTs and FHWA.

- Although these states had varied ways of conducting environmental reviews, most believed they did not need to make major changes to their existing processes to comply with the requirements added by SAFETEA-LU. For example, prior to SAFETEA-LU, some states (Iowa, North Carolina, and Ohio) had already developed processes that provided early opportunities for resource agencies and the public to be involved.

### Views on Environmental Review Requirements

State DOTs, resource agencies, and other transportation stakeholders we contacted recognized some potential benefits of post-SAFETEA-LU changes in environmental reviews, including

- improved project management,
- increased likelihood of weeding out flawed alternatives early, and
- better informed and more involved resource agencies.

According to FHWA, these changes institutionalize more disciplined project management, essentially “tightening up” the environmental review process. In addition, these changes put FHWA in a stronger management role.

State DOTs and resource agencies cited four main challenges in their efforts to implement the post-SAFETEA-LU changes in environmental reviews.

(1) Resource agency resources are limited.

- Resource agencies cited their core regulatory duties as their main responsibility and told us that resource constraints hamper their ability to take on extra responsibilities. These constraints may limit their ability to fully participate in the early stages of environmental reviews.

## Environmental Review (con't.)

### Views on Environmental Review Requirements (con't.)

- FHWA recognizes that resource constraints may limit the ability of resource agencies to participate more fully in environmental reviews. FHWA officials noted that some state DOTs fund positions at resource agencies, using federal-aid funds, while others do not. AASHTO plans to survey states by the summer of 2008 to obtain updated information on the extent to which state DOTs fund positions at resource agencies. As noted previously, FHWA is sponsoring a study of how states manage these positions; this study will identify useful practices, including practices for evaluating the services performed.
- (2) Resource agencies' and local public authorities' knowledge of post-SAFETEA-LU requirements is incomplete.
- Many resource agencies we contacted told us that they need more education and training on the changes.
  - Some local public authorities leading EIS projects that we contacted say they have received limited guidance or training from state DOT and FHWA officials on how to implement the revised requirements.
  - FHWA officials have told us that they are aware of these needs and therefore have made and continue to make efforts to educate resource agencies and other stakeholders on the new requirements, through Web-based seminars, for example.
- (3) Existing processes must be adapted to meet the revised requirements.
- Some state DOTs said they have had difficulty reaching agreement with FHWA division offices on the extent to which their existing processes need to be changed to comply.
  - FHWA officials told us that determining whether or not state DOT processes are compliant has presented a challenge in some cases. For example, some states have maintained that their existing environmental review processes do not need to be changed because they are already in compliance with post-SAFETEA-LU requirements.
  - States that re-engineered their environmental review process under certain provisions in TEA-21 could request a "grandfathering" exemption to continue operating under their pre-SAFETEA-LU processes. Only Florida requested this exemption and this request was approved by FHWA. Some of the states we covered had made major changes in their environmental review processes prior to SAFETEA-LU. One state DOT official told us that his agency did not request this exemption because complying with the SAFETEA-LU requirements did not negatively impact its processes and it would not have been worthwhile to make such a request. An official from another state DOT told us that the DOT decided to make required changes, which were not substantial, to its process in order to realize potential efficiencies.



# Highways and Environment

## Environmental Review (con't.)

### Views on Environmental Review Requirements (con't.)

(4) Documentation requirements have increased.

- Some state DOTs and local public agencies we contacted are concerned that requirements for more correspondence with resource agencies and the public, as well as a documented coordination plan, create an increased paperwork burden—slowing down their efforts to complete environmental reviews.
- Some state DOTs also expressed a concern that the additional paperwork burden could open them to lawsuits if this paperwork is considered deficient in any way.
- Some transportation officials in the states we covered believe that changes in the environmental review process can result in better project decisions. However, some cautioned that the process will not necessarily be more efficient or timely since the extra steps required to comply with the environmental review provisions add time to environmental reviews.
- FHWA headquarters officials told us that they had heard indirectly of such concerns but do not believe that the additional documentation requirements are overly burdensome. They noted that the new documents required, especially the coordination plan, help to achieve better management and oversight of projects.

### Use of 180-Day Limitation Is Varied

- According to FHWA, the **180-day statute of limitations** had been used 96 times as of December 2007. FHWA does not have information on the number of projects for which a decision was taken but no published notice given.
- The 180-day limitation has been used to a varying degree in the six states to limit lawsuits challenging federal decisions on highway projects. (See table below.) Most limitations apply to decisions made between 2005 and 2007. FHWA has interpreted this provision to also allow its use for final agency decisions made before SAFETEA-LU was enacted. Some limitations have been applied to decisions made as far back as 1990.

**Extent of Use of the 180-Day Statute of Limitations in the Six States, as of December 2007**

State	Number of projects to which the limitation was applied
Alabama	*
Iowa	*
North Carolina	4
Ohio	6
Texas	12
Utah	8
<b>Total</b>	<b>30</b>

Source: FHWA.

\*Not applied.

SAFETEA-LU also placed a **180-day limit** on lawsuits challenging final federal agency environmental decisions—such as the approval of an EIS—on highway projects, when notices of those decisions are published in the *Federal Register*. FHWA has interpreted this provision so as to give it and state DOTs discretion in deciding whether, and when, to apply this limit to highway project decisions.

# Highways and Environment

## Other Key Changes

Approximately 90 percent of all surface transportation projects have minimal environmental impacts and therefore receive “**categorical exclusions**,” qualifying them for limited environmental review.

SAFETEA-LU allowed state DOTs to assume the responsibility for determining whether certain highway projects can receive a categorical exclusion, in accordance with criteria to be established by FHWA and with FHWA in a monitoring role. States can assume this responsibility after waiving their sovereign immunity and entering into a memorandum of understanding with FHWA. The intent of this change is to reduce processing time for categorical exclusions.

# Environmental Review (con’t.)

## Use of 180-Day Limitation Is Varied (con’t.)

- Officials from one state told us that they determine whether to ask FHWA to trigger the statute of limitations (by publishing a notice) on a project-by-project basis and did not make broader use of this provision in order to avoid the unintended consequence of encouraging litigation. Officials from another state said that they have plans to use the provision for all eligible projects.
- Some transportation officials in the states we covered noted that the new statute of limitations could lead to cost savings. It limits lawsuits to a period when it would not cost as much to change project plans and, after this period, work can proceed on a project without the risk of lawsuit. They did not cite challenges in implementing the statute of limitations.

## Assessment of Progress in State Assumption of Categorical Exclusion Authority

Some states are pursuing increased responsibilities for **categorical exclusions**, but overall interest has been limited.

- To date, only the California DOT has assumed authority for categorical exclusions and, in addition, according to FHWA, only the Utah DOT and the Alaska DOT are actively seeking this same authority.
- Several state DOTs we contacted did not see a need to take on the authority to approve categorical exclusions because they were using programmatic agreements with FHWA and resource agencies that streamline review and approvals for many projects classified as categorical exclusions.
- State DOTs also identified the requirement to waive sovereign immunity as an obstacle to taking advantage of the categorical exclusion approval authority.
  - Some states were interested in applying for categorical exclusion approval authority (e.g., Ohio and Texas), but the state DOTs were not able to rally enough support in their state legislatures to waive sovereign immunity, as required to assume approval authority for categorical exclusions.
- In discussing with resource agency officials their views on states assuming responsibility for categorical exclusion decisions, most did not express any concern about this change. However, officials from one agency said that state assumption of responsibility for these decisions could decrease input from resource agencies in addressing environmental concerns.

# Highways and Environment

## Other Key Changes (con't.)

A pilot program—called the **surface transportation project delivery pilot program**—has been established to allow up to five states (to include, if interested: Alaska, California, Ohio, Oklahoma, and Texas) to assume FHWA's environmental responsibilities for highway projects under NEPA and other federal laws, after entering into a memorandum of understanding with FHWA and with continuing oversight by the agency. This program is designed to provide information on whether delegating these responsibilities to the states will result in more efficient environmental reviews while meeting all federal requirements for these reviews.

# Environmental Review (con't.)

## Assessment of Pilot Program Progress

To date, only the California DOT has received FHWA approval to participate in the **surface transportation project delivery pilot program**.

- Ohio and Texas declined to participate because their state legislatures did not approve a waiver of sovereign immunity, which is required for participation in the program.
- According to FHWA, Alaska and Oklahoma are still interested and may decide to participate. Alaska is waiting until it has completed a memorandum of understanding with FHWA on the authority for categorical exclusions, and Oklahoma is seeking the approval it needs from its legislature to waive sovereign immunity.

The California DOT began the pilot program on July 1, 2007, and has taken steps to implement its new authorities.

- It added a NEPA quality control review step to its process, in which specialists use the same criteria that FHWA would have used to review the state DOT's EIS.
- These specialists must (1) meet qualification standards and (2) complete a 3-day training course cofacilitated by the California DOT and FHWA division staff.
- It created a NEPA Delegation Manager position to act as the point person for all delegation responsibilities.

After Ohio and Texas declined to participate, FHWA issued a *Federal Register* notice in July 2007 soliciting interest from other states to participate in the program and conducted outreach at national meetings.

- According to FHWA officials, no states have expressed interest.
- FHWA officials told us that they believe concern about the need to waive sovereign immunity is the main reason for the lack of interest, but that states also are concerned about the amount of work required to set up such a program and want to wait and see how the program works in California.

According to state and FHWA officials we spoke with, an additional reason why states have not pursued either of these new authorities is that, to avoid conflicts of interest, FHWA has prohibited state DOTs with these authorities from making advance purchases of rights of way for highway projects.

According to FHWA, this practice presents a conflict of interest because the state then has a stake in environmental decisions.

- States sometimes make such advance purchases in order to accelerate the completion of a project and avoid inflation. According to some state officials, not being able to make such advance purchases would increase the time and cost associated with completing projects.
- According to FHWA officials, they suggested that state DOTs develop a "firewall" to divide those who make environmental review decisions from those who purchase rights of way, but states indicated that they could not do this.

## Environmental Review (con't.)

### Assessment of Pilot Program Progress (con't.)

- In discussing with resource agency officials their views about the pilot program, they expressed little or no concern about it. Officials in several agencies noted that this program could be beneficial. For example, one official said that environmental reviews of projects could be more efficient with a reduced FHWA role.

### FHWA Actions to Promote and Oversee Implementation

FHWA has taken a variety of actions to promote the implementation of the post-SAFETEA-LU changes in environmental reviews, including

- issuing various types of guidance on the implementation of these provisions and posting this guidance on its *Environmental Review Toolkit* Web site;
- proposing revised regulations for environmental reviews and issuing a regulation regarding the surface transportation project delivery pilot program;
- conducting outreach to federal, state, and local agencies involved in environmental reviews to familiarize them with the post-SAFETEA-LU changes through training (both in person and via Webcast), conference presentations, and technical assistance;
- disseminating leading practices through its Web site; and
- funding activities of AASHTO's Center for Environmental Excellence, including
  - issuing a new practitioner's guide on the revised environmental review requirements and
  - identifying leading practices in implementing these requirements to put on the Center's Web site.

FHWA oversees implementation mainly by conducting

- day-to-day oversight of state DOT environmental review activities through, for example, division office review and approval of EISs and monitoring of states' assumption of responsibility for categorical exclusions;
- reviews by FHWA attorneys of the legal sufficiency of EISs, including compliance with the new requirements, as applicable; and
- audits of states' performance in the surface transportation project delivery pilot program. The first audit, of California DOT's performance in the pilot program, was conducted in January 2008, and the report is scheduled to be completed by June 2008.

We did not evaluate the adequacy of FHWA's actions to promote or oversee the implementation of these changes.

## Environmental Review (con't.)

### Views on FHWA Actions

Transportation officials and other stakeholders we contacted generally gave positive reviews of FHWA's efforts to inform them about the key SAFETEA-LU changes in environmental reviews.

The state DOTs, local public agencies responsible for environmental reviews, and resource agencies we contacted suggested possible additional actions to further facilitate implementation of the changes made by SAFETEA-LU. As for transportation planning, expanded funding of and training for resource agencies were suggested. In addition, they cited the following actions:

- Some state officials told us that they would like more flexibility to follow their pre-SAFETEA-LU processes, which they say accomplish the act's goals and the new requirements in spirit.
- Some states have also suggested that, to increase states' interest in assuming authority for categorical exclusions and in participating in the pilot program, the requirement to waive sovereign immunity could be eliminated and states could be allowed to make advance purchases of rights of way and to assume the associated risk.

FHWA's views on concerns raised by various stakeholders and the agency's efforts to address them were discussed above.

# Highways and Environment

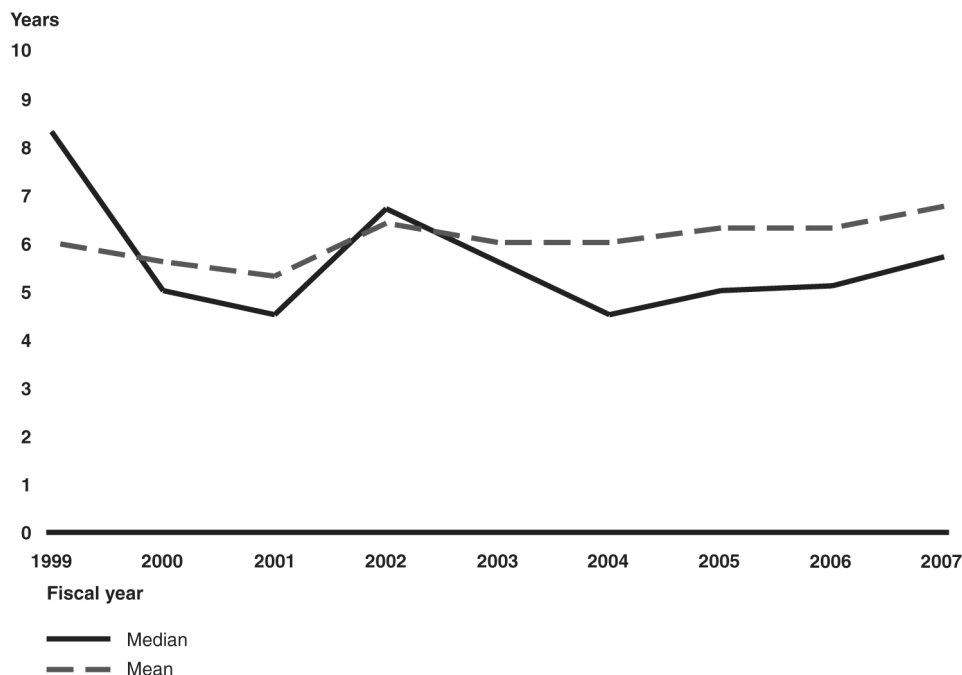
The various environmental review changes made by SAFETEA-LU were designed to achieve more efficient and timely project decision making, particularly for projects undergoing an EIS review, while maintaining environmental protections.

## Environmental Review (con't.)

### FHWA Efforts to Track Progress

According to FHWA data, since fiscal year 1999, EIS reviews have averaged between 5 and 7 years to complete and over 12 percent of them have taken longer than 10 years.

### Completion Times for EISs by Fiscal Year



Source: FHWA.

Note: Completion times represent the time required to prepare and obtain final approval of EISs and apply to the year in which the EIS was approved. This figure does not include any highway projects for which EIS reviews were initiated after the enactment of SAFETEA-LU, because none have progressed to this point.

# Highways and Environment

According to FHWA, its **context-sensitive solutions** initiative is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources while maintaining safety and mobility.

## Environmental Review (con't.)

### FHWA Efforts to Track Progress (con't.)

- FHWA currently has two main methods for monitoring progress in expediting and improving environmental reviews:<sup>2</sup>
  - measures of the timeliness of EIS completion, based on data collected by its division offices, and
  - measures of the quality of interagency coordination, based on surveys, conducted in 2003 and 2006, of resource and transportation agency staff views on environmental reviews of transportation projects.
    - These measures covered a range of topics, such as whether communication among agencies was sufficient, how well transportation staff protected the environment, and whether reviews were completed in a reasonable amount of time.
- FHWA also has related environmental measures, such as measures of efforts to reduce pollution and other adverse environmental effects from transportation projects.<sup>3</sup> These include
  - the number of exemplary **context-sensitive solution** projects and programs and
  - the number of areas not meeting mobile source emissions targets in their state implementation plans<sup>4</sup> (goal is to minimize this number).

### Measures Being Considered

- FHWA is planning and considering developing several other measures specifically to track progress in implementing, and the impacts of, changes made by SAFETEA-LU in environmental reviews. (See following table.)

<sup>2</sup>FHWA has performance goals related to the EIS completion time measures and the results of these measures are reported in its budget request and on its Web site, among other places. The quality of interagency coordination measures are published in a report on these survey results. See Gallup Organization, *Final Report: Implementing Performance Measurement in Environmental Streamlining* (Washington, D.C., May 2007).

<sup>3</sup>FHWA has performance goals related to these measures and reports its results in its budget request and in Performance and Accountability Reports of the U.S. DOT, among other places.

<sup>4</sup>These plans are air quality plans that explain how an area that is not in compliance with the requirements of the Clean Air Act will come into compliance.

## Environmental Review (con't.)

### Measures Being Considered (con't.)

**New Environmental Review Performance Measures Related to SAFETEA-LU That Are under Consideration**

Type of measure	Description of measure	Status
Timeliness of EISs	Median EIS completion time for projects undergoing environmental review under the post-SAFETEA-LU EIS process	Plans to report results of such a measure starting in fiscal year 2009 in agency performance reports and on its Web site
Quality of interagency coordination	Inclusion of questions related to implementation of the post-SAFETEA-LU EIS process in follow-on survey of resource and transportation agency environmental review staff	May repeat survey in 2009 and may include such questions and their responses in final report on survey
Compliance with new requirements	States' implementation of new steps required under the post-SAFETEA-LU EIS process and ratings of the effectiveness of various aspects of this process, based on information collected semi-annually	Has started to develop such measures and plans to include results in report to Congress on the effectiveness of SAFETEA-LU environmental provisions and on its Web site

Source: GAO analysis of information provided by FHWA.

- In addition, FHWA is tracking, for internal management use, the number of projects for which 180-day limitation on claims notices has been filed in order to monitor the use of this limitation.

### Studies and Reviews Underway or Planned

- The agency also is sponsoring several studies and reviews that may provide additional information on progress in implementing, as well as impacts of, SAFETEA-LU changes in environmental reviews. (See following table.)



## Environmental Review (con't.)

### Studies and Reviews Underway or Planned (con't.)

#### Key FHWA Initiatives That May Provide Information on the Implementation and Impacts of SAFETEA-LU Changes in Environmental Reviews

Type of initiative	Description	Status
Program delivery improvement tool	In March 2007, FHWA piloted this standard tool in five states. All state DOTs and FHWA division offices can now use this tool, which is in a checklist format, to monitor the implementation of recommended environmental review activities—including post-SAFETEA-LU requirements—and identify successful practices and opportunities for improvement.	Underway; FHWA is encouraging the voluntary use of the tool.
Monitoring of states' assumption of responsibility for categorical exclusions	FHWA will monitor the compliance of states with the memorandums of understanding (MOU) they enter into with the agency and will consider the results in deciding whether to renew the MOU. Monitoring will include measures of various aspects of MOU compliance and performance, including timeliness.	Underway; first report, on the California DOT, expected in spring 2008.
Audits of the California DOT's performance in surface transportation project delivery pilot program	FHWA will conduct audits of the California DOT to ensure compliance in meeting all federal laws for which the state has been assigned responsibility. FHWA will conduct semi-annual audits during the first 2 years and annual audits thereafter. Audits will include measures of various aspects of performance, including timeliness.	Underway; first report expected in June 2008.

Source: GAO analysis of information provided by FHWA.

### In Time, Measures and Studies Should Show Impacts

- As can be seen from the information presented, FHWA is making a number of efforts to track progress in improving and expediting environmental reviews. However, its efforts to specifically measure or study the implementation and impacts of changes made by SAFETEA-LU are in the early stages of development or implementation, and it is too early to assess them.
- FHWA anticipates that the results of new measures and studies related to SAFETEA-LU will start becoming available during the next year or two.
- Agency headquarters officials also noted that it will take at least 3 to 5 years before the effects of the act's changes in the environmental review process can begin to be discerned.
- Some other transportation stakeholders we interviewed agreed that it will take years to see the effects of the new requirements because the environmental review process is lengthy and it will take some time to get the current highway projects through the entire process.

## **Organizations Contacted**

In performing our work we contacted the following agencies and organizations:

### **Federal Transportation and Resource Agencies**

Advisory Council on Historic Preservation  
Bureau of Indian Affairs  
Department of the Interior  
Department of Transportation  
Environmental Protection Agency  
Federal Highway Administration  
Fish and Wildlife Service  
Forest Service  
National Park Service  
Army Corps of Engineers  
National Marine Fisheries Service

### **State Transportation Agencies**

Alabama Department of Transportation  
California Department of Transportation  
Iowa Department of Transportation  
North Carolina Department of Transportation  
Ohio Department of Transportation  
Texas Department of Transportation  
Utah Department of Transportation

### **State Resource Agencies**

Alabama Department of Environmental Management  
North Carolina Department of Environment and Natural Resources  
Ohio Environmental Protection Agency  
State Historical Society of Iowa  
Texas Commission on Environmental Quality  
Texas Parks and Wildlife Department  
Utah State Historic Preservation Office

### **Metropolitan Planning Organizations**

Birmingham Metropolitan Planning Organization  
Des Moines Area Metropolitan Planning Organization  
Mid-Ohio Regional Planning Commission  
North Carolina Capital Area Metropolitan Planning Organization  
North Central Texas Council of Governments  
Wasatch Front Regional Council

## **Local Public Agencies and Consultants**

Houston Grand Parkway Association  
North Carolina Turnpike Authority  
Solid Civil Design  
Snyder and Associates, Inc.

## **Other Organizations**

Association of Metropolitan Planning Organizations  
American Association of State Highway and Transportation Officials  
Defenders of Wildlife  
Environmental Defense  
National Conference of State Historic Preservation Officers  
National Trust for Historic Preservation

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