

MAP-21 FACT SHEET

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SUBJECT: MAP-21: Section 1313 Project Delivery Program (NEPA Assignment)

PROBLEM STATEMENT:

MAP-21 amends the SAFETEA-LU language on "Surface Transportation Project Delivery Pilot Program" located in 23 U.S.C. 327 to allow all states to participate in the program, allow a State to assume one or more railroad, public transportation or multimodal project within the State, and make the program renewable. (Note that this assignment is independent of the permanent "CE" assignment under SAFETEA-LU.)

RECOMMENDATION:

A Memorandum of Understanding between Caltrans and FHWA took effect on October 1, 2012 continuing the NEPA Assignment program that was the Pilot program. This MOU is in effect until 18 months after the implementation of regulations pursuant to 23 U.S.C. 327(b)(2) or January 1, 2017, whichever comes first. Caltrans should continue activities under this MOU, but work through AASHTO and Caltrans' Office of Legislative Affairs to influence the content of regulations until they are final. This will occur over a couple of years. Caltrans would then negotiate a new MOU for NEPA Assignment. This MOU could include other modes; this would be determined after consultation with partner agencies and development of mechanisms to fund any new work. If the new regulations are too onerous, Caltrans would work to transition NEPA authority back to FHWA so as to preserve as much administrative delegation as possible and reduce impacts to project schedules and costs.

BACKGROUND:

SAFETEA_LU Section 6005 established a Pilot Program that allowed five states to assume the NEPA and other related responsibilities of the Secretary of Transportation for highway projects. California is the only state to have assumed this responsibility. In order to assume this responsibility, California had to waive its sovereign immunity to legal challenges in federal court and submit an extensive application describing in detail the process, procedures and resources in place to carry out the assigned responsibility.

ALTERNATIVES:

Alternative 1: Rulemaking is required, therefore no action can be taken until USDOT; or FHWA, FTA, and FRA individually; implement regulations and issue guidance on these processes.

Pros: Eliminates "guesswork" as to what USDOT/FHWA/FTA/FRA will require.

Cons: Duration between effective date of MAP-21 and implementing regulations may exceed the life of MAP-21.

Alternative 2: Develop "pilot" program applications for FTA/FRA projects based on current requirements identified in 23 CFR 773.

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Pros: Districts and local agencies can identify projects or programs under FTA/FRA where NEPA Assignment is desired and can draft preliminary Application packages based on current regulations and the Caltrans Pilot program application package.

Cons: Applications based on current regulations may not include information required by amendments to regulation. Extensive effort in preparing a program based on current program requirements may be expended District and local agency resources with little or no benefit in future years.

PROPOSED IMPLEMENTATION SCHEDULE:

MAP-21 identifies a target of 270-days for rulemaking. Based on past experience, this is optimistic. The Department would then have 18 months to renegotiate its MOU under MAP-21.

Prior to the issuance of draft regulations, Caltrans should consult with partner agencies on including some or all transit or rail projects. This should occur over the next 270 days.

Caltrans should comment on any proposed regulations and guidance as it comes from US DOT.