

and to the process for consideration of tunnel alternatives in response to comments received.

FTA requests comments on the policy guidance, which is available in DOT's electronic docket at <http://regulations.gov> and on FTA's Web site at http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html.

Issued this May 14, 2009, in Washington, DC.

Matthew J. Welbes,

Acting Deputy Administrator.

[FR Doc. E9-11718 Filed 5-19-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-2009-0051]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This notice announces and solicits comments on the third audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before June 19, 2009.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590. You may also submit comments electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments

electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)-366-2034, Ruth.Rentch@dot.gov, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, Michael.Harkins@dot.gov, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web site at <http://www.access.gpo.gov>.

Background

Section 6005 of SAFETEA-LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be

presented in the form of an audit report and be made available for public comment. This notice announces the availability of the third audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Pub. L. 109-59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on May 11, 2009.

Jeffrey F. Paniati,

Acting Deputy Federal Highway Administrator.

Surface Transportation Project Delivery Pilot Program; Federal Highway Administration Audit of California Department of Transportation; January 26-30, 2009

Introduction

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of January 30, 2009, the California Department of Transportation (Caltrans) continued to work toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) ¹ with FHWA and in the Caltrans Application for Assumption (Application).

With the completion of FHWA's third audit, the audit team has completed onsite audits of the majority of the Caltrans Districts. The audit team identified significant differences across the Districts in terms of the Pilot Program: resource availability and allocation, details of implementation, processes, and improvement and progress toward meeting all commitments. The highly decentralized nature of Caltrans operations is a major contributing factor to the variation observed. The decentralized nature of the organization necessitates clear, consistent and ongoing oversight by Caltrans Headquarters over District operations. A robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meeting all Pilot Program commitments.

Due to the multiyear timeframes associated with more complex and controversial projects, the full lifecycle of project development (beginning with environmental studies and concluding

¹ Caltrans MOU between FHWA and Caltrans available at: http://environment.fhwa.dot.gov/stmrng/safe_cdot_pilot.asp.

with the issuance of a record of decision) has yet to be fully realized by the Pilot Program. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Pilot Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and resources to meet all Pilot Program commitments, especially given the likelihood of increasing resource demands associated with exclusively managing more complex and controversial projects under the Pilot Program.

During the onsite audit, Caltrans staff and management continued to express ongoing interest in receiving feedback from the FHWA audit team related to program successes and areas in need of improvement. By addressing all findings in this report, Caltrans will continue to move its program toward full compliance with all assumed responsibilities and meeting all Pilot Program commitments.

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub L. 109-59) section 6005(a) established the Pilot Program, codified at title 23, United States Code (U.S.C.), section 327. The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of the FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is four fold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies, (2) to collect information needed to evaluate the success of the Pilot Program, (3) to evaluate Pilot State progress in meeting

its performance measures, and (4) to collect information for use in the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report that is published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public comments received no later than 60 days after the date on which the period for public comment closes.

Caltrans published its Application under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its Application to FHWA on May 21, 2007, and FHWA, after soliciting the views of Federal agencies, reviewed and approved the Application. Then on June 29, 2007, Caltrans and FHWA entered into an MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program will be effective through August 2011 (23 U.S.C 327(i)(1)).

Scope of the Audit

This is the third FHWA audit of the Caltrans Pilot Program. The onsite portion of the audit was conducted in California from January 26 through January 30, 2009. As required in SAFETEA-LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in administering a successful Pilot Program.

The audit primarily focused on four key Pilot Program areas: (1) The Local Assistance (LA) program (Caltrans manages LA and Capital projects through independent organizational entities), (2) the role of the regional offices, (3) the effectiveness of and adherence to specified performance measures, and (4) the continued review of compliance with assumed responsibilities.

Prior to the onsite audit, FHWA conducted telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (USFWS) regional offices in California. The onsite audit included visits to the Caltrans Headquarters Office (HQ) in Sacramento

and to four Caltrans District/Regional Offices: District 3/North Region (Marysville), District 4 (Oakland), District 6/Central Region (Fresno), and District 10 (Stockton). The audit team also visited the USFWS and USACE offices in Sacramento.

This report documents findings within the scope of the audit as of the completion date of the onsite audit (*i.e.*, January 30, 2009).

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that each Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State because these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures used by the Pilot State to reach project decisions in compliance with MOU section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assesses Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures Under the Pilot Program.
 - Expanded Quality Control Procedures.
 - Independent Environmental Decisionmaking.
 - Determining the NEPA Class of Action.
 - Consultation and Coordination with Resource Agencies.
 - Issue Identification and Conflict Resolution Procedures.
 - Record Keeping and Retention.
 - Expanded Internal Monitoring and Process Reviews.
 - Performance Measures to Assess the Pilot Program.
 - Training to Implement the Pilot Program.
 - Legal Sufficiency Review.
- The FHWA team for the third audit included representatives from the following offices or agencies:
- FHWA Office of Project Development and Environmental Review.
 - FHWA Office of Chief Counsel.
 - FHWA Alaska Division Office.
 - FHWA Resource Center Environmental Team.

- Volpe National Transportation Systems Center.
- U.S. Fish and Wildlife Service.
- U.S.D.A. Forest Service.

During the onsite audit, FHWA interviewed more than 80 Caltrans staff (from both the Capital and LA programs) in four District/Region offices and Caltrans HQ. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, generalists, associate planners, and technical experts. The audit team also reviewed project files and records for over 35 projects managed under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its third self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and has established processes to address each issue. Some issues described in the Caltrans self-assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review the draft audit report. FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Status of Findings From the Last Audit

As part of the third audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the audit findings in the second audit report.

The FHWA observed that Caltrans continues to demonstrate compliance with two areas identified as "Compliant" in either the first audit (January 2008) or second audit (July 2008); the establishment of Pilot Program policies and procedures and interagency agreements that involve other agencies as signatories.

While previous audits also found Caltrans to be "Compliant" with its commitment to put in place a consistent process to conduct formal legal sufficiency reviews, limited information was available to support any finding determination during the third audit because only one formal finding of legal sufficiency had been completed.

The FHWA also reviewed the current status of "Deficient" and "Needs Improvement" audit findings identified during the second FHWA audit in July 2008.

"Deficient" audit findings:

(1) *Performance Measure:*

"Effectiveness of relationships with the

general public"—Caltrans reported progress in its third self-assessment on the performance measure "effectiveness of relationships with agencies and the general public." Caltrans developed a method to evaluate its relationships with the general public by assigning a survey rating measuring the quality of public meeting materials. The survey was completed for 27 projects for which public meetings were held since the initiation of the Pilot Program. (See related findings N10 and D2 below.)

(2) *Quality Assurance/Quality Control (QA/QC) Certification Process*—Through project file reviews, the FHWA audit identified one instance where the environmental branch chief was not the final document reviewer (based on the signature dates included on the form). The audit team did verify that the External QC Certification form was correctly completed prior to proceeding with the Internal QC Certification form.

(3) *Environmental Document Process—Class of Action Determinations*—The audit team observed that the project files reviewed in this audit contained the required concurrence by the HQ Environmental Coordinator for Environmental Assessment (EA) and Environmental Impact Statement (EIS) class of action determinations. (See related finding D5 below.)

"Needs Improvement" audit findings:

(1) *Commitment of Resources*—The audit team is aware that Caltrans has systems in place designed to capture time spent by staff on various tasks and activities required under the Pilot Program. However, interviews with Caltrans District staff working on LA projects revealed that work hours associated with the Pilot Program are not consistently entered into the Expenditure Authorization system using the Pilot Program specific codes. Caltrans has not clearly identified how the information gathered by these time-recording systems helps Caltrans determine the sufficiency of staff resources needed under the Pilot Program.

Resource tracking is an ongoing area of concern for the audit team. As the complexity of projects increases with maturation of the Pilot Program, the variability in reporting and tracking resource expenditures may affect the timely delivery and quality of environmental documents. (See related finding N5 below.)

(2) *District Training Approaches and Implementation*—During the three FHWA audits, the audit team identified considerable variation in training needs assessments, approaches, and

responsibilities across Districts and also within individual Districts. The observed variations in training approaches may result in potentially widely varying levels of competency among staff. In order to achieve a sufficient level of competency among all staff, Caltrans HQ environmental staff need to actively monitor each District's training methods and ensure that consistency is achieved in terms of training assessment and delivery. (See related findings N7 and N12 below.)

(3) *Pilot Program Performance Measures*—These two performance

measures have been addressed by Caltrans in the following manner:

a) *Performance Measure: "Timely Completion of NEPA Process"*—Caltrans has expanded this performance measure to include tracking the time from initiating environmental studies to the approval date of the draft and final environmental documents. The performance measure also now differentiates the timeframes by EAs and EISs. Previously, project timeframes were reported in aggregate instead of by environmental document type.

b) *Performance Measure: "Maintain documented compliance with requirements of all Federal laws and regulations being assumed."*—Caltrans reported in its third self-assessment that 100 percent of final environmental documents contained documentation of: section 7 of the Endangered Species Act, as amended (section 7) biological opinions and letters of concurrence, State Historic Preservation Officer concurrences under section 106 of the National Historic Preservation Act (section 106), and section 4(f) of the U.S. Department of Transportation Act of 1966 (section 4(f)) findings and conclusions. (See related finding N8 below.)

(4) *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU continue to include inaccurate/incomplete information on environmental document approvals and decisions under the Pilot Program. Each of the first five quarterly reports received by FHWA have been revised, some several times, to address data reporting errors including: omitted categorical exclusions, EAs, findings of no significant impacts, re-evaluations, section 4(f) analyses, and section 7 and section 106 consultations, as well as numerous consultations and categorical exclusions (CEs) reported in error. The third self-assessment reported that a quarterly report protocol was developed and implemented prior to preparing the fifth quarterly report. However, the audit team determined that the fifth

report also included errors and omissions (omitted EA, re-evaluation and notice of intent, and section 7 consultations reported in error) and a revised report was submitted. (See related finding D1 below.)

(5) *Varying Understanding of Section 6004/Section 6005 CEs*—The audit team did not observe any misunderstanding of section 6004 and section 6005 SAFETEA-LU CE determinations in the District Offices visited in the third audit.

(6) *Creating and Maintaining Project Protocols and Project Files*—The Caltrans' third self-assessment reported that corrective action discussions were completed with staff managing projects with incomplete project files and/or those not conforming to the Uniform Environmental File System (UFS) protocol. Additionally, it was reported that discussions of the retention of electronic communications were completed with District staff. (See related findings C1 and N4 below.)

(7) *QA/QC Process Implementation*—Caltrans' third self-assessment reported on the number of ways that Caltrans actively monitors conformance with the Pilot Program QC procedures. Methods include ongoing communication with senior environmental planners regarding the QC processes, discussions at staff meetings, review by senior environmental planners of environmental documents and HQ Environmental Coordinators actively monitoring conformance with the QC procedures. (See related finding C4 below.)

Key Elements of Implementation

One purpose of each FHWA audit of a State Pilot Program is to identify and collect information on Pilot Program implementation practices for consideration by potential future Pilot Program participants. Key programmatic elements used by Caltrans to administer its Pilot Program include documenting policies and procedures in Standard Environmental Reference (SER) Chapter 38, annotated outlines for environmental documents, QC certification forms, environmental document review checklists, and monthly NEPA delegation statewide teleconferences.

Effective Practices

The FHWA audit team observed during interviews and through project file reviews completed in Districts 3, 4, 6, 10 and the North and Central regions the following effective practices:

(1) Central Region practices:

(a) The environmental document template used for each project

establishes the format and provides technical cues at locations where specific data should be entered by environmental document authors. The use of document templates helps to ensure compliance with environmental laws and to improve document consistency and quality.

(b) For large projects, once the Preliminary Environmental Study (PES) form has been completed by Caltrans staff, environmental staffers perform joint field reviews with the local agencies and their consultants. This affords Caltrans and local agency staff the opportunity to discuss the NEPA process requirements and the required technical studies needed to complete the process.

(c) Individual Development Programs (IDPs) are critical elements in the training process for Caltrans staff (in both the Capital and LA programs). Senior environmental planners regularly and consistently use IDPs to guide and track staff training.

(2) The LA staff in District 10 use a work plan and tracking sheet that serves as a work flow chart for LA projects in the District. This tool is useful because it helps Caltrans and local governments understand the requirements, sequencing, and timing of environmental compliance activities throughout the project development process.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria (*i.e.*, MOU, Application). The time period covered by this third audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the third onsite audit (January 30, 2009) with the focus of the audit on the most recent 6 month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.

- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*

- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the

stated commitment in the Application and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit; or* Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application and/or MOU. *Corrective action is required prior to the next audit.*

Summary of Findings—January 2009

Compliant

(C1) *Completion of the PES form*—As stated in Chapter 6 of the LA Procedures Manual, completing the PES form for each project is one of the roles and responsibilities of LA staff. The audit team learned through interviews with LA staff in the Central Region office that training had been provided on how to complete the PES form. The audit team also confirmed through file reviews that the PES forms in the Central Region were completed correctly.

(C2) *Tracking and Managing Projects*—The Central Region office developed a sophisticated data management and tracking system using the File Maker software application for tracking and managing Capital projects (*i.e.*, projects on the State Highway System (SHS)). The Central Region has standard practices to ensure that all projects are entered into the system and tracked appropriately. The system included data validation features such as color coded items to identify missed deadlines or inactive projects. The audit team found that all environmental staffers in the office appear to be able to input data into the system. The File Maker system is used to track, manage, and provide reports on the Capital projects in the Region. As a result, the audit team was able to determine that the Central Region office is compliant with section 8.2.7 of the MOU, requiring Caltrans to report to FHWA any approvals and decisions Caltrans makes with respect to the responsibilities it has assumed under the Pilot Program.

(C3) *Project Files/UFS*—Section 8.2.4 of the MOU and procedures specified in SER Chapter 38 require that Caltrans staff maintain project files and general administrative files for all Capital and LA projects in accordance with the UFS.

The audit team found that the North and Central Regions have taken additional steps to ensure that project files are organized correctly and that the proper information can be located easily. Additional sub-tabs have been added to the UFS file tab system to improve the clarity and consistency across the Districts in these Regions. The new sub-tabs were added for topic

areas likely to contain large amounts of information (e.g., biology, special status species, coordination correspondence).

(C4) *QA/QC Process*—The Central Region has established a QA/QC unit. The audit team interviewed members of this unit during the onsite visit at the Regional office. To ensure compliance with section 8.2.5 of the MOU, the QA/QC unit implemented, for its Capital program staff, a QC process that involves an internal review and QA/QC branch chief signature that exceeds the requirements of the QC plan in the SER Chapter 38.

Needs Improvement

(N1) *QA/QC Certification Process*—Section 8.2.5 of the MOU and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled “Environmental Document Quality Control Program under the NEPA Pilot Program” (July 2, 2007). The audit team observed improvement since the previous audit (July 2008) in the completion of the QC certification forms. However, the audit team still identified incomplete and incorrectly completed QC certification forms. These inconsistencies were also identified in the third Caltrans self-assessment and corrective actions were discussed in that report.

(N2) *Self-Assessment and Process Reviews*—Section 8.2.6 of the MOU and SER Chapter 38 require Caltrans to regularly perform an internal formal process review for environmental compliance, referred to by Caltrans as a self-assessment. A summary report of the Caltrans self-assessment is provided to FHWA prior to each FHWA audit. The audit team has identified aspects of the self-assessment process that need improvement in order for this process to meet its stated intent. These areas include:

(a) Review of projects during the self-assessment. To fully assess compliance with the project development process and responsibilities assumed under the Pilot Program, Caltrans needs to evaluate projects at all phases of project development, as well as compliance with project filing procedures. A complete review should include not only projects that have reached decision points and have been reported in the quarterly reports to FHWA, but also projects yet to reach a decision point.

(b) More details on performance measures. As the self-assessment is the primary method of data collection and evaluation of success in meeting Pilot Program performance measures, more details and discussion regarding each performance measure should be

included in the self-assessments.

Examples of areas that need further explanation include: (1) The sampling procedures used for checking EA/EIS project files organized according to the established filing system and (2) the sampling procedures used for checking the completeness of the QC certification forms.

(c) Limited scope of the self-assessment review. A significant proportion of the third self-assessment focused on the effectiveness of corrective actions implemented by Caltrans to address deficiencies noted in its second self-assessment and actions taken to address FHWA Pilot Program audit findings. While an important component of the self-assessment process, review of improvement regarding noted deficiencies from prior internal and external audits is only one aspect of a successful self-assessment process. The bulk of the self-assessment process should be focused on confirmation that all Pilot Program requirements are being fully met, including pursuit of newly occurring areas of weakness/ potential weakness.

(d) To ensure that Caltrans is effectively reviewing all elements of assumed responsibility as stated in the MOU and Application, it must present a systematic review of all Pilot Program processes and procedures. Caltrans has yet to establish a methodology/approach to specify how it will conduct its self-assessment process. In particular, the process it is using and intends to use to determine, for each audit, what Pilot Program elements warrant review, the level of review to be performed on each selected element, the depth of the review (e.g., the sample size of documents reviewed, the number of districts contacted/staff interviewed, the frequency of reviews), and the coverage of each self-assessment (what parts of the Program have been/need to be reviewed/re-reviewed). The current self-assessment process has yet to demonstrate that Caltrans is evaluating its Program in a manner that will determine for all applicable components if “its process is working as intended, to identify any areas needing improvements in the process” (MOU Section 8.2.6). Evidence to suggest that the self-assessment process needs improvement is demonstrated by new Needs Improvement and Deficient audit findings identified by the FHWA audit team in this audit in areas recently reviewed (but not identified) under Caltrans self-assessment. In addition, the FHWA audit team identified new Deficient findings in Pilot Program areas not evaluated by the self-assessment process.

(N3) *Air Quality Conformity Determinations*—Section 8.5.1 of the MOU and SER Chapter 38 require Caltrans staff to document the air quality conformity analysis for each project by submitting a request to FHWA for a formal conformity determination. The request for the conformity determination should be submitted to FHWA as soon as possible after the preferred alternative is identified. The FHWA conformity determination must be received before the final NEPA action is completed.

Through interviews and project file reviews in the Districts visited, the audit team identified a misunderstanding by the Caltrans staff regarding the air quality conformity determination process. This misunderstanding and confusion was not observed in the first two audits. Several Caltrans staff interviewed in both the North and Central Regions were not aware of their responsibilities to request formal FHWA conformity determinations for projects processed through the LA program. Interviews identified a lack of communication and misunderstandings between Caltrans staff and local agencies regarding air quality conformity analysis and determinations. In two of seven project files reviewed for air quality conformity determinations, FHWA conformity determination letters were missing. For another file, the conformity letter was not included in the project file but was subsequently located by Caltrans staff and included in the file during the audit.

(N4) *Project Files/UFS*—Section 8.2.4 of the MOU and SER Chapter 38 require Caltrans to maintain project files and general administrative files. To support statewide consistency in file content and organization, the UFS has been developed for mandatory use for all Capital and LA projects.

Despite the “Compliant” finding regarding the North and Central regions described under item C3 above, the audit team identified that some project files were not established as soon as environmental studies had begun, as required by SER Chapter 38,

Additional inconsistencies identified included:

(a) Several instances where project files were missing UFS tabs and some sections contained no information or an explanation as to why the tabs were missing or tab sections were incomplete (i.e., empty).

(b) Required project documentation was missing from several project files. Examples of missing documents include PES forms, QA/QC certification forms, air quality conformity determination

letters, State Historic Preservation Office concurrence letters for section 106 determinations, "Plans, Specifications and Estimates" information, and various transmittal letters.

(c) Project file reviews identified unsigned/incomplete documentation including incomplete environmental document filing checklists, unsigned environmental document preparation and review tools, and unsigned LA EA document title pages.

(N5) *Commitment of Resources*—Section 4.2.2 of the MOU requires Caltrans to maintain adequate organizational and staff capability effectively to carry out the responsibilities it has assumed, including devoting adequate staff resources to the Pilot Program. In the Districts/Regions visited, interviews with the Caltrans staff working on LA projects revealed the following:

(a) Inconsistencies associated with charging time spent on Pilot Program activities to the official Work Breakdown Structure (WBS) code (6DELE). Staff interviews identified two main reasons for incomplete adherence to use of the WBS code: not having the time to determine the amount of time and enter it in the time sheet system; not tracking Pilot Program labor expenditures at all.

(b) LA staffers expressed frustration to the audit team regarding the amount of work to be accomplished by current LA staff in the Districts. Concerns were frequently expressed regarding inadequate staffing, lack of timeliness in filling vacant positions, and the difficulty coping with the pressure to advance projects in a timely manner and on schedule.

The audit team learned that Caltrans is considering updating and enhancing the LP 2000 system which should present an opportunity to improve resource tracking for LA staff, and projecting future staff needs.

(N6) *Adequate QA/QC Review of Technical Studies*—The second Caltrans self-assessment identified that the peer review of the biological resources technical studies was sometimes less thorough than the same reviews performed for SHS projects. The audit team confirmed this finding through interviews with LA staff in one District visited. Caltrans has committed to ensure that the appropriate level of environmental analysis is conducted for all NEPA documents for projects on both the SHS and also on local streets and roads.

A corrective measure was identified in the self-assessment to remind the staff biologists that the peer review of biological resource technical studies for

the LA projects uses the same standard as for Capital projects. The audit team concurs in this corrective measure and also recommends that additional follow-up review occurs to ensure that it is being implemented.

(N7) *Training on Air Quality Conformity*—MOU section 12.1.1 requires Caltrans to provide training "in all appropriate areas with respect to the environmental responsibilities that Caltrans has assumed." Three of four LA and Capital environmental planners interviewed in the Central Region office indicated an ongoing need for training in the area of air quality conformity, its role in the Statewide Transportation Improvement Program, the Transportation Improvement Plan, and emissions budgets. Interviewees indicated that additional training or primers by Caltrans' air quality specialists are needed for environmental planners due to this being such a dynamic area affecting many projects. Caltrans should assess if other environmental planners in other Districts/Region offices also find this area problematic and require additional training in this area. Air quality specialists should also work with environmental planners in their Districts to ensure that everyone understands their role and the required processes.

(N8) *Procedural and Substantive Requirements*—MOU section 5.1.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to FHWA in carrying out the responsibilities assumed. Through interviews with USACE and USFWS staff located in California, the audit team learned that there have been a few instances where environmental requirements were not completely and correctly implemented.

(a) In at least one instance, based on the biological assessment of the project, take of threatened or endangered species was anticipated and quantified. However, Caltrans made a request for informal, not formal consultation, to the USFWS. This process decision is contrary to the implementing regulations of section 7 of the ESA.

(b) In other instances, the USACE reported that environmental assessment documents prepared pursuant to NEPA and reviewed by the USACE under section 404 of the Clean Water Act, contained insufficient information to support decisionmaking and chosen alternatives. Further, as part of their Clean Water Act section 404 permit verification, the conclusions made by Caltrans in relation to ESA requirements were not supported. This noncompliance prevented the USACE

from issuing its required permit without the proper consultation with the USFWS.

It is the opinion of the audit team, based on these observations, that Caltrans staff and/or the consultants hired by Caltrans to conduct biological assessments, submit permit applications, and perform NEPA analyses, could benefit from training in various environmental laws and regulations. It is also noted that the technical reviews and other QC reviews should have identified these errors. The MOU section 10.2.1.C performance measure to monitor relationships with Federal resource agencies needs to be implemented.

(N9) *Assignments under the Pilot Program*—MOU section 3.2.2 requires Caltrans to comply with the requirements of all applicable environmental laws. Caltrans staff interviewed indicated a lack of understanding of the SAFETEA-LU section 6002 (§ 6002; 23 U.S.C. 139) environmental review process definition and role of participating agencies, particularly in comparison to that of cooperating agencies.

In a review by the audit team of four EIS project files, the audit team found that the cooperating and participating agency invitation letters sent by Caltrans were not totally accurate and were confusing. The letters were based on the template invitation letter provided in the SER, with links to the Local Assistance Manual. This template contains the following errors and confusing language:

(a) The subject line for the letter only mentions an invitation to become a participating agency, with no indication of an invitation to also be a cooperating agency, when both apply. Yet, in the body of the letter, there is a combined discussion of cooperating agency status and participating agency status.

(b) In the list of activities that will be occurring during the NEPA process, there are two instances listing both FHWA and Caltrans as providing various information. Under the Pilot Program, as stated in the first paragraph of the letter, FHWA is not involved in the project.

(c) The letter does not clarify the different roles and responsibilities of participating and cooperating agencies. (d) The letter states that an agency will be a cooperating agency only if it has "jurisdiction for permit." That is not in accordance with 40 CFR 1598.5 which defines cooperating agency as, "any Federal agency other than the lead agency which has jurisdiction by law or special expertise with respect to any

environmental impact involved in the proposal.”

Caltrans needs to ensure that the SAFETEA-LU environmental review process (§ 6002; 23 U.S.C. 139) is fully and correctly implemented.

(N10) *Performance Measure—“Monitor relationships with the general public”*—MOU section 10.2.1.C requires Caltrans to monitor relationships with the general public. This is the first audit to evaluate this performance measure as such a tool had not previously been developed for this performance measure. This measure is intended to assess the effectiveness of any changes in communication that could affect an existing relationship among Caltrans and the general public. The tool or indicator measure developed involves Caltrans staff and/or consultants performing self assessments to evaluate public meeting materials. To fully assess this relationship, however, the views of the other party must be considered as well. The current performance measure does not reflect the general public’s views on communication with Caltrans regarding Federal-aid highway projects. More details need to be provided regarding the projects for which the public meeting materials are being evaluated. Different projects require different and appropriate materials depending on the scope and issues involved in the project. Using a generic rating for all projects, with no additional information or explanation may not truly reflect the desired outcome.

(N11) *Documentation of Class of Action Determinations*—Through project file reviews, the audit team found inconsistencies in the class of action determination documentation. The SER Chapter 38 “Defining the Class of Action” requires for EAs and EISs, that either a Deputy District Director for Environmental (or designee) or a District Local Area (DLA) Engineer and a District senior environmental planner make a determination with the concurrence of the Division of Environmental Analysis Environmental Coordinator.

Four of six EIS project files reviewed by the audit team did not include documentation on the class of action determination. For one project, the class of action was changed from an EIS to an EA, but no documentation was identified in the file to explain the change or to demonstrate concurrence on the decision to down scope the environmental document type. For another project, the project file did not contain an explanation for the change of action from an EA to an EIS.

(N12) *LA Training Plan*—Under section 12.1.1 of the MOU, Caltrans is

responsible for ensuring that its staff is properly trained and that training will be provided “in all appropriate areas with respect to the environmental responsibilities Caltrans has assumed.” This section of the MOU also states that “Caltrans agrees to have all appropriate employees (including consultants hired for the purpose of carrying out the Secretary’s responsibilities) attend such training.” Additionally, the Application states that DLA environmental staffers “will provide training to local agencies and their consultants to ensure that LA environmental documents follow statewide procedures and meet Federal requirements.”

Section 12.1.2 of the MOU requires that a training plan be updated annually during Caltrans’ participation in the Pilot Program. This training plan is shared with FHWA on an annual basis. The training plans submitted for Fiscal Year (FY) 07–08 and FY 08–09 included information only on Capital program training and did not include information on training for DLA staff or how staff will provide training to local agencies and consultants. The information gaps in the FY08–09 Training Plan include:

(a) The lack of a formalized training plan for DLA staff on DLA-specific processes—Four interviewees and pre-audit information collection revealed no evidence of a formal training plan to carry out the LA responsibilities under the Pilot Program, including training for DLA staff and staff in local agencies and consultants. Interviews in all Districts/Regions visited indicated varying training activities have occurred, however, this information—or an explanation on the approach—is not included in the training plan.

(b) The lack of an ongoing training procedure for local agencies and consultants, including expected courses or outreach to be offered. Six interviewees stated that there is no formal approach being used by Caltrans Districts to ensure proper training or outreach is provided to local agencies and consultants. Given the very large number of LA projects in some Districts, and the typically high staff turnover within local agencies, Caltrans needs to formalize and implement an ongoing training plan to ensure that LA program staff can carry out the responsibilities under the Pilot Program and work with the local agencies and consultants to ensure compliance with statewide procedures and Federal requirements assumed by Caltrans.

Deficient

(D1) *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA

under section 8.2.7 of the MOU continue to consistently include an inaccurate listing of all approvals and decisions under the Pilot Program. The quarterly reports received by FHWA for the first five quarters have all contained substantial errors and have had to be revised and resubmitted to FHWA by Caltrans.

Discussions with Caltrans staff developing input for the quarterly reports identified inconsistent approaches and procedures in the processes leading to report production. Communication is not always timely between the project generalists and the staff responsible for project tracking and reporting. Additionally, two of the four Districts visited during the third audit were unable to readily produce a list of the projects within that District that fall under the Pilot Program. The audit team finds the quarterly reporting process and products deficient.

(D2) *Performance Measure—“Monitor relationships with Federal and State resource agencies”*—MOU section 10.2.1.C requires Caltrans to “assess change in communication among Caltrans, Federal and State resource agencies.” In all three Caltrans self-assessments (December 2007, June 2008, and December 2008) under “Progress in Meeting Pilot Program Performance Metrics” Caltrans stated that this performance measure has not yet been implemented. The audit team understands that Caltrans has engaged a consultant to undertake a survey of Federal and State resource agencies to assess their relationships with Caltrans; however, the minimal degree of progress after 18 months of the Pilot Program renders Caltrans’ performance on this requirement deficient at the time of the audit.

(D3) *Delegation of Signature Authority*—In six of the eight Caltrans District Offices reviewed in this audit, the audit team learned of the delegation of signature authority for EISs and individual Section 4(f) Evaluations that occurred in October 2007.

In September 2007, Caltrans asked for clarification of signature authority for EISs as stated in the Application and section 1.1.2 of the MOU. The FHWA responded with clarification of this signature authority through a letter from FHWA to Caltrans dated September 12, 2007. This letter stated that the Draft EIS can be signed by either the Deputy District Director for Environmental Planning or the District Director, at the Caltrans’ District discretion. Final EISs are to be signed by District Directors, and not further delegated. There was no request for clarification for individual Section 4(f) Evaluations and therefore,

that signature authority remains as agreed to with the Deputy District Director.

During the audit, the audit team learned of two memos, dated October 2007, that delegated, for six Districts, the signature of individual Section 4(f) Evaluations to the Environmental Office Chiefs and the signature of EISs to the Environmental Division Chief or the District Director.

This delegation is inconsistent with the FHWA clarification letter. Additionally, Chapter 38 of the SER is inconsistent regarding this delegation of signature authority for Draft EISs, indicating two different delegation signature authorities, one to the Deputy District Director and one to the Deputy District Director for Environmental Planning, in the sections "Signature Authorities" and "Signature Protocols."

(D4) *Assignment of Section 6002 Responsibility under the Pilot Program*—Under MOU section 3.2.2, Caltrans is responsible for complying with the requirements of any applicable environmental law. Therefore, Caltrans is responsible for complying with SAFETEA-LU section 6002 (23 U.S.C. 139) which defines provisions of the environmental review process. The SAFETEA-LU section 6002(d)(23 U.S.C. 139(d)) states that a Federal lead agency for a highway project conducting a NEPA process under section 6002, in this case Caltrans, "shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project."

In three of the six EIS project files reviewed, there were participating agency invitations sent out to only 5 to 10 agencies per project. For those projects, the audit team, thorough interviews and review of project files, learned that more local, State, Federal, or tribal governmental agencies, either may have or already had, expressed an interest in the project and were therefore required to be an invited participating agency.

The Caltrans' third self-assessment included a section on "Understanding of Section 6002 Requirements," and did not report any finding that requires a corrective action.

Based on its review of project files and interviews with Caltrans staff, the audit team finds Caltrans' compliance

with its Pilot Program responsibilities to be deficient with regard to the intent and requirements of SAFETEA-LU section 6002 regarding inviting participating agencies.

(D5) *Corrective Action for Audit Deficiency*—In three of the project files reviewed by the audit team that contained a class of action determination documentation, the class of action determination concurrence was issued the day before the third audit began, or actually, in two instances, the concurrence was issued during the audit. This is a failure to fully address the deficiency, "Environmental Document Process—Class of Action Determination," noted in the previous audit.

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BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: This meeting of the Financial Literacy and Education Commission will be held on Wednesday, May 27, 2009, beginning at 10 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC, 20220. To be admitted in the Treasury building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. To register, visit <http://www.treasury.gov/ofe>, click on the "Financial Literacy and Education Commission" and then click on "Event Summary and Registration." For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Dubis Correal by e-mail at dubis.correal@do.treas.gov or by telephone at (202) 622-5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at <http://www.treas.gov/ofe>.

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is in Title V of the Fair and Accurate Credit Transactions Act of 2003 (Pub. L. 108-159), established the Financial Literacy and Education Commission (the "Commission") to improve the financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the heads of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months.

This meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The room will accommodate 80 members of the public. Seating is available on a first-come, first-seated basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: May 12, 2009.

Andrew Mayoock,

Executive Secretary, U.S. Department of the Treasury.

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