

Public Roads

— featuring developments in Federal highway policies, programs, and research and technology —



March/April 2006 · Vol. 69 · No. 5

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The Straight Scoop on SAFETEA-LU by Susan J. Binder

Building on the ISTEA and TEA-21 foundations, the new Federal surface transportation legislation introduces new programs and policies.



(Top) President George W. Bush signs SAFETEA-LU at a Caterpillar® facility in Montgomery, IL, on August 10, 2005. Joining the President in the front row, from left, are Congressman Ray LaHood, R-IL; Congresswoman Melissa L. Bean, D-IL; Congressman Jim Oberstar, D-MN; Congressman Tom Petri, R-WI; Senator Kit Bond, R-MO; U.S. Transportation Secretary Norman Y. Mineta; Speaker of the House Dennis Hastert, R-IL; Congressman Bill Thomas, R-CA; and Congressman Bobby L. Rush, D-IL.
(Bottom) In front of a backdrop of earth-moving equipment, Bush waves to the crowd gathered for the signing ceremony.

White House photos by Eric Draper.

Passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005 marked the culmination of 4 years of work to achieve a new surface transportation authorization law. It also signified the beginning of a new challenge as the transportation community absorbs the law's changes and requirements.

With overall funding authorization totaling \$244.1 billion, SAFETEA-LU enacts the largest highway program in the history of the Nation. At the same time, it changes the structure and requirements of longstanding programs, introduces new initiatives, adds oversight responsibilities, and alters transportation policies.

SAFETEA-LU addresses many of the challenges facing the transportation system today, such as enhancing safety, reducing traffic congestion, improving efficiency in freight movement, increasing intermodal connectivity, and protecting the environment. Through its provisions of enhancing research and planning activities, it also lays the groundwork for meeting future challenges.

"This law funds vital new transportation projects, holds the line on gas taxes, and avoids adding to the deficit," says U.S. Transportation Secretary Norman Y. Mineta. "More importantly for America's drivers, it contains significant new safety provisions. State and local officials now have the resources, flexibility, and support they need to make driving safer, fight congestion, and ensure that the Nation's transportation system keeps pace with the rapidly expanding economy."

SAFETEA-LU, signed into law on August 10, 2005, was enacted 22 months after its precursor, the Transportation Equity Act for the 21st Century (TEA-21), expired. In the interim, a series of 12 stopgap extension acts provided the authority for continuance of the Federal-Aid Highway Program, which provides financial assistance to the States for transportation projects and programs.

"It's been a long time coming, but the law will accelerate needed transportation projects, increase safety, improve people's quality of life, and create jobs," says Jack Lettiere, commissioner of the New Jersey Department of Transportation and former president of the American Association of State Highway and Transportation Officials.

Senator Johnny Isakson, R-GA, adds, "This legislation is critical to Georgia because it will provide our State with the tools necessary to improve and expand its surface transportation infrastructure to meet the demands of a growing population."

Analyzing and Implementing the New Law

Since SAFETEA-LU's passage, the U.S. Department of Transportation (USDOT) has been analyzing the changes outlined in the 800-plus-page law and implementing them as efficiently as possible. Actions run the gamut from changing business practices to providing guidance to the Federal Highway Administration's (FHWA) State and local partners on developing regulations.

"Our State and local partners are understandably anxious for us to make SAFETEA-LU funds available as soon as possible, but we must take care that we do so within the law and within the stated preferences of Congress," says FHWA Acting Administrator J. Richard Capka. "We must implement the law quickly, but without sacrificing the high quality of service FHWA has been providing the traveling public for 38 years."

Typically, surface transportation authorizations are multiyear acts that set the amounts that can be spent on federally assisted highways, highway safety, and other transportation programs. They also set the Nation's transportation policy and alter those aspects of the United States Code and regulations that affect surface transportation.

Some surface transportation laws have been described as "revolutionary," as

was the case with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA gave more decisionmaking authority to States, created new statewide planning processes, focused on linkages among transportation modes, brought new players into the transportation process, and set the groundwork for establishing the National Highway System, a network of interstate and other roadways important to the Nation's economy, defense, and mobility.

Other surface transportation laws have been described as "evolutionary," such as TEA-21, which preserved the basic framework of ISTEA with a few important changes. Healthy economic conditions led to increased Highway Trust Fund balances, which enabled greater overall funding and the creation of financial features such as guaranteed funding, firewalls (a budgetary device establishing separate budget categories for discretionary programs such as mass transit spending), and Revenue-Aligned Budget Authority (RABA), an adjustment that ensures transportation funding follows actual revenues from vehicle and gas taxes. TEA-21 was heralded for providing a dramatic increase in investments in Federal surface transportation—40 percent more than the total funding provided for highways, highway safety, and public transportation programs under ISTEA.

SAFETEA-LU—while closer to the evolutionary side of the spectrum—contains several significant changes in areas such as funding, safety, program structure, transportation planning, highway finance, environmental streamlining, and research.

Funding Under SAFETEA-LU

SAFETEA-LU is commonly referred to as a "6-year bill," but it is actually a *law that* covers the 5 fiscal years (FY) 2005-2009. To compare SAFETEA-LU with the two previous acts—which covered 6-year timeframes—analysts frequently add 2004, the year authorized completely by short-term extension acts. SAFETEA-LU's total funding thus includes the 5-year period and, for comparison purposes, the 6 years starting with FY 2004.

SAFETEA-LU authorizes \$201.6 billion for Federal-aid highways, but also rescinds \$8.5 billion, bringing net authorizations to \$193.1 billion. A permanent Emergency Relief (ER) program authorization of \$100 million per year to repair Federal-aid highways damaged by disasters brings the total to \$193.6 billion.

SAFETEA-LU retains the Federal-Aid Highway Program's core programs—the Surface Transportation Program (STP), National Highway System (NHS), Interstate Maintenance Program, Bridge Program, and Congestion Mitigation and Air Quality Improvement Program—and adds a new one, the Highway Safety Improvement Program (HSIP). Funding for core programs is about 63 percent of SAFETEA-LU's total highway and highway safety funding.



SAFETEA-LU contains changes in funding and other areas to meet the challenges of maintaining and growing transportation infrastructure such as the highway shown here.

Funding issues were a major reason SAFETEA-LU was enacted so long after TEA-21 expired. Formulas—which determine how the transportation pie is sliced—are often a contentious issue in reauthorization debates.

SAFETEA-LU Funding		
	FY 2005-2009	FY 2004*-2009
	(All numbers in billions)	
Federal-Aid Highways	\$193.1	\$227.4
Public Transportation	\$45.2	\$52.6
Highway and Motor Vehicle Safety	\$5.8	\$6.5
Totals	\$244.1	\$286.5
*FY 2004 funding provided through Extension Acts.		

Source: USDOT.

During this cycle of reauthorization, the transportation committee leadership in both houses of Congress stressed the importance of greater overall highway spending and their desire for greater equity in the highway program (that is, lessening the "donor/donee" issue between the Federal Government and its State and local partners). These factors, coupled with a desire not to pass a law that would increase taxes, led to much debate on the overall size of the program and how it should be structured.

Specific Projects And Programs

SAFETEA-LU authorizes spending on an unprecedented number of specific projects. The largest category of these congressionally designated earmarks is High-Priority Projects, totaling \$14.8 billion over 5 years for 5,091 projects throughout the country. The next largest category is Transportation Improvements with 466 projects funded at \$2.6 billion.

Lesser amounts are earmarked under other new programs: Projects of National and Regional Significance (\$1.8 billion), National Corridor Infrastructure Improvement (\$1.9 billion), Freight Intermodal Distribution Pilot (\$30 million), designated bridge projects (\$400 million), and Nonmotorized Transportation Pilot (\$100 million).

A new Equity Bonus Program has three features, one tied to Highway Trust Fund contributions and two that are independent. First, building on TEA-21's Minimum Guarantee concept, the Equity Bonus Program ensures that each State's return on its share of contributions to the Highway Trust Fund (in the form of gas and other highway taxes) ranges from at least 90.5 percent in 2005 to 92 percent in 2009.

In addition, each State is guaranteed a specified rate of growth over its average annual TEA-21 funding level, regardless of Highway Trust Fund contributions. Finally, States meeting certain conditions set in SAFETEA-LU (for example, a median household income of less than \$35,000) are guaranteed a share of apportionments and High-Priority Projects not less than the State's average share under TEA-21.

RABA is continued in SAFETEA-LU, but with some changes to avoid the dramatic swings seen under TEA-21. Early in TEA-21's existence, actual revenues accruing to the Highway Trust Fund exceeded projections, resulting in large distributions of additional program funds being made to the States.

Reduced travel by U.S. motorists and a drop in Highway Trust Fund revenues would have required a reduction of the funds available to States if Congress had not acted to prevent it. To even out the swings when calculating RABA, SAFETEA-LU "looks back" at the average of the past 2 years of revenue. Also,

SAFETEA-LU allows a negative adjustment only when the balance of the Highway Trust Fund highway account is less than \$6 billion.

Raising the Bar on Safety

SAFETEA-LU raises the stature of highway safety by making it a core program tied to strategic safety planning and performance. In the past, highway safety was funded through a 10-percent set-aside from STP, but SAFETEA-LU establishes a separately funded HSIP. Under HSIP, States have flexibility on how to spend the funds, enabling them to target money to their most critical safety needs.

Of the \$5.1 billion in HSIP funds available for FY 2006 to 2009, \$220 million per year is set aside for the Railway-Highway Crossings Program, with the remainder distributed by formula to the States. Of that amount, \$90 million is to be set aside for construction and operational improvements on high-risk rural roads.

HSIP money comes with a condition: States must develop and implement a Strategic Highway Safety Plan (SHSP), a comprehensive plan with specific goals and objectives for reducing highway fatalities and serious injuries. If they complete such a plan by October 1, 2007, States may use HSIP funds for new, eligible safety activities, such as safety-conscious planning, collection and analysis of crash data, integration of emergency communications equipment, and work zone safety projects.

States with SHSPs also can use up to 10 percent of their HSIP funds for behavioral and other safety projects if they meet rail grade crossing and safety needs as defined in their SHSPs. States without SHSPs in place by the deadline, however, will have their HSIP apportionments frozen at the 2007 level and may use those funds only for railway-highway crossing and hazard elimination projects.

SAFETEA-LU Core Program Authorizations	
	FY 2005-2009 (All numbers in billions)
Surface Transportation Program	\$32.5
National Highway System	\$30.5
Interstate Maintenance Program	\$25.2
Bridge Program	\$21.6
Congestion Mitigation and Air Quality Improvement Program	\$8.6
Highway Safety Improvement Program (4 years)	\$5.1
Core Program Total	\$123.5

Source: USDOT.

In addition to the core HSIP, SAFETEA-LU creates several programs targeted at specific safety issues. The Safe Routes to School program provides \$612 million over the life of SAFETEA-LU for projects to enable and encourage children to walk and bicycle to school. The Work Zone Safety program, funded at \$5 million per year beginning in 2006, provides money for work zone safety training and a national information clearinghouse and requires traffic-control devices and high-visibility garments for workers in work zones.

SAFETEA-LU also funds bicycle and pedestrian safety, traffic sign and pavement improvements to benefit older drivers, a study on workplace safety at toll facilities, and a new FHWA Motorcyclist Advisory Council.



SAFETEA-LU makes safety a core program and provides States with funding for projects such as initiatives that promote safety in work zones such as this one.

Updating Programs For Today's Needs

Other than adding safety as a core program, SAFETEA-LU does not alter the basic structure of the Federal-Aid Highway Program dramatically. Several program modifications, however, deserve highlighting.

Projects eligible for funding under both the NHS and STP programs have been expanded to include environmental restoration and pollution abatement to minimize the impact of transportation projects, control noxious weeds and aquatic noxious weeds, and establish native species. STP eligibility is further expanded to include advanced truckstop electrification systems and mitigation projects at high-crash, high-congestion intersections. Because of the new HSIP, the STP safety set-aside will be eliminated beginning in 2006.

The Bridge Program was broadened to include funds for systematic preventive maintenance, and the previous requirement that bridges must be considered "significantly important" to be eligible for funding was eliminated. The requirement that States spend at least 15 percent of their bridge apportionments on off-system bridges remains, although the upper limit of 35 percent was eliminated.

The Federal Lands Highway Program (FLHP) was modified with some additional eligibilities and flexibilities. New uses of FLHP funds include up to \$20 million per year to maintain Forest Highways, \$1 million per year to install signs identifying public hunting and fishing access, and \$10 million to facilitate the passage of aquatic species beneath roads in the National Forest System.

The FLHP Indian Reservation Roads Program (IRR) was altered too. Tribes may use up to 25 percent of their IRR program funds for system maintenance. An authorization of \$70 million is provided for projects to replace structurally deficient or functionally obsolete IRR bridges. IRR funding also may be provided, in accordance with the Indian Self-Determination and Education Assistance Act, directly to a tribal government that has demonstrated financial stability and financial management.

In addition to the \$100 million annual authorization to the ER Program mentioned above, SAFETEA-LU authorizes that funds be made available from general fund appropriations in years when ER allocations exceed \$100 million. Separate

appropriations legislation is required to provide such sums. ER funds help State and local governments cover the expense of repairing serious damage to Federal-aid highways resulting from natural disasters or catastrophic failures.

Finally, SAFETEA-LU creates a number of new highway programs. Among them are the Coordinated Border Infrastructure Program, which is aimed at expediting safe and efficient vehicle and cargo movement at U.S. borders with Canada and Mexico, and the Freight Intermodal Distribution Pilot Program, which will provide grants for State and local initiatives to relieve congestion and improve safety at inland ports and intermodal freight facilities.

Enhancing Transportation Planning

SAFETEA-LU makes several changes in the metropolitan and statewide transportation planning processes established by ISTEA as the primary mechanisms for cooperative transportation decisionmaking in the States. Some changes add flexibility and efficiency, while others add new requirements. The new law identifies safety and security as separate items that should be considered in both the statewide and metropolitan planning processes.

Consultation provisions for States and metropolitan planning organizations (MPOs) are expanded under SAFETEA-LU. The statewide planning process must be coordinated with metropolitan and trade and economic development planning activities. Two or more States may enter into planning agreements to develop transportation projects that span State lines.



New freight related programs in SAFETEA-LU include initiatives to expedite vehicle and cargo movement at U.S. borders for container trucks, such as these, and relieve congestion and enhance safety at inland ports and intermodal freight facilities.

The metropolitan planning process must consider environmental mitigation, improved performance, multimodal capacity, and activities that enhance the environmental, cultural, and aesthetic aspects of the transportation system. In addition, tribal, bicycle, pedestrian, and disabled interests must be provided an opportunity to participate in the planning process. The set-aside for metropolitan planning is increased to 1.25 percent, and a new 30-day limit is established for States to reimburse MPOs for planning expenses.

Updates now are required every 4 years for transportation improvement programs (TIPs), documents prepared by MPOs listing transportation projects slated for Federal funding, and statewide transportation improvement programs (STIPs), statewide plans for federally funded highway and transit projects and other priority transportation projects. In the past, updates were required every 2 years.

Leveraging Innovative Financing

To help close the gap between transportation investment needs and funds available from traditional sources, SAFETEA-LU includes several features that can help States leverage innovative sources to fund transportation projects.

SAFETEA-LU provides States with more options to use tolling to finance infrastructure improvements and manage congestion. Over the 5-year period covered by the law, the new Express Lanes Demonstration Program will allow up to 15 demonstration projects across the Nation to use tolling to manage high congestion levels, reduce emissions, or finance additional interstate lanes to reduce congestion. The new Interstate System Construction Toll Pilot Program will allow up to three projects to collect tolls on interstate highways, bridges, or tunnels to fund interstate construction projects.

The law continues the Value Pricing Pilot Program to support the costs of implementing up to 15 variable-pricing pilot programs nationwide to manage congestion and benefit air quality, energy use, and efficiency. A new \$12 million set-aside (that is, \$3 million per year for each FY 2006 through 2009) must be used for projects not involving tolls.

In addition, SAFETEA-LU adds highway and surface freight transfer facilities to the list of activities eligible for tax-exempt private activity bonds. It modifies the Transportation Infrastructure Finance and Innovation Act (TIFIA), under which USDOT provides credit assistance for transportation projects, by lowering the project cost threshold to \$50 million and adding freight rail facilities to the list of eligible uses. It also establishes a new State Infrastructure Bank program that allows all States and U.S. territories to establish investment funds to make loans or provide credit enhancement for transportation projects.

Streamlining the Environmental Process

To address longstanding concerns over the length and complexity of environmental reviews, SAFETEA-LU contains provisions designed to speed up the review process while preserving environmental quality. Although the changes are aimed at streamlining, they include additional steps and responsibilities for transportation agencies.



SAFETEA-LU provides States with more options to use tolling to finance infrastructure improvements and manage congestion, as on the tollway shown here.

SAFETEA-LU establishes a new environmental review process for transportation projects that incorporates much of the current state of the practice. This process will apply to new projects advanced with an environmental impact statement (EIS), required under the National Environmental Policy Act (NEPA) for projects

that may have a significant impact on the environment, as well as to projects advanced with other environmental documents if USDOT chooses to do so.

To allow State, local, and tribal agencies a more formal role in the environmental process, a new category of "participating agencies" was added. After providing an opportunity for public and interagency involvement, USDOT will define a project's purpose and need and will establish a plan for coordinating public and agency participation. It also will provide, as early as practicable in the process, an opportunity to consider a range of alternatives.



SAFETEA-LU contains provisions to streamline the review process for construction projects while preserving environmental quality. An environmental review process helped the Utah Department of Transportation (UDOT) develop a design to avoid as many springs and peat bogs as possible when constructing an improved road, shown in this aerial photograph, between Mountain Green and Huntsville, UT.

USDOT is required to notify Congress of any issue that cannot be resolved in 30 days that might delay the process. SAFETEA-LU establishes a 180-day statute of limitations on lawsuits challenging Federal agency environmental approvals, but such approvals must be published in the *Federal Register*.

SAFETEA-LU establishes new ways for States to assume responsibility for environmental streamlining. The law allows States, after signing a memorandum of understanding, to assume responsibility for determining whether activities are categorical exclusions (CE) under NEPA. CEs are activities that do not involve significant environmental impacts, so they are excluded from requirements for environmental assessments.



Among the FHWA staff who played key roles in developing SAFETEA-LU are (left to right) Susan Binder, deputy associate administrator of the Office of Policy and Governmental Affairs; Ross Crichton, leader of the Highway Needs and Investment Analysis Team; and Carolyn Edwards, leader of the Program Analysis Team.

The new law also establishes a project delivery pilot program that allows five States (Alaska, California, Ohio, Oklahoma, and Texas) to apply to USDOT to assume all USDOT environmental responsibilities under NEPA and other environmental laws. This delegated authority could apply to specific highway projects in a State or programwide. Another pilot program will allow up to five States to assume environmental responsibilities for projects to enhance recreational trails.



SAFETEA-LU addresses challenges facing the transportation system today, including enhancing safety and reducing traffic congestion, such as on the highway pictured here, and lays the groundwork for meeting future challenges.

Research: A Mixed Message

SAFETEA-LU authorizes \$2.3 billion for FY 2005 to 2009 for transportation research programs, which is less than the amount authorized in TEA-21. SAFETEA-LU's research title, Title V, discusses the critical nature of research and development to safety, mobility, economic vitality, efficiency, equity, and environmental protection. It also mentions the meager funding provided for

research and how it is in the interest of the United States to increase Federal transportation research and development investment. However, in sharp contrast to TEA-21's programmatic flexibility for research, SAFETEA-LU's Surface Transportation Research, Development, and Deployment Program (STRDD) directs all research funds to designated projects and initiatives.

The surface transportation research program appears to address fundamental exploratory highway research aimed at significant research gaps, emerging issues with national implications, and research related to policy and planning. Exploratory advanced research is a newly authorized program under SAFETEA-LU that has not previously received direct funding authority. All research activities must include performance measurement and evaluation and be outcome based.

Specific features under the new law include strengthening and expanding the operations element in research, including provisions addressing transportation system management and operations, operational methodologies to reduce congestion, transportation security, and asset management.

Research funded under the law includes long-term bridge research, technology deployment, international highway transportation outreach, and transportation research and development strategic planning. Also included are the Surface Transportation-Environmental Cooperative Research Program (STEP), National Cooperative Freight Transportation Research Program, and Future Strategic Highway Research Program (F-SHRP).

SAFETEA-LU also provides funding for training and education through the National Highway Institute (NHI), Local Technical Assistance Program (LTAP), Garrett A. Morgan Technology and Transportation Futures Program, Dwight D. Eisenhower Transportation Fellowship Program, Transportation Education Development Pilot Program, and Transportation Scholarship Opportunities Program.

In addition to funding the STRDD and training and education, SAFETEA-LU provides funding for the Bureau of Transportation Statistics, University Transportation Research, and intelligent transportation systems research and deployment.

Moving Forward With SAFETEA-LU

Even with all of the hard work that went into developing SAFETEA-LU, the job does not stop there. USDOT and FHWA will continue to develop educational materials, courses, and other resources to help State and local agencies understand the complex new law and its many changes and requirements. The SAFETEA-LU Web site at www.fhwa.dot.gov/safetealu/index.htm provides summary information as well as full details on the law.

The largest surface transportation investment in U.S. history, SAFETEA-LU builds on the firm foundation laid by ISTEA and TEA-21. It supplies the funds and refines the programmatic framework for investments needed to maintain and grow the Nation's vital transportation infrastructure.

Furthermore, it promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national importance, while giving State and local transportation decisionmakers more flexibility to solve transportation problems in their communities.

Susan J. Binder, deputy associate administrator of the FHWA Office of Policy and Governmental Affairs, provides executive direction and leadership for the agency's policy efforts. She also directs the Office of Legislative and Governmental Affairs, managing development of FHWA legislative proposals, national strategic planning initiatives, and congressional relations activities. She has served in a variety of posts since she joined USDOT in 1975, including administrator of the FHWA Maryland Division. She has a bachelor's degree in consumer economics from the University of Maryland and a master's degree in business administration from The George Washington University.

To learn more about SAFETEA-LU, visit www.fhwa.dot.gov/safetealu/index.htm.

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