

Section 6009: Phase II Implementation Study

OMB Burden Statement

This collection of information is voluntary and will be used to report to Congress on the implementation of provisions in Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amending Section 4(f) law and to support U.S. DOT's Environmental Stewardship Strategic Goal. Public reporting burden is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 2125-XXXX. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Highway Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

Section 6009: Phase II Implementation Study

Introduction

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6009, Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites, requires the U.S. Department of Transportation (U.S. DOT) to study the implementation of and the amendments made by Section 6009 to Section 4(f) of the 1966 U.S. DOT Act. Section 4(f) established requirements for approving transportation projects that will use historic sites or publicly owned parks, recreational areas, and wildlife or waterfowl refuges.

The implementation study is being conducted in two phases. The completed Phase I focused primarily on the de minimis impact provision. Phase II will continue the de minimis impact provision analysis and evaluate the implementation of the revised rule on feasible and prudent avoidance alternatives standards.

As such, this survey includes two sections. The first section focuses on the de minimis provision and the second section focuses on the feasible and prudent standards. Knowledge on the use of either or both provisions is requested, so please complete the survey regardless of your level of experience with them.

We thank you in advance for your participation in this survey.

1. Please provide your contact information before beginning the survey.

| | |
|--|--------------------------------|
| Name: | <input type="text"/> |
| Title/Position: | <input type="text"/> |
| Length of service in current position: | <input type="text"/> |
| Agency or Organization: | <input type="text"/> |
| City: | <input type="text"/> |
| State: | <input type="text" value="6"/> |
| Email Address: | <input type="text"/> |
| Phone Number: | <input type="text"/> |

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SECTION I: DE MINIMIS IMPACT PROVISION

SAFETEA-LU amended existing Section 4(f) legislation to simplify the processing and approval of projects that have only de minimis impacts on lands protected by Section 4(f). As codified in the new regulations (23 CFR 774), once the U.S. DOT determines that a transportation use of Section 4(f) property results in a de minimis impact, and the responsible official(s) with jurisdiction over the resource agrees in writing, analysis of avoidance alternatives are not required and the Section 4(f) process is complete.

The following survey questions were designed to collect information regarding the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects where a de minimis impact determination was made. Citizen/advocacy or other user groups with interest in the Section 4(f) resource should answer the questions as applicable to them. All respondents should feel free to supplement their responses with additional explanations.

2. How many projects have you been involved in where the following is true (1) you've played a key role, (2) a de minimis impact determination was made, and (3) the construction of the portion of the project related to the Section 4(f) resource is at least 75 percent complete?

0

1-3

4-6

7-10

More than 10

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SECTION 1: EXPERIENCE WITH DE MINIMIS

3. Please select the number on a scale from 1 to 5, where 1 is “NOT AT ALL” and 5 is “COMPLETELY TRUE”, that best represents the accuracy of each statement as it relates to your experience with a project where a de minimis impact determination was made. Please choose “unknown” if you have no information on which to base an answer.

| | 1 | 2 | 3 | 4 | 5 | Unknown |
|--|----|----|----|----|----|---------|
| The “activities, features, and attributes” of the Section 4(f) resource changed as a result of the transportation project. | jñ | jñ | jñ | jñ | jñ | jñ |
| User experience of the Section 4(f) resource has been or will be maintained at the same level as prior to the transportation project. | jñ | jñ | jñ | jñ | jñ | jñ |
| Use or demand for the Section 4(f) resource increased as a result of the transportation project. | jñ | jñ | jñ | jñ | jñ | jñ |
| The de minimis impact provision at least maintains the protection of Section 4(f) resources as compared to other Section (f) processing options (i.e., programmatic Section 4(f) evaluations and individual Section 4(f) evaluations). | jñ | jñ | jñ | jñ | jñ | jñ |

Please explain the reasons for these ratings:

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4. Based on your experience across all projects, a Section 4(f) de minimis impact determination resulted in the following approximate time savings for the completion of the planning, design, and construction of the project, as compared to the potential time to complete the project without the use of the provision.

0% (no savings)

1% - 10% savings

11% - 15% savings

16% - 25% savings

More than 25% savings

Unknown

Please explain the reason for your rating:

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5. Based on your experience across all projects, a Section 4(f) de minimis impact determination resulted in the following approximate cost savings for the completion of the planning, design, and construction of the project, as compared to the potential time to complete the project without the use of the provision.

0% (no savings)

1% - 10% savings

11% - 15% savings

16% - 25% savings

More than 25% savings

Unknown

Please explain the reason for your rating:

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SECTION 1: DE MINIMIS IMPACT PROJECT CONTACT INFORMATION

For each project (up to five projects) that meets the following criteria 1) you played a key role, 2) a de minimis impact determination was made, and 3) construction of the portion of the project related to the Section 4(f) resource is at least 75 percent complete, please complete the following questions.

If you have been involved with more than five de minimis impact determinations, please respond for the five projects where construction is complete or furthest along.

6. Please provide the following information for Project 1:

| | |
|--|----------------------|
| Project Name: | <input type="text"/> |
| Project Location (City/State): | <input type="text"/> |
| Status of construction (enter either "complete" or "at least 75% complete"): | <input type="text"/> |
| Name for official with jurisdiction over the Section 4(f) resource contact (i.e., SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact): | <input type="text"/> |
| Email address for official with jurisdiction contact: | <input type="text"/> |
| Phone number for official with jurisdiction contact: | <input type="text"/> |
| Name for contact at citizen/advocacy group with interest in the Section 4(f) resource: | <input type="text"/> |
| Email address for citizen/advocacy group contact: | <input type="text"/> |
| Phone number for citizen/advocacy group contact: | <input type="text"/> |

7. Please provide the following information for Project 2:

| | |
|--|----------------------|
| Project Name: | <input type="text"/> |
| Project Location (City/State): | <input type="text"/> |
| Status of construction (enter either "complete" or "at least 75% complete"): | <input type="text"/> |
| Name for official with jurisdiction over the Section 4(f) resource contact (i.e., SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact): | <input type="text"/> |
| Email address for official with jurisdiction contact: | <input type="text"/> |
| Phone number for official with jurisdiction contact: | <input type="text"/> |
| Name for contact at citizen/advocacy group with interest in the Section 4(f) resource: | <input type="text"/> |
| Email address for citizen/advocacy group contact: | <input type="text"/> |
| Phone number for citizen/advocacy group contact: | <input type="text"/> |

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8. Please provide the following information for Project 3:

Project Name:

Project Location (City/State):

Status of construction (enter either "complete" or "at least 75% complete"):

Name for official with jurisdiction over the Section 4(f) resource contact (i.e., SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction contact:

Phone number for official with jurisdiction contact:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

9. Please provide the following information for Project 4:

Project Name:

Project Location (City/State):

Status of construction (enter either "complete" or "at least 75% complete"):

Name for official with jurisdiction over the Section 4(f) resource contact (i.e., SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction contact:

Phone number for official with jurisdiction contact:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

10. Please provide the following information for Project 5:

Project Name:

Project Location (City/State):

Status of construction (enter either "complete" or "at least 75% complete"):

Name for official with jurisdiction over the Section 4(f) resource contact (i.e., SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction contact:

Phone number for official with jurisdiction contact:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

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DE MINIMIS IMPACT SURVEY END

This completes Section 1 of the survey. Questions in the next section focus on the feasible and prudent standard.

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SECTION 2: FEASIBLE AND PRUDENT STANDARD

Section 6009(b) of SAFETEA-LU required the U.S. DOT to promulgate regulations to clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives that avoid uses of Section 4(f) properties. In March 2008, FHWA and FTA published a rule which defines a "feasible and prudent" avoidance alternative as one that "avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property." The definition emphasizes that the use of Section 4(f) property is to be balanced against competing factors, with a "thumb on the scale" in favor of preserving the Section 4(f) property.

The following survey questions were designed to (a) identify the Section 4(f) evaluations (either draft or final) that have been completed under the new regulations and (b) to collect information regarding the effect of the revised feasible and prudent avoidance alternative definition on implementation of Section 4(f).

Citizen/Advocacy or other user groups with interest in the Section 4(f) resource should answer the questions as applicable to them. All respondents should feel free to supplement their responses with additional explanations.

11. How many Section 4(f) evaluations have you been involved with in your current role?

0

1-3

4-6

7-10

More than 10

12. On a scale of 1 to 5, where 1 is "NOT AT ALL FAMILIAR" and 5 is "EXTREMELY KNOWLEDGEABLE," please rate your knowledge of the updated feasible and prudent standard.

1

2

3

4

5

13. Since April 11, 2008, have you been involved in any Section 4(f) evaluations (either draft or final)?

Yes

No

If yes, number of completed evaluations:

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SECTION 2: EXPERIENCE WITH FEASIBLE AND PRUDENT STANDARD

14. Based on your experience across ALL projects with a Section 4(f) evaluation since April 11, 2008, has the new feasible and prudent standard increased or decreased the protection of Section 4(f) properties, where 1 is “DECREASED PROTECTION” and 5 is “INCREASED PROTECTION”?

1

2

3

4

5

Unknown

Additional comments on your rating:

15. For those projects with construction completed or partially completed, has the new feasible and prudent standard increased or decreased the post-construction effectiveness of impact mitigation and avoidance commitments adopted as part of the project, where 1 is “DECREASED PROTECTION” and 5 is “INCREASED PROTECTION”?

1

2

3

4

5

Unknown

Additional comments on your rating:

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16. The final rule defined a “feasible and prudent avoidance alternative” as one that avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property.

Based on your experience, evaluate on a scale from 1 to 5, where 1 is “CONFUSED” and 5 is “SIGNIFICANTLY CLARIFIED,” how have each of the following assessment criteria, considered individually, affected the determination of whether an avoidance alternative is feasible and prudent:

| | 1 | 2 | 3 | 4 | 5 | Unknown |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| An alternative is not feasible if it cannot be built as a matter of sound engineering judgment. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if it compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if it results in unacceptable safety or operational problems. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if, after reasonable mitigation, it still causes severe social, economic, or environmental impacts. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if, after reasonable mitigation, it still causes severe disruption to established communities. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if, after reasonable mitigation, it still causes severe disproportionate impacts to minority or low income populations. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if, after reasonable mitigation, it still causes severe impacts to environmental resources protected under other Federal statutes. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if it results in additional construction, maintenance, or operational costs of an extraordinary magnitude. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if it causes other unique problems or unusual factors. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An alternative is not prudent if it involves multiple factors, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

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SECTION 2: FEASIBLE AND PRUDENT LEAST OVERALL HARM DETERMINATION

17. The final rule includes a “least overall harm” determination, which balances seven factors, which are to be used when all alternatives result in the use of Section 4(f) property and there is no feasible and prudent alternative that avoids a Section 4(f) use.

Based on your experience, please evaluate on a scale from 1 to 5, where 1 is “CONFUSED” and 5 is “SIGNIFICANTLY CLARIFIED,” how have each of the seven factors, considered individually, affected the determination of the alternative with the least overall harm:

| | 1 | 2 | 3 | 4 | 5 | Unknown |
|---|----|----|----|----|----|---------|
| The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property). | jn | jn | jn | jn | jn | jn |
| The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection. | jn | jn | jn | jn | jn | jn |
| The relative significance of each Section 4(f) property. | jn | jn | jn | jn | jn | jn |
| The views of the official(s) with jurisdiction over each Section 4(f) property. | jn | jn | jn | jn | jn | jn |
| The degree to which each alternative meets the purpose and need for the project. | jn | jn | jn | jn | jn | jn |
| After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f). | jn | jn | jn | jn | jn | jn |
| Substantial differences in costs among the alternatives. | jn | jn | jn | jn | jn | jn |

18. The seven factors listed in Question 17 are to be considered together in determining the least overall harm alternative. Please rate on a scale from 1 to 5, where 1 is “EXTREMELY NEGATIVE” and 5 is “EXTREMELY POSITIVE,” how effective have these factors been in making this determination.

jn 1 jn 2 jn 3 jn 4 jn 5 jn Unknown

Please explain the reason for your rating:

5

6

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19. Please rate on a scale from 1 to 5, where 1 is “EXTREMELY NEGATIVE” and 5 is “EXTREMELY POSITIVE”, how successful have these seven factors been in the protection of Section 4(f) resources.

jn 1

jn 2

jn 3

jn 4

jn 5

jn Unknown

Please explain the reason for your rating:

20. Please use the space below to provide any additional comments on the new standards for determining a feasible and prudent avoidance alternative.

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SECTION 2: FEASIBLE AND PRUDENT PROJECT CONTACT INFORMATION

Information from survey responses could be used to select projects to conduct additional research into how the regulatory feasible and prudent definition has affected the Section 4(f) process. For any projects selected, the study team will be contacting stakeholders for participation in exploratory discussions over the telephone.

Please provide the following information for all Section 4(f) evaluations (either draft or final) that you have been involved with since April 11, 2008. If you have been involved with more than five evaluations, please respond regarding those where a final evaluation is complete or furthest along.

21. Project 1:

| | |
|---|----------------------|
| Project name: | <input type="text"/> |
| Project location (City/State): | <input type="text"/> |
| Describe your role in the Section (f) evaluation: | <input type="text"/> |
| Name for the official with jurisdiction over the Section 4(f) resource contact (i.e. SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact): | <input type="text"/> |
| Email address for official with jurisdiction: | <input type="text"/> |
| Phone number for official with jurisdiction: | <input type="text"/> |
| Name for contact at citizen/advocacy group with interest in the Section 4(f) resource: | <input type="text"/> |
| Email address for citizen/advocacy group contact: | <input type="text"/> |
| Phone number for citizen/advocacy group contact: | <input type="text"/> |
| Total project cost: | <input type="text"/> |
| NEPA Class of action: | <input type="text"/> |
| Was a least harm analysis conducted (enter Yes or No): | <input type="text"/> |
| Type(s) and number of Section 4(f) resources (historic property park/recreation area, or wildlife/waterfowl refuge): | <input type="text"/> |
| Resource name(s): | <input type="text"/> |
| Size of Section 4(f) resource (e.g., total acreage or length in miles): | <input type="text"/> |
| Size of Section 4(f) impact (e.g., total acreage or length in miles): | <input type="text"/> |
| Status of Section 4(f) evaluation (enter Draft or Final) and percent complete: | <input type="text"/> |
| Estimated cost of Section 4(f) evaluation: | <input type="text"/> |
| Status of construction (enter Complete, Partially Complete, or Not Started): | <input type="text"/> |

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22. Project 2:

Project name:

Project location (City/State):

Describe your role in the Section (f) evaluation:

Name for the official with jurisdiction over the Section 4(f) resource contact (i.e. SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction:

Phone number for official with jurisdiction:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

Total project cost:

NEPA Class of action:

Was a least harm analysis conducted (enter Yes or No):

Type(s) and number of Section 4(f) resources (historic property park/recreation area, or wildlife/waterfowl refuge):

Resource name(s):

Size of Section 4(f) resource (e.g., total acreage or length in miles):

Size of Section 4(f) impact (e.g., total acreage or length in miles):

Status of Section 4(f) evaluation (enter Draft or Final) and percent complete:

Estimated cost of Section 4(f) evaluation:

Status of construction (enter Complete, Partially Complete, or Not Started):

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23. Project 3:

Project name:

Project location (City/State):

Describe your role in the Section (f) evaluation:

Name of Section 4(f) official with jurisdiction contact (i.e. SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction:

Phone number for official with jurisdiction:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

Total project cost:

NEPA Class of action:

Was a least harm analysis conducted (enter Yes or No):

Type(s) and number of Section 4(f) resources (historic property park/recreation area, or wildlife/waterfowl refuge):

Resource name(s):

Size of Section 4(f) resource (e.g., total acreage or length in miles):

Size of Section 4(f) impact (e.g., total acreage or length in miles):

Status of Section 4(f) evaluation (enter Draft or Final) and percent complete:

Estimated cost of Section 4(f) evaluation:

Status of construction (enter Complete, Partially Complete, or Not Started):

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24. Project 4:

Project name:

Project location (City/State):

Describe your role in the Section (f) evaluation:

Name for the official with jurisdiction over the Section 4(f) resource contact (i.e. SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction:

Phone number for official with jurisdiction:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

Total project cost:

NEPA Class of action:

Was a least harm analysis conducted (enter Yes or No):

Type(s) and number of Section 4(f) resources (historic property park/recreation area, or wildlife/waterfowl refuge):

Resource name(s):

Size of Section 4(f) resource (e.g., total acreage or length in miles):

Size of Section 4(f) impact (e.g., total acreage or length in miles):

Status of Section 4(f) evaluation (enter Draft or Final) and percent complete:

Estimated cost of Section 4(f) evaluation:

Status of construction (enter Complete, Partially Complete, or Not Started):

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25. Project 5:

Project name:

Project location (City/State):

Describe your role in the Section (f) evaluation:

Name for the official with jurisdiction over the Section 4(f) resource contact (i.e. SHPO/THPO, or the park, recreation area, or wildlife or waterfowl refuge contact):

Email address for official with jurisdiction:

Phone number for official with jurisdiction:

Name for contact at citizen/advocacy group with interest in the Section 4(f) resource:

Email address for citizen/advocacy group contact:

Phone number for citizen/advocacy group contact:

Total project cost:

NEPA Class of action:

Was a least harm analysis conducted (enter Yes or No):

Type(s) and number of Section 4(f) resources (historic property park/recreation area, or wildlife/waterfowl refuge):

Resource name(s):

Size of Section 4(f) resource (e.g., total acreage or length in miles):

Size of Section 4(f) impact (e.g., total acreage or length in miles):

Status of Section 4(f) evaluation (enter Draft or Final) and percent complete:

Estimated cost of Section 4(f) evaluation:

Status of construction (enter Complete, Partially Complete, or Not Started):

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Thank You!

Thank you for completing the Section 6009 Phase II questionnaire. We greatly appreciate your time and participation. If necessary, the study team may contact respondents to clarify survey responses or collect more detailed information.

Once you click the "Done" button your survey response will be submitted.