

AASHTO PRACTITIONER'S HANDBOOK

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USING THE SAFETEA-LU ENVIRONMENTAL REVIEW PROCESS (23 U.S.C. § 139)

Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established an environmental review process for highway and transit projects that involve preparation of an environmental impact statement (EIS). This Handbook provides assistance to practitioners in complying with the Section 6002 requirements, while also using this process to achieve better, faster, and more efficient environmental reviews.

Issues covered in this Handbook include:

- Initiating the Environmental Review Process
- Inviting Participating Agencies
- Establishing the Coordination Plan
- Including a Project Schedule in the Coordination Plan
- Setting Comment Deadlines
- Providing an "Opportunity for Involvement" to Agencies and the Public in Developing the Purpose and Need and the Range of Alternatives
- Defining the Purpose and Need
- Determining the Methodologies and Level of Detail for the Alternatives Analysis
- Resolving Issues of Concern
- Developing the Preferred Alternative to a Higher Level of Detail (Optional)
- Reporting Delays in Permit Decisions

The Practitioner's Handbooks are produced by the Center for Environmental Excellence by AASHTO. The Handbooks provide practical advice on a range of environmental issues that arise during the planning, development, and operation of transportation projects.

The Handbooks are primarily intended for use by project managers and others who are responsible for coordinating compliance with a wide range of regulatory requirements. With their needs in mind, each Handbook includes

- key issues to consider;
- a background briefing; and
- practical tips for achieving compliance.

In addition, key regulations, guidance materials, and sample documents for each Handbook are posted on the Center's web site at <http://environment.transportation.org>.



Center for Environmental Excellence by AASHTO



American Association of State Highway and Transportation Officials

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Overview



In Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Congress established an environmental review process for highway and transit projects. This process must be followed for highway and transit projects that require the approval of the U.S. Department of Transportation (U.S. DOT) and involve preparation of an environmental impact statement (EIS). The process is intended to make environmental reviews more efficient and timely by clarifying agency roles and responsibilities, improving coordination, setting deadlines, and improving dispute resolution. This new process is now included in Section 139 of Title 23 of the U.S. Code (23 U.S.C. § 139).

This Handbook is intended to help practitioners ensure compliance with Section 139 and use the new opportunities in Section 139 to achieve the underlying goal of this process: bringing about a better, faster, and more efficient environmental review process. For additional information, readers should refer to Federal Highway Administration (FHWA) and Federal Transit Administration's (FTA) comprehensive guidance on Section 139: SAFETEA-LU Environmental Review Process Final Guidance ("FHWA/FTA Guidance").¹

Key Issues to Consider

Initiating the Environmental Review Process

- Are there decisions that you would like to carry forward from the planning process into National Environmental Policy Act (NEPA)—e.g., on the purpose and need and the range of alternatives? If so, how will these be addressed in the project initiation letter?
- Who will be designated as "lead agencies"? FHWA and state DOT only? Or will there be additional lead agencies for this project?
- How will responsibilities be divided among the lead agencies?

Inviting Participating Agencies

- Which Federal, state, local, and/or tribal agencies will be invited to serve as participating agencies?
- Of the participating agencies, which ones (if any) will be invited to serve as cooperating agencies?

Establishing the Coordination Plan and Schedule

- Is there a standard template that can be used in your state for developing the coordination plan?
- Are there any project-specific issues that will need to be given special consideration in developing the coordination plan for your project?
- What streamlining measures, if any, will be included in the coordination plan? For example, will the coordination plan designate primary points of contact for each agency? Establish regular meeting dates and locations? Define the types of documentation that will be shared with agencies and time frames for review?
- Will the coordination plan include dispute-resolution procedures?

¹ A link to this guidance is available on the Center's web site, <http://environment.transportation.org>, in the Practitioner's Handbooks section.

- Will the coordination plan include a project schedule? If so, what regulatory requirements apply to your project that will need to be considered in developing the schedule?
- Will the coordination plan be incorporated into a Memorandum of Understanding (MOU) that is signed by the participating agencies?
- Will you incorporate the standard comment deadlines (60 days maximum for draft environmental impact statement [DEIS] comments; 30 days maximum for other comment periods)? Or are there reasons to set longer comment periods for this project?

Providing an “Opportunity for Involvement” to Agencies and the Public in Developing the Purpose and Need and the Range of Alternatives

- What opportunity for involvement will be provided to the participating agencies in determining the purpose and need and the range of alternatives? For example, what documentation will be shared with the agencies? What meetings or other opportunities will be provided for agency input?
- What opportunity for involvement will be provided to the public? Will this occur as part of a scoping meeting? Will there be additional opportunities, after the scoping meeting, for public input on these issues?
- Will the opportunity for involvement on the purpose and need occur separately from the opportunity for involvement on the range of alternatives? Or will these occur at a single point in time, as allowed by the FHWA/FTA Guidance?
- If agencies and/or the public provide comments on the proposed purpose and need and the range of alternatives, how and where will those comments be addressed? How will the comments and your responses be documented?
- Do you have a “merger” agreement that requires concurrence from specific agencies on the purpose and need and the range of alternatives? If so, how will the merger requirements be addressed?

Determining the Methodologies for Alternatives Analysis

- What process will be used to collaborate with participating agencies on determining the methodologies for analyzing alternatives?
- Are there existing standard methodologies that can be followed without the need for additional collaboration?
- Are there methodology issues that will need to be discussed specifically with the agencies? Which agencies have applicable expertise in those issues?
- How will the participating agencies’ involvement in developing the methodologies be documented?

Resolving Issues of Concern

- Are there existing dispute resolution procedures that will apply to this project? For example, does your state have an existing streamlining agreement that provides for dispute resolution?
- Are there known issues that are likely to result in disputes among agencies? If so, what steps can be taken to anticipate and address those issues?
- Will this project benefit from the use of a professional mediator or facilitator to assist in managing meetings among agencies?

Developing the Preferred Alternative to a Higher Level of Detail (Optional)

- Do you intend to develop the preferred alternative to a higher level of detail? If so, at what point in the process will this occur?
- What level of detail will be needed to ensure a fair comparison of all reasonable alternatives prior to selection of the preferred? What additional level of work will be performed solely for the preferred alternative?

Background Briefing

Key Terms in Section 139. Section 139 introduces some new terms and uses some familiar terms—e.g., “lead agency”—with a specific meaning that may differ from the meaning of those terms in other contexts. Practitioners should be familiar with the following key terms as used in Section 139:

- **Project.** The term “project” refers to a “highway project, public transportation capital project, or multimodal project that requires the approval of the [U.S. DOT].”² A multimodal project is defined as one that involves funding under Title 23 (highways) or Chapter 53 of Title 49 (transit) of the U.S. Code and requires approval from more than one agency within U.S. DOT.
- **Project Sponsor.** The term “project sponsor” refers to “the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.”³ This means that a state DOT will typically be the “project sponsor” for federally funded highway projects. The project sponsor also can be a state or regional toll road agency, a local government, or a private entity.
- **Environmental Review Process.** The term “environmental review process” includes both the process of preparing an NEPA document *and* the “process for completion of any environmental permit, approval, review, or study required for a project under any Federal law” other than NEPA.⁴ Therefore, permitting under other statutes, such as Section 404 of the Clean Water Act, is considered part of the “environmental review process.”
- **Lead Agency.** The term “lead agency” includes the Federal lead agency—typically, FHWA for a highway project or FTA for a transit project—and any other governmental entity that is serving as a “joint lead agency.”⁵ The project sponsor must be designated as a joint lead agency if it directly receives funds under Title 23 or Chapter 53 of Title 49. For highway projects, the state DOT is the direct recipient and, therefore, must be a joint lead agency. Local governments that are sub-recipients of highway funds may be designated as joint lead agencies, at the discretion of U.S. DOT.⁶ The FHWA/FTA Guidance explains how “lead agency” decisions can be made:

Where not otherwise specified, the lead agencies are free to perform all tasks and make all decisions jointly, or to allocate their joint responsibilities and authorities among themselves by mutual written agreement. If the lead agencies do not agree on a particular matter under their joint authority, then they must work out their differences because that particular matter cannot progress until the lead agencies reach agreement.

- **Participating Agency.** The lead agencies are required to invite any agency that “may have an interest in the project” to be a participating agency. Upon being invited, a Federal agency is automatically designated as a participating agency, unless it declines the invitation (see Practical Tips, *Inviting Participating Agencies*, p. 8). Non-Federal agencies are designated as participating agencies only if they affirmatively accept the lead agencies’ invitation. The responsibilities of participating agencies are defined in Section 139. The FHWA/FTA Guidance includes sample letters for inviting participating agencies.
- **Cooperating Agency.** The term “cooperating agency” is not defined in Section 139. This term continues to have the same meaning that it has traditionally been given in the NEPA process under Section 1508.5 of the Council on Environmental Quality (CEQ) regulations, which define a cooperating agency as one with jurisdiction by law or special expertise regarding the proposed action. *Cooperating agencies are a sub-set of the participating agencies:* every cooperating agency will also be a participating agency, but many participating agencies will not be cooperating agencies.
- **Initiation Notice.** Section 139 requires the project sponsor to notify the U.S. DOT of a proposed project and request that the environmental review process be initiated. This document is referred to in the FHWA/FTA Guidance as an “initiation notice” or “notification letter.” It is distinct from the Notice of Intent (NOI), which is a separate document

² 23 U.S.C. § 139(a)(6).

³ 23 U.S.C. § 139(a)(7).

⁴ 23 U.S.C. § 139(a)(3).

⁵ 23 U.S.C. § 139(a)(4).

⁶ For further information, see Question 16 in the FHWA/FTA Guidance.

published by the Federal agency in the *Federal Register*. The FHWA/FTA Guidance notes that requirement for an initiation notice can be satisfied programmatically or by “batching” notification for multiple projects into a single notice.

- **Coordination Plan.** A “coordination plan” refers to a document prepared by the lead agencies that defines the process for meeting the agency coordination and public involvement requirements in the environmental review process, including both NEPA and related laws. This document must be developed early in the environmental review process. It does not require concurrence of the participating agencies.
- **Issue of Concern.** An “issue of concern” is defined as an issue, raised by a participating agency, that “could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.” The participating agencies are responsible for identifying issues of concern as early as practicable in the process. The scoping process can be used to identify issues of concern. These issues also can be identified later in the process as additional information is developed.

Projects That Must Follow Section 139. The environmental review process in Section 139 must be used for any highway, transit, or “multimodal” (highway and transit) project that requires U.S. DOT approval and involves the preparation of an EIS.⁷ The process also can be used for projects that involve other types of NEPA documents. The responsibility for deciding whether to apply this process to non-EIS projects rests with U.S. DOT. In guidance, FHWA and FTA have clarified several key points:

- *The Section 139 requirements apply only to EISs initiated after the date of enactment of SAFETEA-LU—August 10, 2005.*⁸ An EIS initiated before that date can continue under pre-existing procedures or can transition to the Section 139 process—a decision that must be made by the U.S. DOT agency.
- *The Section 139 requirements will be applied to some supplemental EISs initiated after the date of enactment of SAFETEA-LU.* The general rule is that a supplemental EIS (SEIS) initiated after June 10, 2005, does *not* need to follow the Section 139 process if it involves issues of limited scope—e.g., new information about a specific environmental issue or re-consideration of alternatives in a specific section of the project. By contrast, if the SEIS involves re-assessing or re-scoping of the entire action, it may need to follow the Section 139 process.⁹
- *The “default” assumption is that the Section 139 process will not be used for environmental assessments.*¹⁰ This means that there is no need to document a decision *not* to use the Section 139 process for an environmental assessment (EA). The decision about whether to use Section 139 for an EA will be made by the FHWA Division Office or FTA Regional Office on a case-by-case basis, with the concurrence of any other lead agencies.
- *FHWA and FTA do not intend to use the Section 139 process for categorical exclusions at all.* This means that the use of Section 139 is not being considered, even on a case-by-case basis, for categorical exclusions (CEs).
- *The opportunity to “opt out” has passed.* Section 139 includes a “grandfather clause” that allows states to opt out of the Section 139 process and instead continue to follow streamlining procedures that were approved by U.S. DOT under Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21).¹¹ In guidance, FHWA and FTA required any opt-out requests to be submitted by March 31, 2007. That deadline has now passed. The only state that received permission to opt out was Florida, which will continue to follow its Efficient Transportation Decision Making (ETDM) process. All other states must follow the Section 139 process.

Key Steps in the Section 139 Process. The environmental review process defined in Section 139 provides a framework for carrying out existing requirements under NEPA and other laws; it does not supersede those existing procedures. In other words, the Section 139 process is best understood as an “overlay” on existing environmental review procedures, which continue to apply to highway and transit projects. The key new steps in this process include:

- **Submit the Initiation Notice.** The project sponsor must submit a notice to the U.S. DOT initiating the environmental review process. For a highway project, this notice is submitted to the FHWA Division Administrator.

⁷ 23 U.S.C. § 139(b).

⁸ FHWA/FTA Guidance, pp. 9 and 12.

⁹ FHWA/FTA Guidance, p. 13. Even for an SEIS that involves a full-scale re-assessment of the proposed action, the Section 139 process need not be followed if (a) the EIS was under “active development” during the eight months prior to June 10, 2005, and (b) the SEIS is being initiated “due to changes in project plans and priorities.” The FHWA Division Office or FTA Regional Office will determine whether these conditions are met.

¹⁰ FHWA/FTA Guidance, p. 12.

¹¹ SAFETEA-LU, Section 139(b).

- **Invite Participating Agencies.** The lead agencies must invite and designate participating agencies. This should be done “as early as practicable” in the process. Federal agencies that are invited to participate are automatically designated as participating agencies, unless they decline in writing and make findings required by the statute (which are discussed further below). Non-Federal agencies can accept or decline; a failure to respond is treated as declining.
- **Establish the Coordination Plan.** The lead agencies must establish a coordination plan, which defines a process for involving agencies and the public in accordance with Section 139. The coordination plan can include a project schedule, including comment deadlines. The coordination plan must be shared with the participating agencies and the public. When a schedule is included in the plan, the participating agencies must be consulted regarding that schedule.
- **Provide an Opportunity for Involvement in Defining the Purpose and Need.** The lead agencies must provide an “opportunity for involvement” to participating agencies and the public in developing the purpose and need. This can be combined with the opportunity for involvement in developing the range of alternatives.¹²
- **Provide an Opportunity for Involvement in Determining the Range of Alternatives.** The lead agencies must provide an “opportunity for involvement” to participating agencies and the public in determining the range of alternatives that will be considered in the EIS. This can be combined with the opportunity for involvement in determining the purpose and need.
- **Collaborate on Determining Methodologies for Studying Alternatives.** The lead agencies must determine the methodology and level of detail for the alternatives analysis in the EIS in collaboration with the participating agencies. This can occur at various points during the environmental review process. The collaboration should address approaches to screening alternatives as well as methodologies for evaluating impacts of the alternatives.
- **Notify Congress of Delayed Permit Decisions.** The lead agencies must submit a report to Congress if actions required under other laws—e.g., permit decisions—have not been taken within 180 days after the U.S. DOT has completed its decision-making process and a complete permit application has been filed.
- **Optional: Convene Issue Resolution Meetings.** The project sponsor or a Governor can request a meeting to resolve “issues of concern” as defined in Section 139. This meeting can be convened at any point in the process.
- **Optional: Advance Preferred Alternative to a Higher Level of Detail.** The lead agencies can develop the preferred alternative to a higher level of detail than the other alternatives considered in the EIS, as long as there is sufficient information about all alternatives to allow for an informed choice among the alternatives. The preferred alternative can be developed to a higher level of detail only (1) to facilitate the development of mitigation measures or (2) to facilitate concurrent compliance with other applicable environmental laws.¹³ It must be done in a manner that will not prevent the lead agencies from making an impartial decision.
- **Optional: Provide Funding to Expedite Agency Reviews.** Section 139 retains the authority granted in Section 1309 of TEA-21 to provide funding to other agencies in return for a commitment to expedite their reviews of environmental documents. This authority was slightly broadened in Section 139 to clarify that it can be used to fund programmatic activities that expedite reviews of individual projects. Programmatic activities eligible for funding include transportation planning activities that precede the initiation of the environmental review process; training of agency personnel; information gathering and mapping; and the development of programmatic agreements. Activities can be funded under this section only if they “directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that state.”

How Section 139 Can Streamline Reviews. While Section 139 contains many new requirements, its purpose is not to impose new burdens on the environmental review process. It is intended to *expedite* reviews by promoting a more rigorous approach to managing the complex interactions among numerous regulatory requirements. Fulfilling the intent of Section 139 requires a clear recognition of the following key changes that can help streamline reviews:

- *The lead agencies are responsible for making decisions and keeping the process moving.* Section 139 gives the lead agencies the “authority and responsibility” to “take such actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the

¹² For further information, see FHWA and FTA’s guidance on planning-NEPA linkage in 23 C.F.R. 450, Appendix A. A copy of Appendix A is available on the Center’s web site, <http://environment.transportation.org>, in the Practitioner’s Handbooks section.

¹³ FHWA and FTA have interpreted Section 139 to mean “concurrent compliance with other applicable environmental laws.” See FHWA/FTA Guidance, Question 40.

project.”¹⁴ In addition, the lead agencies are charged in various parts of Section 139 with gathering input and then making decisions that keep the process moving.

- *All Federal agencies have a duty to streamline their reviews.* Section 139 gives each Federal agency a streamlining responsibility. It does this in two ways:
 - *Concurrent Reviews.* All Federal agencies, “to the maximum extent practicable,” must carry out their obligations “concurrently, and in conjunction, with” the review required under NEPA, “unless doing so would impair the ability of the Federal agency to carry out those obligations.”
 - *Policies and Procedures.* Section 139 requires all Federal agencies, “to the extent practicable,” to “formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.”
- *Issues that can delay or prevent approval of permits must be raised early in the process.* The Section 139 process is designed to force potentially difficult issues to the surface early in the process. The lead agencies are required to give the participating agencies information about potential alternatives and impacts “as early as practicable” in the process. Based on this information, participating agencies are required (not just encouraged) to identify any “issues of concern”—which are defined as issues that could prevent or substantially delay issuance of required permits or approvals.¹⁵
- *Coordination, not concurrence, is required on the purpose and need and the range of alternatives.* Prior to SAFETEA-LU, many NEPA/Section 404 merger agreements called for transportation agencies to obtain resource agency concurrence on the purpose and need and the range of alternatives. Section 139 requires only an “opportunity for involvement,” which does not necessarily involve concurrence. States can continue to follow existing agreements that call for concurrence, if those agreements are effective at expediting project development. However, the FHWA/FTA Guidance clarifies that “if the lead agencies conclude that concurrence on an issue is not achievable on a particular project, then the lead agencies must exercise their decision-making obligations under Section 139.”
- *The public, not just the agencies, must have an opportunity for input on the purpose and need and the range of alternatives.* Prior to SAFETEA-LU, streamlining agreements often focused primarily on reaching agreement among agencies on issues such as the purpose and need and the range of alternatives. Section 139 requires that the public (not just the agencies) have an opportunity for involvement as these decisions are being made. This change is significant because it opens up these critical decisions to input from a broader set of stakeholders.
- *Two process steps—defining the purpose and need and developing the range of alternatives—can overlap.* Section 139 requires an opportunity for involvement on defining the purpose and need and developing the range of alternatives. According to the Section 139 Guidance, public involvement on both of these issues can occur at a single coordination point. This means that the development of the purpose and need can overlap with the screening of the alternatives.
- *Lead agencies are responsible for determining the appropriate methodologies and level of detail for analyzing alternatives, after collaborating with participating agencies.* In many cases, the environmental review process is delayed due to disputes over “how much is enough” detail in the alternatives analysis. Section 139 addresses this problem by clearly defining the lead agencies as the decision-makers on these methodology issues. The lead agencies must exercise this responsibility “in collaboration with” the participating agencies; the ultimate decision rests with the lead agencies with regard to the NEPA document that they are responsible for preparing. This collaboration should address approaches to screening alternatives as well as methodologies for evaluating impacts of the alternatives.
 - One limitation on this point is that, in some cases, other agencies have their own independent permitting decisions or other approvals to grant. In such cases, it is prudent to ensure that the FHWA NEPA document is considered satisfactory to those agencies, so that they do not consider it necessary to conduct additional studies during the permitting process.
- *The preferred alternative can be developed to a higher level of detail prior to completion of the NEPA process.* Section 139 allows a preferred alternative to be developed to a higher level of detail in order “to facilitate the

¹⁴ 23 U.S.C. § 139(c)(6).

¹⁵ 23 U.S.C. § 139(h)(2)-(3).

development of mitigation measures or concurrent compliance with other applicable laws.” A decision to develop the preferred alternative to a higher level of detail requires approval from the Federal lead agency (FHWA or FTA).

- *Section 139 requirements can be carried out programmatically.* Section 139 provides that “any authorities granted in this section may be exercised for a project, class of projects, or program of projects.”¹⁶ This provision allows broad flexibility for state DOTs and others to adopt procedures that minimize the need for project-by-project determinations. For example, rather than developing a separate coordination plan for each project, a state can establish a standard set of coordination procedures and simply reference those procedures in each project-specific plan. Similarly, rather than discussing the methodology for alternatives analysis for each specific project, a state can adopt a menu of standard methodologies to choose from (in collaboration with the appropriate resource agencies) and then focus its project-specific coordination on any special issues that require adaptation of those methods.

Section 139—Potential Elements of the Purpose and Need. In addition to defining an environmental review process, Section 139 lists three “objectives” that can be included in the purpose and need statement. The objectives listed in the statute are not an exhaustive list of potential project goals; they confirm that these three goals can be included in the purpose and need statement.

- *The purpose and need can include “achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan.”* This provision establishes a clear statutory basis for carrying forward a “transportation objective” from a statewide or metropolitan plan into the purpose and need statement. For example, if a statewide plan sets a goal of completing a system of strategic highway corridors, the purpose and need for an individual project can be defined as completing a section of that system. Similarly, if a metropolitan plan defines a goal of providing transit service in a specific corridor, or a goal of establishing high-occupancy vehicle (HOV) or high-occupancy tolled (HOT) lanes on certain routes, those goals can become the basis for defining the purpose of an individual project.
- *The purpose and need can include “supporting land use, economic development, or growth objectives established in applicable Federal, state, local, or tribal plans.”* This provision directly addresses an issue that has been a frequent source of dispute—the relationship between transportation projects and land use. Section 139 affirms that a transportation project can, in fact, be used to promote land use goals established by local governments. For example, if a local government sets the goal of attracting development to a previously undeveloped area, the purpose and need for an individual transportation project can be defined as providing the transportation infrastructure needed to support the local government’s planned growth.
- *The purpose and need can include “serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.”* This provision recognizes that projects proposed by state and local governments sometimes serve larger national priorities, which can and should be reflected in the purpose and need statement. In some cases, the Federal objective may involve broad direction of transportation policy, such as improving roadway safety; in others, the Federal objective may be defined more specifically in terms of the need for improvements in a specific “high-priority corridor.” In both cases, the Federal policy can be incorporated into the purpose and need statement.

In short, Section 139 does more than repeat well-known principles for defining the purpose and need. It clarifies issues that are often disputed, and, in doing, it should help to minimize the delays associated with disagreements about what constitutes a valid purpose and need.

Practical Tips

Section 139 presents new requirements that must be satisfied in order to ensure legal sufficiency, so it is important to keep those requirements clearly in mind when managing the NEPA process for a highway or transit project. But Section 139 also presents new opportunities to expedite environmental reviews. This section focuses both on the *compliance obligations* and the *environmental streamlining and stewardship opportunities* in Section 139.

¹⁶ 23 U.S.C. § 139(b)(2).

Under the “Achieving Compliance” heading, this section recommends actions that will help satisfy Section 139 and the FHWA/FTA Guidance. The “Streamlining Opportunities” heading lists additional suggestions for expediting the environmental review process.

1 | Initiating the Environmental Review Process

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The project sponsor submits a letter to the FHWA Division Administrator or FTA Regional Administrator. The project sponsor is typically the state DOT, but in some cases, the project sponsor can be a state or regional toll road agency, a local government, or a private entity.¹⁷
- The letter identifies the “type of work, termini, length, and general location” of the proposed project; lists “any federal approvals anticipated to be necessary for the project”; and requests that the environmental review process be initiated. Standard language for the letter is provided in the FHWA/FTA Guidance.
- The letter indicates the timeframe in which the project sponsor would like the environmental review process to be started.
- The letter is submitted prior to, or concurrently with, publication of the NOI in the *Federal Register*.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Meet with FHWA before submitting the initiation notice to discuss the overall scope of the environmental study.
- Use the initiation letter to identify any decisions or studies that you would like to carry forward into NEPA from the statewide or metropolitan planning process.
- Use the initiation letter to submit the draft NOI to FHWA. (See Question 11 in the FHWA/FTA Guidance.)

2 | Inviting Participating Agencies

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The lead agencies identify Federal and non-Federal agencies that “may have an interest” in the project. The list may be developed based on a standard list established by the state DOT for projects in that state.
- The lead agencies issue letters to those Federal and non-Federal agencies inviting them to become “participating agencies.” This can be done programmatically.
- The lead agencies send the invitations “as early as practicable” in the environmental review process. The invitation sets a deadline for responses to be submitted. The guidance suggests a deadline of no more than 30 days.
- Federal agencies are designated as participating agencies, unless they decline based on the reasons listed in Section 139—specifically, the agency must state that (1) it has no jurisdiction or authority over the project; (2) it has no information or expertise regarding the project; and (3) it has no intention of submitting comments on the project. A letter declining the invitation must be sent by the deadline specified in the invitation letter.
- Non-Federal agencies are designated as participating agencies only if they affirmatively accept the invitation within the deadline specified by the lead agencies.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Include in the invitation letter a list of all agencies that are being invited to become participating agencies; identify which agencies will also be invited to be cooperating agencies.
- Include additional information with the invitation letter, in order to begin satisfying other Section 139 requirements. These can include: a draft coordination plan for participating agencies; information on environmental constraints and general locations of alternatives; proposed methodologies for analyzing alternatives; and a project schedule.

¹⁷ For transit projects, the sponsor is typically the public transit agency, and the letter should be submitted to the FTA Regional Office.

- Establish a standard list of agencies that should be invited to serve as participating agencies for various types of projects, based on location, impacts, approvals needed, etc.
- Avoid inviting agencies that have only a remote or tangential interest in the project. FHWA/FTA Guidance allows flexibility to designate additional participating agencies later in the process if the need arises.

3 | Establishing the Coordination Plan

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The lead agencies prepare a plan for “coordinating public and agency participation in and comment on the environmental review process for a project or category of projects.”
- The coordination plan is developed early in the process. The statute does not specify the timing, but guidance recommends that it be done early in the process.
- The coordination plan explains how the lead agencies have divided the responsibilities for compliance with the various aspects of the environmental review process.
- The coordination plan explains how the lead agencies will provide the opportunities for input from the public and other agencies, in accordance with applicable laws, regulations, and policies.
- The coordination plan is shared with participating agencies and the public. This is not required by statute but is recommended by the FHWA/FTA Guidance.
- If the lead agencies decide to include a project schedule in the coordination plan, they develop the schedule in consultation with the participating agencies.¹⁸ Concurrence by the participating agencies is not required.

“Project Management Plan” Requirement for “Major Projects”

Under Section 1904 of SAFETEA-LU, a “project management plan” is required for all “major projects,” which are defined as FHWA projects costing \$500 million or more.^a According to FHWA’s major projects guidance, the draft Project Management Plan (PMP) must be submitted before the Record of Decision (ROD) or other NEPA decision document is signed, and the final PMP must be approved within 90 days after that decision document is signed.^b Therefore, the PMP is not required to be developed as part of, or concurrently with, the Section 139 coordination plan.

^a See 23 U.S.C. § 106(h).

^b See FHWA, “FHWA Major Project Guidance” (Jan. 19, 2007), Question 12.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Establish a programmatic coordination plan, or modify existing coordination procedures, in order to avoid the need to define coordination procedures on a project-by-project basis.
- Establish a schedule of regular meeting dates with agencies that will be involved in the project.
- Establish procedures for resolving issues or disputes at the lowest level possible, before triggering the “issue resolution” process that can result in reporting to Congress.
- Define a “primary contact” for each agency. Include names and contact information in the plan itself.
- Establish web-based methods for sharing documents and project-related information among all lead and participating agencies.
- Incorporate a coordination plan into an MOU, if this will help to expedite the process.
- Post the coordination plan on-line, indicating the version date of the plan.

¹⁸ The Section 139 Guidance “assumes” that a coordination plan will include a schedule for FHWA projects. For further information, see Section 139 Guidance, Question 34.

4 | Including a Project Schedule in the Coordination Plan

Achieving Compliance. There is no requirement in Section 139 to include a project schedule in the coordination plan.¹⁹ If a schedule is included in the coordination plan, compliance with Section 139 typically will include the following actions:

- The lead agencies consult with the participating agencies regarding the project schedule.
- The lead agencies consult with the project sponsor and with the state in which the project is located. (If the project sponsor and/or the state are lead agencies, which is typically the case for highway projects, this requirement does not apply.)
- The schedule includes timeframes for completing the entire “environmental review process,” not just the NEPA process. As defined in Section 139, the environmental review process includes all permits and approvals required for the project under any Federal law.
- The schedule is consistent with any relevant time periods established under any Federal law. For example, if the project will require formal consultation under the Endangered Species Act (ESA), the schedule should allow for the time periods specified in ESA regulations.
- The lead agencies consider, in setting the schedule, the following factors, which are listed in the statute:
 - The responsibilities of participating agencies under applicable laws.
 - Resources available to the cooperating agencies.
 - Overall size and complexity of the project.
 - The overall schedule and cost of the project.
 - The sensitivity of the natural and historic resources that can be affected by the project.
- The lead agencies can *lengthen* the schedule “for good cause.” No other agency’s approval is required when the schedule is lengthened.
- The lead agencies can *shorten* the schedule (if it has been established under Section 139 and included in a coordination plan) “only with the concurrence of the affected cooperating agencies.”²⁰

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Set deadlines that are realistic but aggressive. Remember that the purpose of the schedule, as stated in the FHWA/FTA Guidance, is “expediting the process by communicating expectations and forcing discipline” on the lead agencies and others.
- Demonstrate a commitment to the schedule through your own actions. Other agencies are unlikely to respect deadlines if the project sponsor itself does not do so.
- Include sufficient time in the schedule to respond to public and agency comments and to conduct any additional engineering or environmental studies that are needed in order to respond appropriately to the comments.
- Use the “Negotiated Timeframes Wizard” that FHWA has developed as a tool for developing project schedules. The Wizard enables agencies to set project-specific timeframes for completing requirements, track the progress of meeting timeframes, and maintain a history of events.²¹

¹⁹ FHWA encourages inclusion of a schedule in the coordination plan, in accordance with its guidance on negotiated timeframes, which pre-dates SAFETEA-LU. A link to this guidance is available on the Center’s web site, <http://environment.transportation.org>, in the Practitioner’s Handbooks section.

²⁰ This section does not require concurrence of all participating agencies, or even all cooperating agencies. It requires concurrence from “affected cooperating agencies.” In general, a cooperating agency will be “affected” if the change shortens a time period for that agency to conduct its review.

²¹ To download the Wizard, visit http://environment.fhwa.dot.gov/wizard/wiz_download.asp.

5 | Setting Comment Deadlines

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The lead agencies set a comment period for the DEIS that is *at least 45 days but no more than 60 days* after publication of the notice of availability of the DEIS in the *Federal Register*. A time period longer than 60 days can be provided if
 - “a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies” or
 - “the deadline is extended by the lead agency for good cause.”
- The lead agencies set deadlines of *no more than 30 days* for all other comment periods, including any comment period on the final environmental impact statement (FEIS). The 30-day period runs from the “date of availability” of the materials on which comment is requested. A longer time period can be set if one of the findings listed above has been made, or if required by another law.

Comment Periods Required under other Laws

No comment deadline or schedule established under 23 U.S.C. § 139(g) can “reduce any time period provided for public comment” under any existing Federal law, nor can it “preempt or interfere with” the authority of any governmental entity with regard to a project.

This means that, if another law or regulation requires a time period longer than the 60-day and 30-day periods specified in SAFETEA-LU, the longer period must be provided.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Establish and maintain schedules that comply with the time periods established in Section 139. Make longer time periods the exception, not the rule.
- Incorporate comment deadlines into the coordination plan and project schedule.
- Ensure that comment deadlines are effectively communicated to participating agencies and the public.
- Explain to agencies and the public that comment periods have been established by Federal law to encourage efficiency in the environmental review process.

6 | Providing an “Opportunity for Involvement” to Agencies and the Public in Developing the Purpose and Need and the Range of Alternatives

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The lead agencies determine the appropriate timing and format of the opportunity for involvement. The format and timing is determined on a case-by-case basis.
- The opportunity for involvement occurs “as early as practicable” in the process, before the lead agencies decide on the purpose and need and determine the range of alternatives to be evaluated in the EIS.
- The opportunity for involvement is publicized. It can include methods such as public meetings, postings on web sites, telephone conferences, distributing printed materials, and other approaches. Public meetings are not required.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Provide opportunities for involvement that are appropriate in scale to the study, taking full advantage of the broad flexibility allowed by the statute.
- Address both sets of issues—the purpose and need and the range of alternatives—as part of a single public involvement process, where appropriate. (See Question 37 in the FHWA/FTA Guidance for additional instructions regarding the use of this procedure.)

- Incorporate opportunities for involvement into existing public involvement and agency coordination procedures. It is not necessary to create new, stand-alone procedures to satisfy Section 139 requirements.
- Establish clear expectations with participating agencies regarding the lead agencies' decision-making responsibilities. Section 139 requires consultation, not concurrence.
- Seek to reach a common understanding on both the purpose and need and the range of alternatives with any agency that has independent permitting authority and NEPA responsibilities—e.g., the U.S. Army Corps of Engineers for a project that requires a Section 404 permit. If significant disagreements exist, use the Section 139 “issue resolution” process or other dispute resolution procedures to resolve those issues.
- Remember that the lead agencies retain the flexibility to move forward in the study process while continuing efforts to resolve concerns raised by participating agencies or stakeholders. Disagreements between lead agencies and participating agencies about issues such as the purpose and need do not automatically prevent the process from moving forward.
- Use opportunities for planning-NEPA linkage in statewide and metropolitan planning regulations, 23 C.F.R. §§ 450.212 and 450.318, and in Appendix A to those regulations.

7 | Defining the Purpose and Need

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The purpose and need statement includes a “clear statement of the objectives that the proposed action is intended to achieve.”

Potential Elements of the Purpose and Need

Section 139 lists three potential elements of the purpose and need. The statute confirms that these goals can be included in the purpose and need statement for a highway, transit, or multimodal project. It does not require these goals to be included, nor is the purpose and need statement limited to these specific goals.

The three potential goals listed in Section 139 are

- achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;
- supporting land use, economic development, or growth objectives established in applicable Federal, state, local, or tribal plans; or
- serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

For additional information, see Question 33 in the FHWA/FTA Guidance.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Consider opportunities to use the statewide and metropolitan planning process to support the development of the purpose and need. Detailed guidance on linking planning and NEPA is provided in Appendix A to the planning regulations.²² Question 35 in the FHWA/FTA Guidance also addresses this issue.
- If objections arise to the purpose and need statement, use the procedures established in the coordination plan or, if necessary, the “issue resolution” process under Section 139 to resolve those objections.
- For additional information, see the AASHTO Practitioner’s Handbook No. 7, “Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects,” and AASHTO Practitioner’s Handbook No. 10, “Using the Transportation Planning Process to Support the NEPA Process.”

²² The FHWA/FTA Guidance on linking planning and NEPA was originally issued in February 2005. That guidance was later superseded by Appendix A to the statewide and metropolitan transportation planning regulations (23 C.F.R. Part 450). Appendix A is now the official version of the guidance. A link to this guidance is available on the Center’s web site, <http://environment.transportation.org>, in the Practitioner’s Handbooks section.

8 | Determining the Methodologies and Level of Detail for the Alternatives Analysis

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The coordination plan defines, at least in general terms, the process for “collaboration” regarding methodologies and level of detail of alternatives analysis.
- The lead agencies “collaborate” with participating agencies “at appropriate times in the study process” regarding the methodologies to be used and the level of detail of the analysis of alternatives. This need not occur at a single point and need not involve written reports or comment periods. For additional information, see Question 38 in the FHWA/FTA Guidance.
- After collaboration with participating agencies, the lead agencies determine the methodologies and appropriate level of detail to be used in the analysis of alternatives. The lead agencies must collaborate with the participating agencies but are not required to obtain their concurrence in these decisions.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Provide the participating agencies with an overview of the scope of work for the EIS early in the NEPA process. This summary can be prepared as a table that briefly describes the work to be performed in each area of the EIS—wetlands, air quality, etc.
- Identify any areas of disagreement with the participating agencies as early as possible. Resolve issues informally wherever possible. When necessary, elevate disagreements for inter-agency resolution using procedures defined in the coordination plan or the “issue resolution” process defined in Section 139.
- Develop standard procedures and rely upon them wherever possible. When standard procedures are being followed, they can simply be cross-referenced. The collaboration required by Section 139 does not mean re-examining standard procedures on each individual project.
- Address methodology issues *within* existing consultation procedures wherever possible. For example, the methodology for identifying historic resources can be addressed as part of Section 106 consultation under the National Historic Preservation Act. Section 139 does not require a separate collaborative process.
- Summarize the results of this collaborative process in the EIS. One possible approach is to summarize the methodology at the beginning of the relevant section in the EIS—e.g., briefly describe the methodology for evaluating noise impacts at the beginning of the noise chapter or sub-chapter.
- Remind cooperating agencies that, under Section 1503.3 of the CEQ regulations, they should describe their own preferred methodology if they submit comments criticizing the methodology used by the lead agencies.
- Consider requirements of other laws—e.g., Endangered Species Act—when preparing a NEPA document, so that the methodology used in the NEPA process can also satisfy other legal requirements.

9 | Resolving Issues of Concern

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The lead agencies and participating agencies “work cooperatively to identify and resolve” any issues that can delay completion of the process or result in the denial of needed approvals.
- The lead agencies make information available to the participating agencies “as early as practicable” regarding (1) the “environmental and socioeconomic resources located within the project area” and (2) the “general locations of the alternatives under consideration.” This information can be based on existing data sources.
- Based on information provided by the lead agencies, the participating agencies identify any “issues of concern,” which are defined as issues that “could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.”

- If requested by the project sponsor or the Governor, the lead agencies convene a meeting to resolve any issues of concern that have been identified. The meeting must include the relevant participating agencies, the project sponsor, and the lead agencies, as well as the Governor if the Governor requested the meeting.²³
- If the issue is not resolved within 30 days after the issue resolution meeting has been held and the lead agencies have determined that all information needed to resolve the issue has been obtained, the Federal lead agency publishes a notice in the *Federal Register* and informs the following entities
 - the heads of all participating agencies;
 - the project sponsor;
 - the Governor;
 - the U.S. Senate Committee on Environment & Public Works;
 - the House Transportation and Infrastructure Committee; and
 - the Council on Environmental Quality.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Satisfy the requirements of this section by using or adapting existing early coordination or scoping procedures. Broad and comprehensive scoping can greatly assist in identifying potentially difficult issues as early as possible.
- Develop a standard information package that is provided to each participating agency early in the NEPA process to satisfy the requirements of this section.
- Use the coordination plan to define an informal process for raising and resolving issues, while reserving the option of invoking the Section 139 issue resolution process.
- If necessary, use the Section 139 issue resolution process to resolve issues that have the potential to delay completion of the process or result in the denial of needed approvals.
- Encourage participating agencies to raise potential issues of concern as early as possible, so that they can be addressed and resolved with a minimum of delay to the process.

10 | Developing the Preferred Alternative to a Higher Level of Detail (Optional)

Achieving Compliance. There is no requirement in Section 139 to advance the preferred alternative to a higher level of detail. If a project sponsor seeks to take advantage of this flexibility, the sponsor will need concurrence from the Federal lead agency in both the identification of the preferred alternative *and* the decision to advance the preferred alternative to a higher level of detail. The exact sequence of events depends on when the preferred alternative is identified.

The following options represent two potential approaches to obtaining FHWA concurrence in advancing a preferred alternative to a higher level of detail. Other approaches also may be permissible. For example, there may be situations (albeit uncommon) in which a preferred alternative is identified before the DEIS and presented at a higher level of detail in the DEIS. For additional information, see Questions 39–46 in the FHWA/FTA Guidance and, in particular, the factors in Question 43.

Option 1—Preferred Alternative Identified in the DEIS

- The DEIS analyzes all reasonable alternatives to an equivalent level of detail.
- The DEIS identifies a preferred alternative.
- The project sponsor submits a letter to FHWA seeking approval to advance the preferred alternative to a higher level of detail in the FEIS. This letter includes
 - the reasons why the project sponsor seeks to advance the preferred alternative to a higher level of detail;
 - the general nature and extent of the work to be performed; and
 - the reasons why performing this work will not prejudice the consideration of other alternatives.

²³ The fact that an agency raises an issue of concern does not automatically require a meeting. The issue resolution meeting is required only if it is requested by the project sponsor or the Governor.

- FHWA concurs in writing with the project sponsor's request.
- The preferred alternative is developed to a higher level of detail, pursuant to the FHWA authorization.
- The FEIS discloses the fact that additional design work has been done for the preferred alternative. The FEIS also discloses any changes in impacts.
- If impacts are substantially different from those disclosed in the DEIS, the FEIS may need to update the analysis of other alternatives to determine whether the new information affects the choice of the preferred alternative.
- The ROD contains FHWA's final decision on the project.

Option 2—Preferred Alternative Identified After DEIS

- The DEIS analyzes all reasonable alternatives to an equivalent level of detail.
- The DEIS does not identify a preferred alternative.
- Between the DEIS and FEIS, and typically after the end of the DEIS comment period, the project sponsor submits a letter to FHWA seeking (1) concurrence in identification of the preferred alternative *and* (2) concurrence that the preferred alternative can be developed to a higher level of detail in the FEIS.
- The project sponsor's letter to FHWA includes the justification for selecting the preferred alternative, as well as the information described above under Option 1.
- FHWA concurs in writing with the project sponsor's request.
- All remaining steps are the same as in Option 1.

Developing the Preferred Alternative to a Higher Level of Detail

In Section 139, there are three important limitations on the ability to develop a preferred alternative to a higher level of detail. These include:

- The preferred alternative can be developed to a higher level of detail only "after being identified." This means that the Federal lead agency (e.g., FHWA) must concur in the preferred alternative before it can be developed to a higher level of detail under Section 139.
- The preferred alternative can be developed to a higher level of detail only (1) to facilitate the development of mitigation measures or (2) to facilitate concurrent compliance with other applicable environmental laws. These are the only justifications that can be used for developing the preferred alternative to a higher level of detail.
- The preferred alternative can be developed to a higher level of detail only if "the development of such higher level of detail will not prevent the lead agency from making an impartial decision as to whether to accept another alternative which is being considered in the environmental review process." The Federal lead agency (e.g., FHWA) must concur that this requirement has been met.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Establish standard procedures or guidelines for deciding whether to develop the preferred alternative to a higher level of detail. Consider the pros and cons of developing the preferred alternative in greater detail.
- Reach agreement with FHWA as early as practicable on: (1) when the preferred alternative will be identified; (2) whether the preferred alternative will be developed to a higher level of detail; and, if so, (3) what additional engineering and environmental work will be done for the preferred alternative.
- Use the coordination plan to document the expected timing and process for identifying the preferred alternative and deciding whether to develop it to a higher level of detail.
- Initiate permitting activities (including pre-application consultation) during the NEPA process to allow for concurrent reviews. Information needed for permitting can be developed during the NEPA process.
- Use the Context Sensitive Solutions (CSS) process to improve the design of the preferred alternative.
- Announce a "state-preferred" alternative. This announcement allows the state to disclose the direction of its thinking, even if FHWA and/or FTA are not yet ready to authorize additional work solely on the preferred alternative.

- Consider identifying the preferred alternative in the DEIS, especially (but not only) for projects that have a high degree of local support and consensus.

11 | Reporting Delays in Permit Decisions

Achieving Compliance. Compliance with Section 139 and the FHWA/FTA Guidance typically will include the following steps:

- The U.S. DOT reports to Congress if a decision by another agency on a permit, license, or other approval has not been made within 180 days after a complete application has been filed for that agency's approval—or 180 days after the U.S. DOT completes its decision-making process on the project, whichever is later.
- The U.S. DOT submits this report to two committees: the U.S. Senate Committee on Environment & Public Works and the House Transportation and Infrastructure Committee.
- The U.S. DOT submits a follow-up report every 60 days until the issue is resolved. This notice must include the “number of decisions of the Federal agency that remain outstanding” as of the date of the notice.

This is purely a reporting requirement; it is not a deadline for a permit decision.

Streamlining Opportunities. These optional steps can be taken to streamline the environmental review process:

- Inform the permitting agency when (in the lead agencies' judgment) the 180-day period has begun.
- If the permitting agency objects to that determination, because it does not consider the permit application to be complete, immediately identify and address any gaps in the application.
- Contact the affected permitting agency to discuss the issue well in advance of the 180-day deadline for notifying Congress.

References

Statutes, regulations, and guidance documents cited in this Handbook, along with additional materials and sample documents, are available on the Center for Environmental Excellence by AASHTO web site: <http://environment.transportation.org>.

The Center for Environmental Excellence's Technical Experts are available to provide strategic environmental and focused environmental management technical advice. For more information on the Center Technical Assistance Program (CTAP), please visit: http://environment.transportation.org/center/tech_experts/.

Appendix A

Cross-Reference Table for SAFETEA-LU Environmental Review Process

Section 139 Process Step	Section in Title 23 of the U.S. Code	Q&As in FHWA/FTA Guidance
Determine Whether Section 139 Applies	§ 139(a),(b)	8–10
Determine Lead and Joint Lead Agency Roles	§ 139(c)	14–20
Submit Initiation Notice	§ 139(e)	11–13
Invite Participating Agencies	§ 139(d)	21–29
Invite Cooperating Agencies	§ 139(d)	30–31
Develop Coordination Plan, Which May Include a Project Schedule	§ 139(g)(1)	47–57
Provide Opportunity for Involvement in Developing the Purpose and Need	§ 139(f)(1)–(2)	32–35
Determine Project Objectives for Purpose and Need	§ 139(f)(3)	33
Provide Opportunity for Involvement in Determining the Range of Alternatives	§ 139(f)(4)(A)–(B)	36–38
Identify and Resolve Any “Issues of Concern”	§ 139(h)	61–63
Set Comment Deadlines (45 to 60 Days for DEIS; 30 Days for Others; Some Exceptions Allowed)	§ 139(g)(2)	54
Develop Preferred Alternative to a Higher Level of Detail (Optional)	§ 139(f)(4)(D)	39–46
Report to Congress on Any Permitting Delays	§ 139(g)(3)	58–59
Enter Funding Agreements to Expedite Reviews (Optional)	§ 139(j)	67–69

ADDITIONAL RESOURCES

PRACTITIONER'S HANDBOOKS AVAILABLE FROM THE CENTER FOR ENVIRONMENTAL EXCELLENCE BY AASHTO:

- 01 Maintaining a Project File and Preparing an Administrative Record for a NEPA Study
- 02 Responding to Comments on an Environmental Impact Statement
- 03 Managing the NEPA Process for Toll Lanes and Toll Roads
- 04 Tracking Compliance with Environmental Commitments/Use of Environmental Monitors
- 05 Utilizing Community Advisory Committees for NEPA Studies
- 06 Consulting Under Section 106 of the National Historic Preservation Act
- 07 Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects
- 08 Developing and Implementing an Environmental Management System in a State Department of Transportation
- 09 Using the SAFETEA-LU Environmental Review Process (23 U.S.C. § 139)

For additional Practitioner's Handbooks, please visit the Center for Environmental Excellence by AASHTO web site at: <http://environment.transportation.org>

Comments on the Practitioner's Handbooks may be submitted to:
Center for Environmental Excellence by AASHTO
444 North Capitol Street, N.W., Suite 249
Washington, DC 20001
Telephone: 202-624-5800
E-mail: environment@aahto.org
Web site: <http://environment.transportation.org>

