

**SAFETEA-LU Section 6002**  
**Efficient Environmental Reviews for Project Decisionmaking**

**SUMMARY**

**Applicability**

- Required for EIS Projects. The procedures established in Section 139 *must* be followed on all highway and transit projects that require the approval of USDOT and involve preparation of an environmental impact statement (EIS).
- Optional for Others. These procedures *may* be applied, at the discretion of the USDOT, to other highway and transit projects that require USDOT approval.

**USDOT as Lead Agency**

- USDOT as Lead Agency. The USDOT is designated as the federal lead agency for the “environmental review process” for any highway or transportation project that requires a USDOT approval. The environmental review process is defined to include both NEPA and other reviews.
- Lead Agency’s Role. The lead agency is responsible for taking actions “within the authority of the lead agency” to facilitate the expeditious resolution of the environmental review process. It also is responsible for preparing the required NEPA document for the project, or ensuring that one is prepared.

**Project Sponsor**

- Definition of Project Sponsor. The project sponsor is defined as the “agency or other entity, including any private or public-private entity,” that seeks approval of the USDOT for a highway or transit project. The project sponsor is given certain roles and responsibilities in the environmental review process, as discussed below.
- Project Sponsor as Joint Lead Agency. Any State or local governmental entity acting as project sponsor and receiving federal funds for a highway or transportation project “shall serve” as a joint lead agency with USDOT for purposes of preparing the appropriate environmental document(s).
- Ability of Project Sponsor to Prepare NEPA Document. A State or local entity serving as joint lead agency “may” prepare the relevant environmental review document, if the USDOT as federal lead agency “furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by [USDOT].”
- Ability of Other Agencies to Adopt NEPA Document Prepared by Project Sponsor. Any environmental document prepared by a state or local entity may be adopted or used by a federal agency to the same extent it could be were it prepared by another federal agency. (Note: This was intended to clarify that a document prepared by a State DOT for FHWA can be adopted by the U.S. Army Corps of Engineers.)

**Participating Agencies**

- Invitations. The lead agency is responsible for designating as participating agencies all other governmental agencies – federal or non-federal – that may have an interest in

the project, and inviting those entities to participate in the environmental review process for the project. Such designation and invitation should occur as early in the environmental review process as is practicable.

- Responses to Invitations. Any federal agency that is invited to participate in the process must accept the invitation, unless that agency notifies the lead agency in writing by the deadline specified in the invitation that (1) it has no jurisdiction or authority over the project, (2) it has no information or expertise relevant to the project, and (3) it does not intend to submit comment on the project.
- Relationship to “Cooperating Agency” Status. A participating agency can also be designated as a “cooperating agency” by the lead agency, pursuant to CEQ regulations.
- Significance of Designation as Participating Agency. Participating agency status does not imply that an agency supports a project or has any jurisdiction over, or expertise in, the project.

### **Concurrent Reviews**

- The Act directs “each Federal agency, to the maximum extent practicable,” to (1) carry out all reviews required under other laws concurrently with the review required by NEPA, and (2) formulate and implement mechanisms to enable the agency to ensure the completion of the environmental review process in a “timely, coordinated, and environmentally responsible manner.”

### **Project Initiation**

- Project Sponsor Role. It is the project sponsor’s responsibility to notify USDOT that the environmental review process for the project “should be initiated.”
- Contents of Notice. This initiation notice should identify the “type of work, term, length and general location of the project.” It also should identify any “federal approvals” that the project sponsor believes will be necessary (e.g., Section 404 permits).

### **Coordination Plan and Scheduling**

- Coordination Plan (Required). The lead agency “shall” establish a plan for coordinating public and agency participation in the environmental review process. (Note: The environmental review process includes all federal reviews needed for the project, not just USDOT reviews.) The coordination plan established by the lead agency “may” be incorporated in an MOU.
- Schedule (Optional). As part of the coordination plan, the lead agency “may” establish a schedule for completion of the environmental review process, after consultation with all participating agencies and the State (and the project sponsor, if the sponsor is not the State). The schedule “shall be consistent with any other relevant time periods established under Federal law.”
- Factors to Consider in Setting Schedule. The lead agency “shall consider” certain factors when establishing a schedule, including (1) responsibilities of participating agencies under applicable laws; (2) resources available to participating agencies; (3) overall size and complexity of the project; (4) overall schedule and cost of the project;

and (5) sensitivity of the natural and historic resources that could be affected by the project.

- Changes to Schedule. After establishing such a schedule, the lead agency may lengthen it for good cause but may only shorten it if it obtains the approval of the affected *cooperating* agencies.
- Distribution of Schedule. If a schedule is established, a copy should be made available to the participating agencies, the State, the project sponsor (if different from the State), and the public.

### **Comment Periods**

- Lead Agency Role. The lead agency is responsible for establishing deadlines for comments by the public or other agencies.
- Deadline for DEIS Comments. The maximum time period for comments on a DEIS is 60 days after publication of notice in the Federal Register, unless (1) the lead agency, the project sponsor, and all participating agencies agree on a different deadline, or (2) the lead agency extends the deadline “for good cause.” (Note: The *minimum* time period for DEIS comments under the CEQ regulation is 45 days.)
- Deadlines for All Other Comments. All other deadlines established by the lead agency for agency or public comments in the environmental review process must be not more than 30 days after “availability of the materials on which comment is requested,” unless (1) the lead agency, the project sponsor, and all participating agencies agree on a different deadline, or (2) the lead agency extends the deadline “for good cause.”
- Effect on Existing Practices. Nothing in this section shall be construed to reduce a time period provided for public comment in the environmental review process under an existing law (including a regulation).

### **Deadlines for Decisions Under Other Laws**

- Initial Notice After 180 days. The Senate and House committees with jurisdiction over surface transportation (Senate EPW and House T&I) must be notified by USDOT if a decision under any Federal law was required to be made, but has not been made, within (1) 180 days after the USDOT approved the project or, (2) if later, 180 days after the application has been submitted to that agency for approval.
- Additional Notices at 60-Day Intervals. Additional notices must be provided to the same committees every 60 days until the required action has been taken.

### **Purpose and Need**

- Opportunity for Involvement. The lead agency must provide “an opportunity for involvement” by participating agencies and the public in defining the project’s purpose and need. This opportunity should be provided “as early as practicable” in the environmental review process.
- Decision on P&N. After the required opportunity for involvement, the lead agency “shall define” the project’s purpose and need. This definition of purpose and need applies to “any document which the lead agency is responsible for preparing for the project.” (Note: If a separate NEPA document is prepared by another federal agency, that agency would not be bound by USDOT’s definition of purpose and need.)

However, pursuant to CEQ guidance, other agencies must show “substantial deference” to USDOT’s definition of purpose and need. This CEQ guidance is noted, with approval, in the Conference Report for SAFETEA-LU.)

- Contents of P&N. The purpose and need statement must include a clear statement of the project’s objectives. Objectives may include:
  - “(A) achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan;
  - “(B) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or tribal plans; and
  - “(C) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.”

### **Alternatives Analysis**

- Opportunity for Involvement. The lead agency must provide “an opportunity for involvement” by participating agencies and the public in determining the range of alternatives to be considered for the project. This opportunity should be provided “as early as practicable” in the environmental review process.
- Decision on Range of Alternatives. After the required opportunity for involvement, the lead agency “shall determine” the range of alternatives to be considered in “any document which the lead agency is responsible for preparing for the project.”
- Decision on Methodology and Level of Detail. The lead agency shall determine, “in collaboration with participating agencies at appropriate times in the study process,” the “methodologies to be used and the level of detail required” in the analysis of alternatives.
- Preferred Alternative – Higher Level of Detail. The preferred alternative, after being identified, may be developed in more detail than the other alternatives “in order to facilitate the development of mitigation measures or concurrent compliance with other applicable laws,” provided the lead agency determines that doing so “will not prevent the lead agency from making an impartial decision” among the alternatives. (Note: As an example, this would allow the preferred alternative to be developed to a higher level of detail to accommodate processing a Section 404 permit application concurrently with NEPA.)

### **Issue Identification**

- Cooperative Approach. The lead agency and the participating agencies are required to cooperate in seeking to identify and resolve issues that could (1) delay completion of the environmental review process or (2) result in denial of approvals that are needed for the project.
- Providing Information. The lead agency shall make information available to participating agencies as early as is practicable “regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.” The information may be based on existing sources, such as GIS mapping.
- Identifying Issues of Concern. In turn, participating agencies “shall identify, as early as practicable, any issues of concern regarding the project’s potential environmental or socioeconomic impacts.” As defined in this paragraph, “issues of concern” include

“any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project.”

### **Issue Resolution**

- **Request for a Meeting.** An issue resolution meeting shall be convened at any time upon the request of the project sponsor or the Governor of the State in which the project is located. In addition to the lead agency, the meeting should include the relevant participating agencies, the project sponsor, and the Governor (if the Governor called for the meeting). The purpose of the meeting is to resolve issues that could substantially delay completion of the environmental review process or could result in denial of approvals for the project. (Note: Under TEA-21, the dispute resolution process could be invoked only by FHWA; this provision allows the process to be invoked by the project sponsor or Governor.)
- **If Issues Are Not Resolved.** If the relevant issues cannot be resolved within 30 days after the meeting, and the lead agency finds that all necessary information has been obtained, the lead agency must notify the project sponsor, the heads of all the participating agencies, the Council on Environmental Quality, and certain identified congressional committees of the lack of resolution and publish the notification in the Federal Register. (Note: TEA-21 required the issue to be resolved within 30 days; this provision requires only that notice be given if resolution cannot be achieved within that time frame.)

### **Assistance to Affected Federal and State Agencies**

- **Authority to Provide Funds.** The USDOT may approve a request by a State to provide Title 23 (highway) or Title 49 (transit) funds to “affected Federal agencies, State agencies, and Indian tribes” to “support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State. (Note: This authority is similar to the authority granted in Section 1309(e) of TEA-21, but allows somewhat greater flexibility in terms of the types of activities for which the funds can be used.)
- **Types of Activities.** Funds provided under this section can be used for, among other things, “transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.” (Note: These examples clarify that funding can be used to support non-project-specific activities, as long as those activities meet the basic eligibility requirement – i.e., they “meaningfully contribute to expediting and improving” reviews for projects.)

### **Savings Clause**

- **Effect on NEPA and Other Laws.** Nothing in this section (i.e., the new Section 139) shall be construed to supersede, amend or modify NEPA or any other Federal law or to affect the responsibility or authority of any Federal officer to comply with or enforce any such law.
- **Other Limitations.** Nothing in this section shall be construed to “preempt or interfere with” (1) any practice of seeking, considering, or responding to public comment, or (2) any power of a Federal, State, or local government, or MPO, tribe, or project sponsor.

### **Statute of Limitations**

- 180-Day Period. All claims relating to the issuance of a permit, license or approval under Federal law for a highway or transportation project must be brought within 180 days of publication of the Federal Register notice announcing that the relevant permit, license or approval has been finalized.
- Separate 180-Day Period for SEIS Decisions. The preparation of a Supplemental EIS (SEIS) shall be considered a separate action. Therefore, the 180-period for challenging an SEIS runs from publication of a Federal Register notice announcing the decision on that document.

### **Effect of Section 1309 of TEA-21**

- Effect on Existing Procedures. This section does not affect “any existing State environmental review process, program, agreement, or funding arrangement approved by the Secretary under section 1309” of TEA-21. (Note: This provision protects existing procedures that were approved by USDOT under Section 1309, such as the ETDM process in Florida.)
- Repeal of Section 1309. Section 1309 of TEA-21 (the environmental streamlining section) is repealed.