QUESTIONS AND ANSWERS REGARDING THE ENVIRONMENTAL VITAL FEW GOAL OF NEGOTIATED TIMEFRAMES

Introduction

FHWA’s Environmental Vital Few Goal (VFG), as well as FHWA’s Performance Plan calls for the following measures to improve the timeliness of both the Federal-Aid and Federal Lands Highway Program environmental process:

- Establish timeframes for Environmental Assessments (EAs) and Environmental Impact Statements (EISs) and meet the schedules for 90% of those projects by September 30, 2007;
- Decrease the median time it takes to complete an EIS from 54 months to 36 months by September 30, 2007; and
- Decrease the median time to complete an EA from approximately 18 months to 12 months by September 30, 2007.

Through the Catchball Process in 2002, the Environmental Vital Few Goal Team (consisting of four Division Administrators, senior leadership from Headquarters’ Office of Planning, Environment and Real Estate Services and Office of Chief Counsel staff) with input from the rest of FHWA selected negotiated timeframes as one component of the three Environmental Vital Few Goals. This objective was selected because it fulfills the statutory direction of Section 1309 of TEA-21 to establish concurrent review timeframes as a cornerstone of Environmental Streamlining. Similar provisions regarding timeframes were included in the Department of Transportation’s (DOT) SAFETEA proposal. President Bush’s recent Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, also highlights the need to streamline the environmental review and development of transportation projects.

Congressional directives and statutory mandates focus heavily on the Federal environmental review process as a source of project delay, and FHWA must respond to that. In support of this focus, the Administration felt it important to rigorously pursue the improvement of timeliness and thus selected a target goal of 90% of EIS and EA timeframes being met by 2007. State and local impediments have also been identified as significant sources of delays throughout the entire project development process. However, we believe it is important to focus this objective solely on the environmental review process to be responsive to Congressional direction.

An integral component of this objective is the documentation of adjustments to established timeframes and the associated reasons for delay. By documenting the tracking of timeframes, FHWA will develop a better understanding of the key impediments to the environmental review process, enabling us to help deliver projects in a more predictable and timely manner. Gathering data on the key impediments will allow FHWA to better articulate the sources of delay and address the concerns of Congress, the States, and other stakeholders.

All EIS and EA projects initiated after the start of FY 04 (October 1, 2003) are to have negotiated timeframes for the environmental review process.
**Questions and Answers**

1. **What is meant by the term “negotiated timeframes”?**

The term “timeframe” refers to the establishment of a schedule or timeline for the environmental review or National Environmental Policy Act (NEPA) process. The term “negotiated” means that schedules should be developed in consultation with others involved in the review. Section 1309 of TEA-21 calls for a “cooperatively determined time period.” The environmental review schedule is generally part of a larger project schedule that includes final design, ROW acquisition, and construction. Therefore, negotiating the timeframes for the environmental review should be considered as part of the overall project schedule.

The development of project schedules is not a new concept and most State DOTs already develop schedules as an essential element of managing their projects and utilize project management software for this purpose. In a recent AASHTO survey on the “State of the Practice in Preconstruction Engineering Management,” 38 states responded that they currently track the environmental phase of the project development process in their management system. The ongoing scheduling efforts of each State DOT should be capitalized and built upon in the implementation of this objective. (For more information on the survey, visit [http://design.transportation.org/references.html](http://design.transportation.org/references.html))

There is considerable variability in current scheduling practices when it comes to the involvement of Division Offices and environmental resource and permitting agencies. This objective requires Division Offices to be engaged in the process and work collaboratively with State DOTs to set environmental review schedules on a project-by-project basis, for groups of similar types of projects, or for NEPA classes of actions. In keeping with the intent of this objective and Section 1309 of TEA-21, State DOTs and Divisions Office should negotiate these timeframes in consultation with the involved environmental review and permitting agencies. Timeframes should be established based on the complexity and characteristics of the project(s), as well as the State’s own sense of priority. Defining the timeframe for the environmental review process may be as simple as coming to an agreement at a scoping meeting that all parties have the resources and workload priorities to accommodate the agreed upon timeframe. A complex project may require acknowledgement upfront that a long timeframe will be required and that as the project progresses, ongoing assessment and tracking must be provided to determine if it is necessary to modify the timeframe.

2. **What are the benefits of establishing timeframes?**

The establishment of timeframes for the environmental review process should be viewed as an element of good project management. The very activity of having to think about what it will take to get through all the reviews, forces an assessment of resources and issues. Timeframes can provide goals and structure for the process. Setting timeframes can be an effective continuous process improvement tool to identify bottlenecks, conflicts, and systematic issues, as well as to monitor progress.

Establishing timeframes will require upfront discussion among FHWA, the State DOT and other involved agencies (Federal, State and local) and can lead to the realization of project efficiencies:
• **Improve timeliness of the process:** The existence of a timeframe should help to create a sense of accountability and it will also allow all agencies input into setting the timeframe. If an environmental review schedule is agreed to and publicized, there will be an expectation to keep to the schedule.

• **Identify issues early:** The process of establishing a schedule will require potential project issues, analysis methodologies, and environmental impacts to be considered early on in order to develop a realistic schedule for the environmental review process. Setting timeframes forces early and complete scoping.

• **Encourage early participation of environmental resource and permitting agencies:** By acknowledging project issues early, the interested parties and affected environmental resource and permitting agencies can be identified and brought to the table sooner. The importance of their involvement and input must be stressed. It is important to educate the resource agencies that this will be a benefit to them also. Good transportation infrastructure is a critical resource.

• **Recognize resource limitations upfront:** By establishing a general level of priority for the project early, all parties (FHWA, State DOT, and environmental resource and permitting agencies) can address limitations of human, financial, and time resources.

3. **When is the best time in the process to establish timeframes?**

   Timeframes or environmental review schedules should be developed as soon as the Division Office and State DOT have sufficient information to determine project environmental concerns or issues and identify agencies that will need to be involved in the project. If a schedule is established prior to scoping, it should be revisited pursuant to information gained from the public and agencies, or at any other time the Division and State deem necessary.

4. **Who should be involved in negotiating or setting up timeframes for the environmental review process? Do timeframes have to be set project-by-project or can they be done for groups of projects?**

   Timeframes may be set on a project-by-project basis, for groups of similar types of projects, or for NEPA classes of actions. This allows for flexibility in how each State and Division Office chooses to implement the objective to meet their specific needs for various projects. There are many different models for establishing timeframes that range from a schedule unilaterally being established to a timeframe jointly developed and agreed to by an interagency team. Timeframes may also be set for broad groups or categories of projects via programmatic agreements or memoranda of understanding.

   Division Offices and State DOTs should work collaboratively to set schedules. The schedule should cover the environmental review process and spell out milestones as well as set a target completion date. In keeping with Section 1309 of TEA-21, States should consult environmental resource and permitting agencies in the establishment of the timeframe. The schedule should be consistent with any relevant time periods established under Federal and/or State law. Schedules should also account for the necessary review periods by the FHWA Division Office and State DOT offices, legal sufficiency reviews by FHWA Office of Chief Counsel, and allow adequate time for consultants or document preparers to develop work products or respond to feedback.
When establishing a timeframe for the environmental review process, the following factors should be considered:

- Overall size, complexity, and characteristics of the project;
- Current and anticipated workload, committed resources, and priorities of agencies involved in the project;
- Sensitivity of the natural and historic resources that could be affected by the project;
- Responsibilities of cooperating agencies under applicable laws;
- Potential for controversy and public support;
- State’s sense of priority for the project;
- Overall schedule for and cost of the entire project; and
- Provision of resource agency support via FHWA/State funding of positions.

5. **The other two measures associated with this VFG objective to improve the timeliness of the environmental review process set out specific targets of decreasing the median completion time for EISs and for EAs to 36 months and 18 months respectively, by September 2007. Should all timeframes be set to these targets?**

Each timeframe should be set based upon the factors identified in Question #4 and should be realistic for the individual project, groups of similar types of projects, or NEPA classes of actions. Establishing an ambitious but realistic and achievable schedule, as well as documenting the negotiation and any changes to the schedule, are key to success for this component of the objective. In pursuit of the overall goal of improving the timeliness of the environmental review process and reducing the median processing times, Division Offices and State DOTs should continue seeking efficiencies in the process and explore the use of programmatic or other streamlining mechanisms.

It is important to recognize that the EIS and EA targets are median times that represent a national aggregate of processing times. Using the median, rather than the mean, presents a more representative snapshot of typical timeframes for the environmental review process that can be disproportionately skewed by one or two projects that are exceedingly long or short to process. While meeting the 36-month review time for EISs may not be realistic for certain projects, there are other projects around the nation that will be able to complete the environmental review process in 36 months or less.

6. **Should the number of active EISs/EAs or the size of the State’s highway program be taken into account when developing timeframes?**

The process of establishing timeframes should not become over burdensome or a source of delay itself. For those States with a large program and/or a high number of EISs and EAs, it is likely that establishing general timeframes for groups of similar projects will be the most effective and efficient manner to implement this objective. In the case of extremely complex, controversial, or unique projects, it is recommended that project specific timeframes be established. Many Division Offices and State DOTs routinely establish interagency project teams involving resource and permitting agencies for these types of projects. The negotiation of a schedule for the environmental review process should be an initial action item for this team.

7. **What are the consequences if the time frames are not met or if things don’t proceed?**
There are no legal consequences of not meeting the established timeframes. Timeframes should create a sense of accountability with the public and agencies. Loss of trust and accountability with the public and with other agencies may be a consequence of not meeting those expectations. The establishment of timeframes should be done collaboratively, therefore, not meeting the agreed upon commitment could reflect negatively on interagency coordination and the working relationship between agencies.

As mentioned elsewhere, timeframes should be considered a project management tool. When new issues arise or priorities change, the schedule should be reviewed and revised as necessary. Any schedule changes should be well documented and shared with Cooperating Agencies. Reasons for schedules delays should be analyzed for lessons learned and, where appropriate, these lessons should be applied to other projects. Documenting sources of delays is an integral part of this objective. This data will enable the agency to better articulate reasons for project delays and to develop appropriate countermeasures.

We acknowledge that unforeseen issues may arise late in the process, such as changes in program/political priorities, which are outside the control of FHWA or the State DOT. Other impediments such as funding, politics, and local controversy are often sources of delays and also outside the control of the parties involved in negotiating timeframes.

8. **Concern has been expressed over timeliness being the sole outcome measure of this objective. Some fear that the goal to set and establish timeframes will drive decisions, instead of using the decision process to drive timeframes. If speed is the only important characteristic, are we still making good decisions and isn’t there a potential for document quality to decline?**

We recognize that timeliness is only one aspect of environmental streamlining. This objective should be viewed together with the other Environmental Vital Few Goal objectives and in the larger context of FHWA’s focus on environmental stewardship and environmental streamlining. The other objectives provide complementary measurements of the quality of decision-making. FHWA is promoting widespread use of Context Sensitive Solutions and Integrated Approaches to improve the environmental quality of transportation decisionmaking as well as the advancement of ecosystem initiatives. In short, we do not believe that timeliness objective will compromise quality. If the timeframe is consistent with the complexity of the project, quality should not be compromised and can be improved by increased management, oversight and productive involvement by the environmental resource and permitting agencies.

Quality decision-making is an essential element of streamlining. Environmental streamlining is the timely delivery of transportation projects while protecting and enhancing the environment. Nothing in the objective should be construed as relieving FHWA of its responsibility to provide quality environmental documents that ensure quality environmental decisions.

9. **How receptive are the other agencies to establishing and abiding by timeframes?**

The Federal environmental resource and permitting agencies have been very involved in FHWA’s environmental streamlining efforts. As one of the first measures to implement
Section 1309 of the TEA-21, DOT and six Federal agencies entered into a National Environmental Streamlining Memorandum of Understanding (MOU) in July 1999. The six agencies included the Environmental Protection Agency, the Advisory Council on Historic Preservation, the US Army Corps of Engineers, and the Departments of Commerce, Agriculture and the Interior. In the MOU, all of the agencies agreed to streamline environmental review processes in accordance with TEA-21 and other relevant environmental statutes in ways that reinforce the Federal responsibility to protect the environment. With respect to establishing timeframes, the MOU calls upon all agencies to:

Support and encourage field offices to explore flexible streamlining opportunities on their own and with state transportation and environmental partners including developing MOUs to lay out mutual expectations, funding agreements in support of streamlining, and concurrent review within cooperatively determined time frames.

President Bush’s Executive Order 13274, *Environmental Stewardship and Transportation Infrastructure Project Review*, reinforces the need to enhance environmental stewardship and streamline the environmental review process for transportation projects. The interagency Transportation Infrastructure Streamlining Task Force, established as part of the Executive Order, is aimed at determining the appropriate mechanisms to coordinate agency consultation, review, approval, and permitting of projects. The Task Force oversees the expedited review of selected Priority Projects. The establishment of schedules and milestones has been a component of these Priority Projects. Lessons learned from the Priority Projects should be applied to all projects.

FHWA’s emphasis on establishing timeframes is also a discussion item at the FHWA sponsored interagency Conflict Resolution Workshops held in each of the ten standard Federal regions. Participants are from various Federal and State resource and permitting agencies. These timeframe discussions have yielded interesting feedback. Many resource agency staff indicated that knowing the schedule upfront helps to balance workloads and can lead to timely coordination. Agencies acknowledge that resource limitations affect their level of participation in projects. However, many agencies have expressed the desire to know the State DOTs’ priorities to enable workload planning and optimization. Discussing timeframes upfront with agencies involved can add predictability to the process and result in trust building between the agencies. Many agencies noted that the more information they have upfront, the easier it will be for them to commit to a timeframe.

The current level of involvement by environmental resource and permitting agencies in the development of project specific timeframes varies significantly. Some State DOTs meet routinely with these agencies and overview upcoming projects and anticipated schedules. Other DOTs regularly share their STIPs with these agencies.

Setting negotiated timeframes for environmental review by agreement is a key to meeting project and resource agency expectations.

10. Often, the regulatory time periods are not being met, let alone making the review times any shorter. How do we address this?
The regulatory required time periods for review or consultation should be used as the baseline or milestones in the environmental review process schedule. If regulatory time periods are currently not being met, Division Office and State DOTs should work with the appropriate environmental resource and permitting agencies to identify the sources of delays. We should be sure to fulfill our responsibility as lead federal agency to facilitate the process. Workload, resources, and other priorities should be assessed when discussing timeframes with environmental resource and permitting agencies. With upfront and early coordination on timeframes, realistic time periods for agency reviews can be factored into the schedule. If an agency will be unable to meet the regulatory time period, upfront discussion will allow this to be considered in the timeframe. This type of early coordination may result in agencies negotiating for a quicker review on the project(s) with the highest priority in the State while acknowledging that lower priority projects will receive a longer review. To assist in the timeliness of environmental reviews, State DOT headquarters should prioritize EIS and EA projects and send this list to the review agencies on a periodic basis.

Unless agreed to by the agency, it is generally not feasible to request a review period that is shorter than what is required by regulation. The exception will be in cases where the State DOT is funding environmental resource and permitting agency positions and the agreement spells out conditions for an expedited review. It is reasonable to expect quicker reviews from resource agency staff in funded positions. TEA-21 allows State DOTs to use Federal-aid funds to provide additional resources to Federal agencies to meet newly established time limits for environmental reviews, conditioned upon the review time periods being less than the customary time necessary for such reviews.

11. How should timeframes be tracked?

The FHWA internal Environmental Document Tracking System (EDTS) should be used to track timeframes. Currently the system contains a data entry field for timeframes. The field first asks for a yes/no response to the question “Did project schedule include agreed upon timeframes for completion of other agency reviews?” and then allows for comments to be provided in a text box. The target completion date should be entered into the system. If the schedule is revised, the reasons for revision should be documented in the text box. Both the amount of delay time and the reason for delay need to be documented.

HEPE is currently revising this data entry field to better capture information on why a scheduling problem happens and tracking changes in the target date.

12. What are the differences in negotiating timeframes for projects requiring an EA versus an EIS?

Generally the same procedures for establishing a timeframe should be followed for both EISs and EAs. The same project factors listed in Question #4 should be considered for both types of projects. EISs do have a more defined process including formal scoping that may make the initial establishment of the schedule and involvement of environmental resource and permitting agencies easier. A lack of well-defined milestones in the EA process coupled with the wide variation in the scope of EAs from State to State may present challenges.

Division Offices and State DOTs should work collaboratively to set project EA schedules on a project-by-project basis or for groups of similar types of EAs. As with EISs, the discussion
about establishing a schedule should begin when the Division Office and State DOT have sufficient information to determine project environmental concerns or issues and identify agencies that will need to be involved in the project. If possible, a consistent initiation point for all EA projects within the State should be selected.

13. **What actions have been taken so far by some of the Division Offices and State DOTs to establish and negotiate timeframes?**

Many State DOTs are using project management or scheduling software to establish timeframes, but involvement by FHWA Division Offices and environmental resource and permitting agencies in the development of those schedules varies greatly. Historically, most State DOTs and Division Offices have developed environmental review process schedules as needed on a project-by-project basis for the most complex or highest priority projects in the State. Often, the resource and permitting agencies have been engaged in schedules for these select types of projects. Very few State DOTs routinely set schedules in consultation with environmental resource and permitting agencies. A sampling of Division and State activities associated with establishing timeframes is provided below:

- **Ohio:** The Ohio Department of Transportation (ODOT) has established a goal of 90%+ on-time delivery of projects. Current project delivery in Ohio is over 90% on-time. On-time project delivery is defined as awarding a project to construction contract at or prior to the date established in the ODOT database. This goal was established by ODOT’s environmental section and uses Microsoft Project to develop schedules for the completion of environmental documents in 1998. The output of this software is a Gantt Chart which is a graphical representation of the steps that are necessary and the critical path required to complete the process. In 2001 the use of Gantt Charts was also expanded to cover the entire project delivery process. The Gantt Charts are developed early in the project development process. Templates have been developed as a starting point for common classes of projects. The timeframes used in the templates are based on historical data. However, project specific timeframes are occasionally negotiated with the resource agencies. The use of Gantt Charts greatly assists in the development of reasonable milestone dates. The project milestones are then taken from the Gantt Chart and entered into ODOTs project tracking database. Gantt charts are also used on some of the more complex CE projects, and all projects have associated milestone dates that are entered into the ODOT database.

The milestone dates in the project database are adjusted as necessary during project development, but “lock down” dates have been established for all critical decision points. For example, on January the 15th of each year, ODOT "locks down" the construction sale dates for the next 18 months.

ODOT’s executive leadership, the FHWA Division Office and all levels of District management hold monthly meetings to discuss scope, schedule and budget concerns on any of ODOT's "major" projects (projects over $5 million). In addition, the project environmental teams meet monthly and even weekly (in some cases) with resource agencies to ensure all reviewers are aware of schedule and scope demands. All agencies, including FHWA and ODOT, are tracked for on-time completion. If problems occur, they are communicated with each agencies management on a monthly basis. This helps to
ensure that if an agency is performing at a low level of on-time delivery, that they are aware of it and will usually take measures to make improvements.

For more information on Ohio’s project milestones tracking, please contact David Snyder at 614-280-6852.

- **Texas**: The Environmental Affairs Division of Texas Department of Transportation (TxDOT) has developed an electronic spreadsheet that calculates and estimates process time for environmental clearance, ROW, and PS & E based on a number of factors. Texas had accelerated four EIS projects in central Texas, and completed the process in 2½ years because resources (time, money and staff) were dedicated to those projects. The Division has found that concurrent review of TxDOT District documents by the TxDOT Central Office and FHWA has really helped streamline the review process.

Currently the Division Office and TxDOT develop and agree upon timeframes on a project-by-project basis for large complex projects. On those projects, a project team is established and that team negotiates the timeframe. A more formal negotiated timeframe was implemented on the 1,000-mile long I-69 project. A Technical Advisory Committee (TAC) was formed with membership from FHWA, TxDOT, State and Federal resource and permitting agencies, and Metropolitan Planning Organizations. A product of the TAC is I-69 Process Manual. This manual formally established the timeframes for the I-69 project though the NEPA process. Now that the Process Manual has been approved by the I-69 Steering Committee (consisting of agency executives), TxDOT is considering implementation of similar Process Manual approach for a multitude of mega projects in Texas.

For more information on Texas’ accomplishments, please contact Sandy Allen at 512-536-5944.

- **Indiana**: The Indiana Division Office has recently begun the process of negotiating schedules. The Division uses a spreadsheet with key milestones listed for each project, and works with Indiana Department of Transportation (INDOT) to update the schedules on a quarterly basis. When updated, the schedules are sent to the resource and permitting agencies and the milestones are then updated in the Environmental Document Tracking System (EDTS). These milestones are called “consultation points” rather then “concurrence points”. Sixty days prior to a consultation point, a package is sent to the resource and permitting agencies for their consideration. About 30 days later, a meeting is set up to discuss the package with the involved agencies. For an EIS, consultation points are considered for the purpose and need, selection of preliminary alternatives, alternatives screening, and preferred alternative/mitigation agreement. The beginning or the end of yearly quarters are used for the milestones instead of specific dates, as the Division Office and INDOT believe that is as close as they can estimate accomplishment. Actual dates are put into the spreadsheet and EDTS when they are accomplished, or the schedule is adjusted based on further consultation with INDOT. Schedules have not been negotiated with the resources agencies; however the agencies are comfortable with the established consultation process, and appreciate knowing when to expect the next consultation package in the mail.
For more information on Indiana’s activities, please contact Robert Dirks at 317-226-7492.

- **Arkansas**: The Arkansas Division Office has developed a Memorandum of Agreement (MOA) on “Environmental Streamlining and Interagency Cooperation on Environmental and Transportation Issues.” The agreement sets forth principles for establishing reasonable document review timeframes resulting in effective and efficient use of agency resources. FHWA, Arkansas DOT, USACOE, USFWS, EPA, and the SHPO are signatories on the MOA.

For more information on this MOA, please contact Randal Looney at 501-324-6430.

14. **Are there any follow-up activities to this guidance?**

The Office of Project Development and Environmental Review (HEPE) will sponsor a web conference(s) to address any questions on this guidance. This web conference(s) will be a follow-up step to the initial Performance Measurement Forum that was held on September 30, 2003, and focused on negotiated timeframes. The September forum, sponsored by the DA Council and the Office of Corporate Management, was part of a series of web conferences addressing the eight measurement areas representing the key business processes and the Vital Few.

Following the web conference, HEPE will establish a small working group of Federal-aid and Federal Lands Division Office, Resource Center, and Headquarters representatives to further explore the implementation of this objective. Input from this work group will be sought in the development of training and technical assistance tools.

15. **What tools or technical assistance will be available to Division Offices or State DOTs in developing timeframes?**

HEPE will be developing an electronic template to assist Division Offices and State DOTs in identifying all Federal data requirements and permit schedules. The electronic template will be an interactive tool used to illustrate how agency involvement can be better coordinated and required processes better integrated to provide for a more efficient transportation project development process. HEPE has engaged the services of the Volpe Center to develop this template. Prior to developing the template, the Volpe Center will gather information from Divisions Offices and State DOTs to identify existing practices related to the development of timeframe agreements. The Volpe Center will also develop an overview of the Federal transportation and resource protection requirements as well as a process flowchart.

Input from the working group mentioned above will be sought in the development of the template. HEPE anticipates finalizing the template in the summer of 2004.