

Title: Agency Roles and Government-to-Government Coordination
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Issued by the Office of Planning and Environment (TPE)

1. Purpose

The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500-1508) and FTA's environmental regulations (23 CFR part 771) and guidance emphasize the importance of early and effective coordination with Federal, State, and local agencies in the preparation of environmental impact statements (EISs). This SOP discusses the roles and responsibilities of various agencies in the environmental review process, primarily for EISs.

2. Applicability/Scope

The environmental review process for EISs includes three types of formal agency roles: lead agency, cooperating agency, and participating agency. This document addresses factors for determining how FTA participates in the environmental review process (i.e., as a lead, co-lead, cooperating, or participating agency), and how FTA Regional staff, in coordination with project sponsors, identify Federal, State, or local agencies to participate in the environmental review process as a co-lead, cooperating, or participating agencies. Throughout the SOPs, agency roles are discussed further as they relate to the specific milestone or document type.

For EAs, depending on impacts, early and effective coordination with other entities can also be important.

3. Responsibilities

FTA Regional staff should work closely with the project sponsor to define roles and responsibilities for agency coordination at the beginning of the environmental review process. It is recommended that FTA Regional staff conduct initial coordination with other Federal agencies and certain State agencies, such as the State Historic Preservation Office, to help ensure FTA involvement and engagement in the process. Follow-up coordination with Federal agencies on technical matters, such as to fulfill a permit or process, and other coordination with State and local agencies may be handled by the project sponsor.

FTA Regional staff are responsible for communications with Federally-recognized Indian tribes under government-to-government consultation.

4. Standard Procedures

4.1. Define FTA's role in the process. After determining that a project is eligible for and will likely receive FTA funding, the FTA Regional office determines FTA's role in the environmental review process. This should be done in coordination with the project sponsor and any other co-lead agencies, and may include discussions with other

Federal, State, and local agencies.¹ For more information on lead, cooperating, and participating agencies, review the SAFETEA-LU Environmental Review Process Final Guidance (2006).

- **Lead agency.** For projects that involve FTA funding only, FTA is the Federal lead agency for the project. The project sponsor that will be the direct recipient of FTA funding will be a joint lead agency with FTA. For projects that involve several Federal funding sources, FTA will determine its role in coordination with the other Federal agencies providing funding.

A project sponsor may request that the Secretary of DOT designate an operating administration or secretarial office within DOT to serve as the Federal lead agency for the project. This process is described in 23 U.S.C. § 139(e)(4), but FTA recommends project sponsors contact FTA prior to requesting the Secretary's determination because FTA may be able to make the determination.

- **Joint lead Federal agency.** For projects that require both FTA and another Federal agency to take a Federal action, FTA and the other agency may choose to serve as joint lead Federal agencies or, preferably, one agency may choose to serve as a cooperating agency (see below). Often a project with joint lead Federal agencies is a multimodal project and the other Federal agency involved is another Department of Transportation (DOT) modal administration. This approach is not normally encouraged because it can complicate decisionmaking related to the environmental review process, but if it is pursued, the roles and responsibilities of the agencies should be clearly defined and documented in order to facilitate decisionmaking. FTA's decision on its role in the environmental review process depends on the relative magnitude of the transit elements of the multimodal project and the timing of FTA funding for the project.
- **Cooperating agency.** For projects that have multiple Federal funding sources or approvals, and for which FTA either has special expertise or expects to fund/approve a transit component, FTA may participate in the review process as a cooperating or participating agency (note these roles apply to EIS projects, specifically). FTA should expect to serve in these roles when the FTA action is minimal or, in some cases, undetermined. Note, cooperating agencies are also considered participating agencies so references to participating agencies in 23 U.S.C. § 139 include cooperating agencies.

Cooperating agencies have a higher degree of authority, responsibility, and involvement in the environmental review process. The two main advantages to participating in the environmental review process as a cooperating agency

¹ If, at the project outset, it appears that the project will need Federal permits or approvals, FTA/project sponsor should coordinate with the Federal agency with jurisdiction by law over those permits or approvals when discussing agency roles. This will help set the foundation for a single NEPA/environmental document (23 U.S.C. § 139(d)(8)), to the maximum extent practicable.

instead of a participating agency are: (1) a non-DOT cooperating agency may adopt without recirculating the EIS of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied² (40 CFR 1506.3); and (2) lead agencies may share the administrative draft environmental document for review and comment with all or select cooperating agencies prior to publishing the documents for public review and comment.

- **Participating agency.** If the lead agency expects FTA will have an interest in the project, FTA will likely be invited to participate in the environmental review process. If FTA is invited to participate pursuant to 23 U.S.C. § 139 or Title 41 of the FAST Act and the FTA Regional office determines FTA does not have an interest in the project, FTA must decline the invitation in writing and specify the reasons found in the applicable statutory provision.

4.2. Identifying cooperating and participating agencies. The SAFETEA-LU Environmental Review Process Final Guidance (2006) provides detailed guidance on whom and how to invite agencies to participate in FTA’s environmental review process as cooperating and participating agencies. However, there are aspects not covered by the SAFETEA-LU Guidance, noted below, due to recent reauthorization.

- **Lead agency roles.**
 - The lead agencies must identify participating agencies no later than 45 days after publication of the notice of intent (NOI) (23 U.S.C. § 139(d)(2));
 - The lead agencies must establish the project coordination plan no later than 90 days after EIS NOI publication (23 U.S.C. § 139(g)(1)(A)), and seek concurrence from all participating agencies on the schedule included in the coordination plan (23 U.S.C. § 139(g)(1)(B));
 - The lead agencies must develop the environmental checklist discussed at 23 U.S.C. § 139(e)(5) in consultation with the participating agencies and when the lead agencies determine that a checklist would be appropriate;
 - The lead agencies must consider and respond to comments from participating agencies on matters within those agencies’ special expertise or jurisdiction (23 U.S.C. § 139(c));
 - FTA or the Secretary of DOT must respond in writing to EIS “review of application”/project notification requests within 45 days of receipt (23 U.S.C. § 139(e)(3)); and
 - FTA must identify the participating agencies not participating in the development of the purpose and need and range of alternatives on the Federal Infrastructure Permitting Dashboard (23 U.S.C. § 139(o)(1)(A)(ii)). FTA policy is to request written notice from the participating agency stating it will not participate in the development of the purpose and need and range of alternatives in order for FTA to include the agency on the Dashboard under the 23 U.S.C. § 139(o) provision.

² Adoption of environmental documents within DOT is governed by the process set out in 49 U.S.C. § 304a.

- **Participating (including cooperating) agency roles.**
 - Participating agencies must provide comments within their special expertise/jurisdiction and use the environmental review process to address any environmental issues of concern to their agency (23 U.S.C. § 139(d)(9));
 - Participating agency concurrence is required on the project schedule to be included in the coordination plan (23 U.S.C. § 139(g)(1));³ and
 - Participating agencies must comply with the schedule within the coordination plan even if they decline to participate in the development of the purpose and need and the range of alternatives (23 U.S.C. § 139(f)(4)(A)).

4.3. Communicating responsibilities to cooperating and participating agencies. Once FTA and the project sponsor have invited the cooperating and participating agencies using the standard invitation letter template (Attachment B to the SAFETEA-LU Environmental Review Process Final Guidance (2006)), discussions regarding roles and responsibilities will occur. FTA and the project sponsor may choose to draft the roles and responsibilities and present them, along with the draft project schedule, in the coordination plan and request review and comment, and/or FTA and the project sponsor may hold an agency coordination meeting (in person or via tele-conference) to discuss roles and responsibilities. Ultimately, the lead agency(s) will memorialize the roles and responsibilities of the lead agencies, cooperating and participating agencies, tribes, and the public in the EIS coordination plan.

In addition to the responsibilities of being a participating agency, cooperating agencies (Federal agencies required to make an approval or take an action for a project) may be given additional responsibilities for reviewing or preparing sections of the EIS. FTA and the project sponsor would outline these responsibilities in the coordination plan.

4.4. Government-to-government consultation. The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions.⁴ As part of the project development and environmental review process, FTA Regional staff shall make a reasonable and good faith effort to identify Indian tribes that may have an interest in a project. Out of deference to Federally-recognized Indian tribes, FTA Regional staff should not contact these governments using the generic participating agency template letters and instead draft correspondence recognizing their sovereignty and potential interests. Correspondence must come from FTA staff. If other communication arrangements are made for the course of the project, FTA Regional staff should include it in the coordination plan.

³ FTA will assume concurrence of participating agencies if no objections are received within 30 days of distribution of the schedule.

⁴ Executive Order 13175: Consultation and Coordination with Indian Tribes; Presidential Memorandum on Tribal Consultation (November 5, 2009).

4.5. Documenting agency coordination. All agency coordination, whether conducted by FTA or the project sponsor, should be documented and saved in the project file. Any correspondence containing decisions, determinations, findings, or agreements should be appended to the EIS.

5. References

- Efficient environmental reviews for project decisionmaking, [23 U.S.C. § 139](#)
- CEQ regulations implementing NEPA, [40 CFR Sections 1501.7](#) and [1508.25](#)
- [SAFETEA-LU Environmental Review Process Final Guidance](#) (2006)
- Executive Order 13175: [Consultation and Coordination with Indian Tribes](#)
- [Presidential Memorandum on Tribal Consultation](#) (2009)

APPROVAL:



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