

the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) *Other.* In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 110, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

[52 FR 32660, Aug. 28, 1987; 53 FR 11065, Apr. 5, 1988, as amended at 62 FR 6873, Feb. 14, 1997; 70 FR 24469, May 9, 2005]

§ 771.111 Early coordination, public involvement, and project development.

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to

identify the probable impacts of the action. This is normally no later than the review of the transportation improvement program (TIP).

(c) When FHWA and FTA are involved in the development of joint projects, or when FHWA or FTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on

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project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by § 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the FTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a public hearing will be held during the circulation period of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 5323(b), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the FTA environmental process may be obtained from: Director, Office of Human and Natural Environment, Federal Transit Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590.

[52 FR 32660, Aug. 28, 1987, as amended at 70 FR 24469, May 9, 2005]