

(f) *Applicant.* Any State, local, or federally-recognized Indian tribal governmental unit that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this regulation) may assume the responsibilities of the applicant in this part. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant in this part.

(g) *Lead agencies.* The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulation.

(h) *Participating agency.* A Federal, State, local, or federally-recognized Indian tribal governmental unit that may have an interest in the proposed project and has accepted an invitation to be a participating agency, or, in the case of a Federal agency, has not declined the invitation in accordance with 23 U.S.C. 139(d)(3).

(i) *Project sponsor.* The Federal, State, local, or federally-recognized Indian tribal governmental unit, or other entity, including any private or public-private entity that seeks an Administration action.

[52 FR 32660, Aug. 28, 1987, as amended at 70 FR 24469, May 9, 2005; 74 FR 12527, Mar. 24, 2009]

**§ 771.109 Applicability and responsibilities.**

(a)(1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

(2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.

(3) Environmental documents accepted or prepared after the effective date of this regulation shall be developed in accordance with this regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections. The FTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(c) The following roles and responsibilities apply during the environmental review process:

(1) The lead agencies are responsible for managing the environmental review process and the preparation of the appropriate environmental review documents.

(2) Any applicant that is a State or local governmental entity that is, or is expected to be, a direct recipient of funds under title 23, U.S. Code, or chapter 53 of title 49 U.S. Code, for the action shall serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance and independently evaluates the documents.

(3) The Administration may invite other Federal, State, local, or federally-recognized Indian tribal governmental units to serve as joint lead agencies in accordance with the CEQ regulation. If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the role of the applicant will be determined by the Administration in accordance with the CEQ regulation and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department

of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of section 102(2)(D) of NEPA, may prepare the EIS and other environmental review documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) The role of a project sponsor that is a private institution or firm is limited to providing technical studies and commenting on environmental review documents.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, 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 review documents unless the State requests and receives written FHWA 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; 74 FR 12527, Mar. 24, 2009]

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

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental review documents 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 review documents. 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 review documents.

(2) The information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR 1502.21 and 23 CFR 450.212 or 450.318.<sup>3</sup>

(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.

(c) When both the FHWA and FTA are involved in the development of a project, or when the 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 lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139.<sup>4</sup> Agencies with special expertise may be invited 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

<sup>3</sup>On February 14, 2007, FHWA and FTA issued guidance on incorporating products of the planning process into NEPA documents as Appendix A of 23 CFR part 450. This guidance, titled "Linking the Transportation Planning and NEPA Processes," is available on the FHWA Web site at <http://www.fhwa.dot.gov> or in hard copy upon request.

<sup>4</sup>The FHWA and FTA have developed guidance on 23 U.S.C. Section 139 titled "SAFETEA-LU Environmental Review Process: Final Guidance," November 15, 2006, and available at <http://www.fhwa.dot.gov> or in hard copy upon request.