

The NEPA Process: Agency Responsibilities

How are agencies involved in the NEPA process?

NEPA requires coordination among multiple agencies and units of government. The roles and responsibilities are determined by their designation as a lead, cooperating, or participating agency.

Joint Lead Agencies

At a minimum, the Federal agency responsible for the action in question, such as the Federal Highway Administration (FHWA), will serve as a lead agency. Any state or local government receiving federal funds directly must serve as a joint lead agency. The required lead agencies may also allow other federal, state, or local government entities to serve as joint lead agencies. The lead agency is responsible for complying with NEPA. On the I-94 project FHWA and MnDOT are Joint Lead Agencies.

Role

- Supervise preparation of the environmental document/review process
- Develop/approve coordination plan and schedule
- Invite cooperating and participating agencies
- Conduct scoping
- Determine purpose and need
- Determine range of alternatives
- Determine preferred alternative
- Prepare responses to comments from participating agencies
- Approve draft EIS for circulation
- Determine whether the FEIS and ROD may be combined
- Select alternative for Record of Decision
- Approve the FEIS/ROD

Cooperating Agencies

Cooperating agencies are specifically requested by the lead agency during early coordination to assist with the environmental process. Federal agencies with jurisdiction by law must be requested to be cooperating agencies if an EA or EIS is being prepared. This includes permitting agencies such as the U.S. Army Corps of Engineers. Cooperating agencies can also include other federal agencies with special expertise, state or local agencies acting in the stead of federal agencies or in support, or tribal governments where reservation land is involved.

Role

- Perform environmental analysis and prepare portions of the environmental document at request of lead agencies
- Provide written comments on environmental document and other draft documents (purpose and need, evaluation criteria, range of alternatives, etc.)
- Ensure environmental document fulfills the agency's NEPA responsibilities
- For EIS projects, rely upon DEIS and FEIS to satisfy their NEPA requirements
- To the extent possible, incorporate their NEPA decision making responsibility into one Record of Decision

Participating Agencies

Participating agencies can include any federal, state, regional, local, or tribal government unit with an interest in the project. The lead agencies have the responsibility to identify and involve participating agencies. However, an agency can also make a request to become a participating agency. All cooperating agencies are participating agencies, but not all participating agencies are cooperating agencies. Participating agencies have less authority, responsibility, and involvement than cooperating agencies. Private entities and nongovernmental organizations are not permitted to act as participating agencies.

Role

- Provide input on purpose and need, range of alternatives, and methodologies and level of detail in the consideration of alternatives
- Provide written comments on environmental document and other draft documents (purpose and need, evaluation criteria, range of alternatives, etc.)
- When asked, provide comments within their areas of expertise for environmental documents (draft EIS and technical memoranda)
- Ensure environmental issues of concern are addressed

Sources

FHWA Environmental Review Toolkit, NEPA Implementation, Project Development and Documentation Overview. August 21, 1992.

https://www.environment.fhwa.dot.gov/legislation/nepa/overview_project_dev.aspx

FHWA Environmental Review Toolkit, Legislation, Regulations, and Guidance, Frequently Asked Questions on the Environmental Review Process.

https://www.environment.fhwa.dot.gov/legislation/authorizations/safetealu/reviewProcessFAQ.aspx#faq_1

FHWA Office of Planning, Environment, & Realty, SAFETEA-LU Environmental Review Process (Public Law 109-59). https://www.fhwa.dot.gov/map21/guidance/12mar_prop_env_proc_review_pc.cfm

Office of the Law Revision Counsel, 23 USC 139: Efficient environmental reviews for project decisionmaking. October 9, 2019.

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