



U.S. Department
of Transportation

**Federal Highway
Administration
Federal Transit
Administration**

JUL 23 2003

Subject: Guidance on "Purpose and Need"

Date:

From: Mary E. Peters, Administrator
Federal Highway Administration

Reply to
Attn. of: HCC-30

Jennifer L. Dorn, Administrator
Federal Transit Administration

To: FHWA Division Administrators and
FTA Regional Administrators

This memorandum provides guidance on preparing purpose and need statements in light of the letter we received from the Council on Environmental Quality (CEQ) on May 12, 2003 (copy attached). We request that you share this guidance with the State Departments of Transportation, local transit agencies, and other joint lead agencies, as well as cooperating agencies and other agencies involved in the preparation and review of National Environmental Policy Act (NEPA) documents.

1. In its letter, CEQ states that "The lead agency [in our case, the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA)] ...has the authority for and responsibility to define the 'purpose and need' for purposes of NEPA analysis." The letter goes on to say that "In the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the Department of Transportation agency's articulation of purpose and need." This deference is due to the Department of Transportation (DOT) for transportation projects because of our primary substantive expertise and program responsibility, and is the same deference that would be owed to other Federal agencies in their areas of expertise and program responsibility. Although the CEQ letter does not define what is meant by "substantial deference," it suggests that another Federal agency should only raise questions regarding our purpose and need statements when those questions relate to substantive or procedural problems (including omission of factors) important to that agency's independent legal responsibilities. Such questions should be raised immediately, and, if necessary, elevated to higher level decision-makers within both DOT and the commenting agency.

2. The CEQ letter emphasizes that the statement is designed to identify the purpose and need that the lead Federal agency is responding to in proposing alternatives, including the proposed action. For proposed transportation actions where other Federal agencies do not have separate decisionmaking responsibilities, FHWA or FTA has the sole authority and responsibility for defining the purpose and need statement. While it is entirely appropriate for other agencies to comment on the purpose and need statement, both during early coordination and in response to the draft environmental impact document, other agencies cannot require FHWA or FTA to alter the purpose and need statement. Agreements that call for other agencies with no independent decisionmaking authority to "concur" in FHWA and FTA purpose and need statements should be renegotiated or reinterpreted to mean that agencies are free to make supportive or adverse comments on the statement. Please notify your counterparts at any such agencies of this new guidance. The processing of transportation environmental documents should not be delayed by adverse comments, except to the extent that FHWA or FTA deems that more time is necessary to adequately address such comments.
3. When FHWA or FTA is not the sole agency with responsibility for making decisions with respect to the proposed action, other Federal agencies may formally agree to become either joint lead or cooperating agencies. To the extent that such agencies may be required to take actions subject to NEPA, it is important to note that they have an independent responsibility to prepare a NEPA document, including a purpose and need statement. In addition, other Federal laws (e.g., Section 404 of the Clean Water Act) may require purpose determinations that are closely related to the statement of purpose and need. FHWA and FTA strongly encourage the preparation of a single environmental document that satisfies the NEPA responsibilities of all Federal agencies that must take actions on the proposed project. It is in our best interest to work with those agencies to develop a purpose and need statement so that one NEPA document will serve their requirements as well as ours. As indicated in paragraph 1, the CEQ recognized that, as the agencies with legal responsibility for surface transportation projects and with transportation expertise, FHWA and FTA should be given "substantial deference" when identifying the transportation purposes and needs that are at issue.
4. The purpose and need statement serves as the cornerstone for the alternatives analysis, but should not discuss alternatives. The alternatives analysis is the place in the document for explaining how the considered range of alternatives meet the purpose and need. Care should be taken that the purpose and need statement is not so narrowly drafted that it unreasonably points to a single solution. Assessments made during the planning and scoping processes relating to mode choice, alignments, and project scale should be presented or incorporated by reference, as appropriate, in the alternatives analysis.
5. The purpose and need statement should be as concise and understandable as possible. The attached letter suggests that the statement is typically only one or two paragraphs long. While a short purpose and need statement may not be possible for a few transportation projects, every effort should be made to develop a concise purpose and need statement that focuses on the primary transportation challenges to be addressed. Relevant information on factors considered during the metropolitan or statewide planning processes should be presented or incorporated by reference, as appropriate.

It is our expectation that this guidance will expedite the development of purpose and need statements. If you continue to have difficulties regarding the coordination of purpose and need statements or need to elevate a purpose and need question, please contact Fred Skaer, Director of the FHWA Office of Project Development and Environmental Review, at 202-366-2065 or email at Fred.Skaer@fhwa.dot.gov, or Susan Borinsky, Director of the FTA Office of Human and Natural Environment, at 202-366-8012 or email at Susan.Borinsky@fta.dot.gov. As the topic of purpose and needs is also being examined by the Interagency Task Force created under Executive Order 13274, the Office of Project Development and Environmental Review in FHWA and the Office of Human and Natural Environment in FTA would like to stay informed on problems you have encountered or best practices you have employed to make this step in the NEPA process more efficient. More comprehensive guidance will be issued at a later date on the subject of purpose and need by the Interagency Task Force, which we will circulate to you once it is available.

Attachment

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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

CHAIRMAN

May 12, 2003

The Honorable Norman Y. Mineta
Secretary, Department of Transportation
400 Seventh St., S.W., Room 10200
Washington, D.C. 20590

Dear Secretary Mineta:

I write in response to your letter of May 6, 2003, asking for the Council on Environmental Quality's (CEQ) guidance on the issue of "purpose and need" in the context of compliance with CEQ's regulations implementing the procedural provisions of NEPA. Your letter refers to the fact that the Interagency Transportation Infrastructure Streamlining Task Force has identified "purpose and need" as a priority issue in need of clarification. Specifically, you ask for guidance on the appropriate exercise of authority by lead and cooperating agencies in determining the purpose and need.

The requirement for a discussion of "purpose and need" in an environmental impact statement under the CEQ regulations is to "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. §1502.13. This discussion, typically one or two paragraphs long, is important for general context and understanding as well as to provide the framework in which "reasonable alternatives" to the proposed action will be identified.

The lead agency -- the federal agency proposing to take an action -- has the authority for and responsibility to define the "purpose and need" for purposes of NEPA analysis. This is consistent with the lead agency's responsibilities throughout the NEPA process

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for the "scope, objectivity, and content of the entire statement or of any other responsibility" under NEPA. 42 U.S.C. §4332(D); see also, 40 C.F.R. §§1501.5, 1506.5.

Federal courts generally have been deferential in their review of a lead agency's "purpose and need" statements, absent a finding that an agency acted in an arbitrary or capricious manner. They have recognized that federal agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the federal agency's NEPA analysis of purpose and need. *North Buckhead Civic Assoc. v. Skinner*, 903 F.2d 1533 (11th Cir. 1990). Courts have cautioned agencies not to put forward a purpose and need statement that is so narrow as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)", *Simmons v. U.S Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997); (see also, *Alaska Wilderness Recreation and Tourism Association v. Morrison*, 67 F.3d 723 (9th Cir. 1995).

In situations involving two or more agencies that have a decision to make for the same proposed action and responsibility to comply with NEPA or a similar statute, it is prudent to jointly develop a purpose and need statement that can be utilized by both agencies. An agreed-upon purpose and need statement at this stage can prevent problems later that may delay completion of the NEPA process. As Congress stated in the Federal Aid Highway Act of 1973, "It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government", 23 U.S.C. §101(e); see also, CEQ's regulations implementing NEPA at 40 C.F.R. §§1500.4, 1500.5.

In the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need. 49 U.S.C. §101(b)(5). This deference reflects CEQ's expectation and experience in other settings where an agency has the primary

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substantive expertise and program responsibility. If a cooperating or joint lead agency identifies substantive or procedural problems with the purpose and need statement, including an omission of factors, important to that agency's independent legal responsibilities, the agency should raise those issues immediately and, if necessary, elevate those issues to higher level decisionmakers in the region and at headquarters for resolution. Thoughtful resolution of the purpose and need statement at the beginning of the process will contribute to a rational environmental review process and save considerable delay and frustration later in the decisionmaking process.

Please let me know if you have any further questions regarding this issue. Thank you for your leadership and I commend your department officials for the work they are undertaking in fulfilling the President's direction.

Sincerely,

[Original signed by]

James L. Connaughton