Memorandum

U.S. Department
of Transportation

Federal Highway Administration
Federal Transit Administration

Subject: Guidance on "Purpose and Need"

Date: JUL 23 2003

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 be 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