

Final Guidance on Application of 49 U.S.C. 307: Improving State and Federal Agency
Engagement in Environmental Reviews (DOT Liaison Program)

Office of the Secretary of Transportation

October 5, 2022

This guidance document finalizes implementation of Section 1312 of the Fixing America's Surface Transportation Act (FAST Act), which amended Title 49 of the U.S. Code by adding Section 307, Improving State and Federal agency engagement in environmental reviews (DOT Liaison Program).¹ This guidance supersedes the DOT Interim Guidance document on the application of 49 U.S.C. 307, dated June 2, 2016. This guidance document addresses the use of funds by eligible public entities to support Federal agencies, including the U.S. Department of Transportation (DOT), State agencies, and Indian Tribes participating in environmental planning and review processes. The DOT Liaison program can be used for individual projects, a group of projects, or a program of projects. This type of program, a narrower version which has been available under 23 U.S.C. 139(j) since 2005 for public entities receiving financial assistance under title 23 and chapter 53 of title 49 of the U.S. Code for highway, rail, and transit projects only, has been used to promote efficient project delivery through funding positions in resource and regulatory agencies to promote early consultation, the development of programmatic approaches, and troubleshooting when problems arise. This provision also allows funds to be used for mapping and information gathering that can support the development and updating of databases that facilitate efficient reviews.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This guidance document is intended only to provide information to the public regarding existing requirement under the law or agency policies.

1. How does 49 U.S.C. 307 (Section 307) relate to 23 U.S.C. 139(j), Assistance to Affected State and Federal Agencies?

Section 307 applies to public entities receiving funding under *any* DOT authority, whereas 23 U.S.C. 139(j) applies only to public entities receiving financial assistance under title 23 or chapter 53 of title 49 of the U.S. Code for highway, rail, and transit projects. Public entities currently receiving financial assistance from DOT may continue to establish funding

¹ Section 1304(i) of the FAST Act amended a similar provision at 23 U.S.C. 139(j).

arrangements that comply with 23 U.S.C. 139(j) or chapter 53 of title 49, which was not affected by Section 307.

Alternatively, those public entities may utilize Section 307. More importantly, all public entities receiving funding from any DOT Operating Administration (OA) are now authorized by Section 307 to support activities that expedite and improve the permitting and review processes of projects and programs.

2. What is a “public entity” under 49 U.S.C. 307?

A public entity includes any State or local government; any department, agency, special purpose district, or other instrumentality of one or more State or local governments, such as Metropolitan Planning Organizations; Indian Tribes; and transportation agencies that receives financial assistance from DOT or an OA for one or more projects for a public purpose.

3. Who is eligible to receive funding from a public entity?

Federal agencies (e.g., U.S. Fish and Wildlife Service), including DOT and DOT OAs, State agencies, and Indian tribes participating in the environmental planning and review process for one or more projects, or a program of projects are eligible to receive funds from a public entity. This guidance document refers to these parties as “recipient agencies.” NOTE: It is the decision of the public entity whether to request from the Secretary of Transportation (Secretary), or otherwise delegated DOT OAs, approval for this funding option. Additional information is provided in question #6 below.

4. What activities are eligible for funding?

Funded activities must directly and meaningfully contribute to expediting the permitting and environmental review processes to facilitate transportation project planning and delivery of projects being funded by the relevant OA.² Below is a non-exhaustive list of activities that may be funded:

- Dedicated staffing in resource and regulatory agencies to expedite project delivery and improve environmental review processes.
- Information gathering and mapping such as scanning and geospatial information systems digitization of natural and cultural resource information collected from existing sources or surveys.
- Conducting analysis and reviews.
- Development of programmatic agreements.

² See 49 USC 307(a)(2)

- Environmental screening of projects.

5. Are there limitations to how the funding may be used?

Public entities may provide funds only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for one or more projects or a program of projects. The recipient agency should agree that with the assistance of the additional resource it will conduct environmental reviews and reviews of planning documents in a period of time that is shorter than the time it would ordinarily have taken to complete this review. However, to the maximum extent practicable, expediting and improving the process must not adversely affect the timeline for review and permitting by Federal or State agencies, Indian Tribes, or other entities that have not contributed funds under this section.³ Additionally, funds provided under this program may not impact impartial decision making of recipient agencies with respect to environmental reviews or permits, either substantively or procedurally. Pursuant to Section 307, “the use of funds accepted under this section will not impact impartial decision-making with respect to environmental reviews or permits, either substantively or procedurally.” Accordingly, public entities and recipient agencies should include in their written agreement language that ensures such impartiality.

6. How does the public entity obtain approval for use of Section 307 funds?

A public entity receiving DOT financial assistance should request in writing to the OA from which it receives financial assistance permission to provide funds to a recipient agency. Public entities should provide the OA with information sufficient to ensure all of the statutory criteria would be met. While the Secretary is responsible for allowing the public entity to provide funds to a recipient agency, the relevant OA will facilitate Secretarial review and approval.

7. What type of agreement is necessary between the public entity and the recipient agency?

Prior to providing any funding for under Section 307, the recipient agency and the requesting public entity must enter into a written agreement (e.g., memorandum of agreement) that establishes a process to identify projects or priorities to be addressed by the use of the funds.⁴ Funding agreements should be in compliance with applicable Federal and State contracting and finance laws and procedures. For additional information and examples, visit https://www.environment.fhwa.dot.gov/env_initiatives/liaisonCOP.aspx.

³ See 49 USC 307(e)(2)(A)

⁴ See 49 USC 307(d)

8. If an entity chooses not to provide funds under Section 307, will the timeline for review and permitting of projects be adversely affected?

No. Section 307 does not penalize public entities that choose not to provide funds under Section 307, nor does it allow recipient agencies to prioritize entities that do provide funds under this Section. Because the funding may be used to provide increased capacity, there should not be any adverse effect on the recipient agency's performance with respect to other projects and programs. However, each agreement must include language specifying that the recipient agency acknowledges that its acceptance and use of funds, to the maximum extent practicable, will not adversely affect the timeline for review and permitting for projects or programs not covered by the agreement, including projects and programs of other public and private entities.⁵

9. How will DOT ensure that funding made available to a recipient agency under Section 307 will not impact, either substantively or procedurally, impartial decision making with respect to environmental review or permit decisions?

Each agreement between a public entity and recipient agency must include language specifying that both parties understand that the acceptance and use of funds under the agreement must not impinge on the recipient agency's exercise of independent judgment in its review or alter the recipient agency's obligations under applicable laws, implementing regulations and policies.⁶

10. How will DOT maintain and make publicly available a list of projects or programs for which review or permit decisions have been carried out using funds authorized under this section?

The Permitting Dashboard (<https://www.permits.performance.gov/>) will identify those projects using this provision on the project home page.

Additional Information:

49 U.S.C. 307 – Improving State and Federal Agency Engagement in Environmental Reviews

<https://www.govinfo.gov/content/pkg/USCODE-2020-title49/pdf/USCODE-2020-title49-subtitleI-chap3-subchapI-sec307.pdf>

23 U.S.C. 139 – Efficient environmental reviews for project decision-making,

⁵ 49 USC 307(e)(2)(A)

⁶ 49 USC 307(e)(2)(B)

(j) Assistance to Affected State and Federal Agencies.

<https://www.govinfo.gov/content/pkg/USCODE-2020-title23/pdf/USCODE-2020-title23-chap1-sec139.pdf>

Other Resources:

“Study on the Effectiveness and Benefits of Transportation Liaisons.” FHWA Office of Project Development and Environmental Review. July 2019.

https://www.environment.fhwa.dot.gov/env_initiatives/liaisonCOP/documents/Liaison_Effectiveness_Study.aspx

“Establishing a Transportation Liaison Program: A How-To Guide for Agencies Interested in Getting Started.” FHWA Office of Project Development and Environmental Review. September 2021.

https://www.environment.fhwa.dot.gov/env_initiatives/liaisonCOP/documents/Establishing_a_Transportation_Liaison_Program_Guidebook_UpdatedFinal.pdf