



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

ORDER

DOT 4600.13

10-3-83

**Subject: INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF TRANSPORTATION
PROGRAMS AND ACTIVITIES**

1. PURPOSE. This Order furnishes guidance for implementing Executive Order 12372, Intergovernmental Review of Federal Programs, and 49 CFR 17, Intergovernmental Review of Department of Transportation Programs and Activities. The intent is to increase cooperation between the Department of Transportation (DOT) and state and local governments in the review of DOT assistance programs and projects.
2. CANCELLATION. DOT 4600.4C, EVALUATION, REVIEW AND COORDINATION OF DEPARTMENT OF TRANSPORTATION ASSISTANCE PROGRAMS AND PROJECTS, of 4-12-76.
3. BACKGROUND.
 - a. Recognizing that close intergovernmental cooperation can reduce areas of waste and conflict, provisions were included in two legislative acts, and an Executive Order was issued to increase coordination in planning and reviewing programs and projects involving Federal assistance. These provisions and the Executive Order on which this Order is based are:
 - (1) Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966;
 - (2) Section 401 of the Intergovernmental Cooperation Act of 1968; and
 - (3) Executive Order 12372, Intergovernmental Review of Federal Programs.
 - b. Consultation between state and local officials and Federal agencies concerning Federal programs and activities has taken place through a process established by the Office of Management and Budget (OMB) Circular A-95, Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects. The A-95 system required state and local governments to follow prescribed procedures to review Federal programs. On July 14, 1982, Executive Order 12372 was issued. The Executive Order revoked OMB Circular A-95, and provided a new system of intergovernmental consultation involving a state process for review of Federal activities.
 - c. When state and local elected officials use this new process to notify the Department of their concerns regarding Departmental projects, the Department will have to make an effort to accommodate their concerns. For those cases where the concerns cannot be accommodated, the

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Department will provide a written explanation of its decision in a timely manner. This accommodation or explanation provision gives greater weight to state or local views than provided by Circular A-95. State and local officials can still make their views known directly to the Department; however, the requirement to accommodate or explain only applies to state process recommendations.

- d. The Executive Order was implemented in the Department by 49 CFR 17 issued on June 24, 1983. Concurrent with the issuance of implementing regulations, the Department published a list of programs and activities covered by the regulation. The Executive Order also requires OMB to report to the President on Federal agency compliance with the Executive Order, and OMB has requested each Department to establish central recordkeeping of nonaccommodations, waivers, and complaints. This Order provides further instructions regarding implementation of the Executive Order within the Department.

4. DEFINITIONS.

- a. Departmental elements are the operating administrations and the Office of the Secretary (OST).
- b. Direct Federal development includes the planning and construction of public works, physical facilities and installations or land and real property development (including the acquisition, use and disposal of real property and the issuances of permits and licenses) undertaken by and for the use of the Federal Government.

5. APPLICATION. The instructions contained in paragraph 6 of this Order are applicable to all Departmental elements.

6. RESPONSIBILITIES. Each Departmental element, wherever the instructions of this Order apply, shall incorporate provisions to implement the rules listed in the following subparagraphs into guidance material issued to actual and potential applicants. The new and/or revised documents should be distributed on the widest possible basis to ensure that interested state and local agencies are informed of the requirements prior to submitting applications for assistance.

- a. Program Coverage. The Assistant Secretary for Administration is responsible for (1) obtaining appropriate clearances and publishing changes to the Departmental list of programs and activities subject to requirements of 49 CFR 17, and (2) receiving and distributing initial selections and subsequent changes by states of programs and activities to be covered by a state's process. Departmental elements shall follow revised state program coverage as soon as feasible; however, implementation shall occur within 90 days of receipt of state revision. Departmental elements are authorized to work with individual states to revise their state program coverages; however, all revisions shall be submitted to the Assistant Secretary for Administration.

b. State Process.

- (1) Departmental elements shall use a state's process as soon as feasible after a state notifies the Department of the process or of changes to the process; however, implementation shall occur within 90 days of the state's notification to the Department. The Assistant Secretary for Administration will notify the state when the Department will start using the state process, except that Departmental elements are authorized to notify a state for their own programs and activities. Departmental elements shall advise the Assistant Secretary for Administration if they choose to do their own notifications, and shall provide a copy of all notifications to the Assistant Secretary for Administration. Departmental elements shall notify a state and the Assistant Secretary for Administration whenever the Departmental element decides to waive the use of a state's process as provided in 49 CFR 17.13, or provides less than the 60 day comment period provided in 49 CFR 17.8(a).
- (2) A state has the option to designate a single agency (e.g., a transportation department) to serve as the single point of contact for transportation matters. This designation, as a minimum, shall include responsibility to coordinate all transportation programs and activities which the State selects for review in accordance with 49 CFR 17. If a State designates a transportation contact, this contact shall be responsible for coordinating the review of all transportation activities among State, areawide, regional and local officials and submitting the State process recommendation and comments directly to the Departmental element responsible for administering the program being reviewed.

- c. Federal Assistance Programs. The Departmental elements providing assistance under the programs covered by 49 CFR 17 shall ensure that assistance projects are reviewed in accordance with 49 CFR 17. Applicants shall be instructed to follow the state process prior to submission of applications to Departmental elements if required by the state process. In those cases where Departmental elements cannot accommodate state process recommendations or reach a mutually agreeable solution, the Departmental element shall explain in writing the reasons for the Department's decision to the state's point of contact. An informational copy of the explanation shall be sent to the Assistant Secretary for Administration for central recordkeeping and submission to the Assistant Secretary for Governmental Affairs for Secretarial notification, if appropriate. Where environmental impact information is required, the applicant may use the state process to obtain comments on the project and its impact from state, area-wide and local agencies authorized to develop and enforce environmental standards, or having expertise or jurisdiction with respect to the environmental impact of the project pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969. If an environmental document is circulated for review through state process,

Departmental elements shall instruct applicants to have the state point of contact forward all comments received to the applicant for subsequent submission to the Departmental element according to the procedures in DOT 5610.1C, Procedures for Considering Environmental Impacts.

- d. Direct Federal Development. The Departmental elements responsible for direct Federal development will assure that such efforts are, to the maximum extent feasible, consistent with state, regional and local plans and programs. To achieve a high degree of consistency, Departmental elements are required to:
- (1) Provide a written notification to state, area-wide, regional and local officials, through the state process or otherwise, of any plan or project for direct development in the state or locality. This notification shall take place at the earliest practicable time in project planning, but in all cases at least 60 days prior to the actual beginning of construction on any project. The notification shall contain:
 - (a) Name of the organization proposing the project;
 - (b) Geographic location of the project;
 - (c) Brief description of the project that will ensure appropriate distribution;
 - (d) Program to be supported by the project; and
 - (e) Date on which the actual development, construction or other activities involved in the physical implementation of the project are scheduled to begin.
 - (2) In areas where no state process exists, forward the notification letter directly to affected state, areawide, regional, and local entities with instructions to review and coordinate the project.
 - (3) Make every effort to accommodate the "state process recommendation," in accordance with 49 CFR 17. When the attempt is unsuccessful, and the Departmental element desires to proceed with the project, the explanation for not accommodating the recommendation and current project implementation plans shall be furnished to the state point of contact prior to starting work on the project. Except for direct Federal highway projects, all such communication shall be submitted to the Assistant Secretary for Administration for appropriate clearances within OST. For direct Federal highway projects, an informational copy of explanations to states of nonaccommodations shall be sent to the Assistant Secretary for Administration.

- (4) Use the state process, where appropriate, to obtain comments on environmental statements in accordance with DOT 5610.1C.
 - (5) Notify state and local officials, through the state process or otherwise, at least 60 days prior to granting Federal licenses or permits. This notification is not required for permits issued for the construction of bridges over navigable waters on Federal-aid or direct Federal highway projects, providing the project has complied with the provisions of 49 CFR 17.
- e. State Plans. The Departmental elements which administer programs requiring, by statute or regulation, a state plan as a condition of assistance shall advise recipients where to send state plans that simplify, consolidate or substitute federally required state plans. In those cases where the Departmental element cannot accept the state's plan, the element shall notify the state of necessary steps to bring the state's plan into compliance with Federal requirements. Copies of all disapprovals of modified state plans shall be sent to the Assistant Secretary for Governmental Affairs.
7. MONITORING COMPLIANCE. The Assistant Secretary for Administration is responsible for monitoring compliance with the Executive Order and for reviewing concerns raised by states that the Department has not made appropriate use of a state process. The Assistant Secretary for Administration is also responsible for maintaining records of all nonaccommodation notices, waivers and complaints.
8. IMPLEMENTATION. The policy and procedures contained in this Order are effective immediately. Implementing directives should be submitted to the Assistant Secretary for Administration within 60 days following publication of this Order.

FOR THE SECRETARY OF TRANSPORTATION:



Robert L. Fairman
Assistant Secretary
for Administration