

responsibilities of becoming a cooperating agency. The FMCSA may consider the following factors, as appropriate on a case-by case basis, for determining whether to invite, decline, or end cooperating agency status:

- (i) Whether the agency has jurisdiction by law (40 CFR 1508.15) (e.g., Does the agency have authority to approve, veto, or finance a proposal or portions of a proposal?);
- (ii) Does the cooperating agency have the special expertise (40 CFR 1508.26) needed to help the lead agency to:
 - (a) Meet a statutory responsibility;
 - (b) Carry out an agency mission;
 - (c) Meet related program expertise or experience; or
 - (d) Meet the objectives of regional, State, and local land use plans, policies and controls (40 CFR 1502.16(c))?
- (iii) Does the agency understand what cooperating agency status means and can it legally enter into an agreement to be a cooperating agency?
- (iv) Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?
- (v) Can the cooperating agency, in a timely manner, aid in:
 - (a) Identifying significant environmental issues, including aspects of the human environment (40 CFR 1508.14) and natural, social, economic, energy, urban quality, historic and cultural issues (40 CFR 1502.16)?
 - (b) Eliminating minor issues from further study?
 - (c) Identifying issues previously the subject of environmental review or study?
 - (d) Identifying the proposed action's relationship to the objectives of regional, State and local land use plans, policies and controls (40 CFR 1502.16(c))?
- (vi) Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?
- (vii) Can the cooperating agency provide resources to support scheduling and critical milestones, such as:
 - (a) Personnel? Consider all forms of assistance (e.g., data gathering, surveying; compilation; research).
 - (b) Expertise? This includes technical or subject matter expertise.
 - (c) Funding? Examples include funding for personnel, travel and studies.
 - (d) Models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.

(e) Facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

(viii) Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues, and analyses?

(ix) Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

(x) Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

(xi) Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating agency status. Agencies must be alert to situations where State law requires release of information.

(xii) Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

(B) Agencies responsible for NEPA analysis are urged to:

- (i) Set time limits;
- (ii) Assign milestones;
- (iii) Assign responsibilities for analysis and documentation;
- (iv) Specify scope and detail of the cooperating agency's contribution;
- (v) Establish other appropriate ground-rules addressing issues such as availability of pre-decisional information; and
- (vi) In appropriate cases, document their expectations, roles, and responsibilities (e.g., Memorandum of Agreement or Understanding, or correspondence).

(2) *Agencies That Decline Cooperating Agency Status.* Federal agencies that decline to accept cooperating agency status in whole or in part are obligated to respond to the request. A copy of their response should be provided to CEQ (40 CFR 1501.6(c)). If an agency refuses to participate, FMCSA shall provide the agency refusing to participate with a draft EIS for comment. Negative and/or controversial

comments may be referred to CEQ for resolution via the Administrator.

(3) *Declining an agency's request to participate.*

(A) If the FMCSA disagrees with the request by an agency to participate in the development of an EA or EIS, the Associate Administrator for Policy and Program Development (MC-PR) will contact the requesting agency's responsible official to have a meeting to discuss the matter and attempt to resolve the issues the FMCSA has against participating.

(B) If no agreement can be reached between the requesting agency and FMCSA:

(i) The Associate Administrator for Policy and Program Development will prepare a letter for the FMCSA Administrator's signature declining to participate with the requesting agency.

(ii) The letter will provide the specific reasons why the FMCSA believes it should not or cannot participate with the cooperating agency's request.

(iii) The FMCSA will coordinate its letter of declination with OST's Office of the Assistant Secretary for Transportation Policy (P-1) before the FMCSA Administrator signs and transmits this letter of declination to the cooperating agency and CEQ.

c. *CEQ Resolution.* Request for Council on Environmental Quality (CEQ) resolution concerning lead agency designation must be made via the Administrator. The Administrator will contact CEQ for resolution of environmental issues.

d. *Adverse Comments and Delays.* Matters to be discussed with the Council on Environmental Quality (CEQ) must be coordinated with the Administrator.

2. Distribution of Environmental Documents

a. FMCSA will provide a written notification to State, area-wide, regional, local, and tribal officials through the State process or otherwise, of any plan or project proposed in the State or locality. Where the effect of an action or rulemaking, etc., crosses State/tribal lines, the FMCSA will notify each entity of the proposal. Notification must take place at the earliest practicable time in project planning. The notification must contain all of the following:

- (1) Name of the organization proposing the project.
- (2) Geographic location of the project.
- (3) Brief description of the project that will ensure appropriate distribution.
- (4) Program to be supported by the project.
- (5) Date on which the actual development, construction, or other