

Intergovernmental Review Guidance

I. Background.

Intergovernmental Review (IR) is a process that provides states along with directly affected area-wide, regional and local governments an opportunity to provide EPA with comments on proposed financial assistance projects or direct EPA development activities. Executive Order 12372, which EPA implemented in 40 CFR Part 29 as part of a common rule, cites two primary statutes as the basis for the IR requirement:

- Section 401 of the Intergovernmental Cooperation Act of 1968 (Section 401) Requires that EPA, to the extent possible, consider State and local viewpoints when providing financial assistance for planning and development projects
- Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 ("Section 204").

Requires that EPA must consider comments from local government or areawide/regional planning agencies regarding land use planning and proposed physical development projects, e.g., water supply and distribution facilities, waste treatment works, and water development projects within metropolitan areas.

Executive Order 12372 exempts Federal financial assistance to Indian Tribes from IR and EPA extends that exemption to grants to Intertribal Consortia that meet the requirements of 40 CFR 35.504. Additionally, EPA has determined that activities that will only be performed on Tribal Lands are exempt from IR even if the recipient is not an Indian Tribe or Intertribal Consortia as long as the recipient provides written assurance that the Indian Tribe with jurisdiction over the Tribal Lands is aware of and supports the recipient's performance of the activities.

EPA limit Intergovernmental Review to situations in which it is required by Section 204 and 201 or for compelling policy reasons. Currently, IR only applies to EPA grant programs that fund construction or land use planning when an applicant proposes to carry out one or both of those activities. EPA has also determined that IR requirements may be satisfied when an EPA financial assistance program has a statutorily mandated public notification procedure that ensures that directly affected State, areawide, regional, and local entities ("Directly Affected Entities") have an opportunity to comment on proposed financial assistance.

II. Requirements.

As provided in 40 CFR 29.7(a) EPA requires that applicants for EPA funding for construction or land use planning to notify State Single Points of Contact (SPOC) that review EPA grant applications of their application to EPA for funding. When there is no SPOC that will review the

application under 40 CFR 29.7(b) EPA requires that applicants notify Directly Affected Entities. Both SPOCs and Directly Affected Entities have 60 calendar days to provide EPA with comments on applications as authorized by 40 CFR 29.8(a) and (c).

III. Definitions.

A. Areawide planning agencies. An organization authorized by law or agreement to undertake planning or similar activities in metropolitan or non-metropolitan areas. Areawide planning agencies are often associated with Councils of Governments (COGs).

B. Construction. For the purposes of IR, EPA uses the definition of “Construction” in EPA’s Small and Disadvantaged Business (DBE) rule at 40 CFR 33.103 which defines construction as “. . . erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.” Under this definition, construction includes installation of devices to reduce vehicle idling, electric vehicle charging stations located on publicly owned facilities or accessible to the public, building berms or other barriers to protect water bodies and land restoration projects including remediation of contaminated soils or abatement of asbestos or lead based paint in buildings.

C. Directly Affected Entities. EPA interprets the term “directly affected” in 40 CFR 29.7(b) to refer to governmental units and areawide planning agencies with primary jurisdiction over the area in which an EPA funded activity subject to intergovernmental review will take place. For example, for construction or land use planning projects that take place solely within the boundaries of a single city, town, county or similar governmental unit applicants are only required to provide notice to the governmental unit with primary jurisdiction over the location of the project and to any cognizant areawide planning agency.

D. Land Use Planning. The term “land use planning” refers to EPA funded studies that make recommendations for changes to zoning, policies for siting of infrastructure or industrial facilities, and similar regulations on the use of land in discrete geographic areas. Land use planning also includes EPA funded work to plan for and design specific facilities and other infrastructure that will require construction. EPA’s intent is to ensure that grantees have coordinated with directly affected State, areawide, regional, and local entities with jurisdiction over such areas. EPA research grants and other types of financial assistance that study environmental issues relating to land use generally at a national or regional level are not covered by the term “land use planning” for intergovernmental review purposes.

E. State Single Point of Contact or “SPOC”. The state agency or instrumentality authorized by state law to review proposed Federal financial assistance, coordinate with local officials and areawide planning agencies, and transmit comments (if any) to EPA.

IV. Instructions for Performing Intergovernmental Review.

In the Notice of Funding Opportunity (NOFO), applicants will find guidance advising if IR is necessary. If the NOFO states that IR is only applicable to Selected Applicants, when applying the applicant should check Box C. for Item 19 in the Standard Form 424 document.

If the NOFO advises all applicants to comply with IR, or if IR compliance is required of a selected applicant, then they must follow IR, and contact their SPOC or local affected entity where the work is being done.