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Department of Transportation

## **INTERGOVERNMENTAL COORDINATION AND REVIEW (ICAR)**

### **PURPOSE:**

This procedure describes in detail the interface between the Florida Department of Transportation (Department) and the Office of Intergovernmental Programs of the Florida Department of Environmental Protection (State Clearinghouse). It includes the responsibilities of the Central Office and Districts, and lists the steps which must be followed if the required coordination effort is to occur smoothly, accurately, and expeditiously. This procedure covers only the review of ICAR documents and does not address the rare submission of Department generated ICAR applications. ICAR as used in this procedure includes applications and activities under both ***Presidential Executive Order 12372*** and the Florida Coastal Management Program.

### **AUTHORITY:**

Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

### **REFERENCES:**

- Presidential Executive Order 12372
- Gubernatorial Executive Order 95-359
- Section 403.061, F.S.
- Section 380.23, F.S.
- Title 15, Code of Federal Regulations (C.F.R.), Part 930
- Gubernatorial Executive Order 81-105
- State of Florida's Intergovernmental Coordination and Review Procedures Manual (maintained at the State Clearinghouse)
- Florida Coastal Management Program, Federal Consistency Evaluation Procedures
- Florida Department of Environmental Protection, State Clearinghouse Policy and

Procedures Manual

- Federal Coastal Zone Management Act of 1972

## SCOPE:

This procedure impacts the following offices: Office of General Counsel, offices of the Assistant Secretary for Intermodal Systems Development, Production, Office of Environmental Management, District Environmental Management, Permitting, Design, Drainage, Maintenance, Utilities, and Traffic Engineering and Operations.

## BACKGROUND:

**Presidential Executive Order 12372** requires intergovernmental review of federal financial assistance applications and federal projects. The **Order** requires that federal agencies "provide opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance or direct federal development" and "the states, in consultation with local general purpose governments, and local special governments they consider appropriate, develop their own processes or refine existing processes for state and local elected officials to review and coordinate proposed federal financial assistance and direct federal development."

**Gubernatorial Executive Order 95-359** establishes an Intergovernmental Coordination and Review Process and transferred responsibility from the Governor's Office of Planning and Budgeting as the single point of contact (State Clearinghouse) for the review coordination effort to the Florida Department of Community Affairs. The **Gubernatorial Executive Order** states that Florida will review all federal assistance applications and federal projects which are indicated as available for inclusion pursuant to **Presidential Executive Order 12372**, and requires state agencies making a funding request to the federal government to submit their applications to the State Clearinghouse established by **Gubernatorial Executive Order**. In 2002, **Section 403.061, F.S.**, moved the State Clearinghouse from the Department of Community Affairs by installing the State Clearinghouse within the Department of Environmental Protection.

The State Clearinghouse administers the coordination program. It sends and receives pertinent material, assigns control numbers to program documentation, maintains a calendar of comment maturity dates, follows up on applications which have not been returned within the time allocated, and prepares the state's response to applications for federal financial assistance.

The **Florida State Clearinghouse Policy and Procedures Manual**, implemented by the Florida Department of Environmental Protection (FDEP)<sup>1</sup> outlines the process and criteria for reviewing federal financial assistance applications and federal projects. Although criteria are listed in this manual, the State Clearinghouse and the Department

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<sup>1</sup> [http://www.dep.state.fl.us/secretary/oip/state\\_clearinghouse/manual2.htm](http://www.dep.state.fl.us/secretary/oip/state_clearinghouse/manual2.htm)

have agreed to the development and use of review criteria specific to transportation for the applications reviewed by the Department.

FDEP manages the ICAR process under the Coastal Management Program. Based upon the ***Federal Coastal Zone Management Act of 1972*** and ***Title 15, CFR, Part 930, Gubernatorial Executive Order 81-105*** provides that state and federal funds shall only be directed to "those coastal areas which can accommodate growth, where there is need and desire for economic development, or where potential danger to human life and property from natural hazards is minimal." The ***Florida Coastal Management Program Federal Consistency Evaluation Procedures Manual*** provides broad criteria for reviewing applications for consistency. Discussions with the State Clearinghouse indicate that a specific agency's responsibilities relative to the Coastal Management Program should parallel ICAR, as both are tied to the agency's statutory responsibilities with ICAR being the vehicle for carrying out those responsibilities relative to federal funding applications and federal projects.

In recent years (2014-2016), electronic transmission via e-mail has generally replaced paper transmission of ICAR cases between FDEP and FDOT, and within FDOT. Electronic transmission is almost always faster, and usually more reliable, than paper transmission. It is both FDEP's and FDOT's intention to continue and increase the use of electronic transmission. This Procedure has been edited to require, with rare exceptions, the use of electronic transmission.

## **DEFINITIONS:**

**Conditional Concurrence/Objection:** Determination by the Department when a proposed federal activity in an application under the Coastal Management Program would result in a violation of a specific state law or administrative rule, relative to the Department. If the application is not amended, the conditional concurrence is treated as an objection, as provided in ***Title 15, Section 930.4, CFR.***

**Conditional Concurrence/Objection Letter:** A letter to the State Clearinghouse stating that the project described in a Coastal Management Program application violates or would violate a specific state law or an administrative rule, relative to the Department. The letter shall include specific information regarding the violation and the reviewer's comments. The legal staff in the Office of General Counsel (OGC) in the Department's Central Office is required to review the letter before it is submitted. FDOT management, which may include a representative of OGC, will sign it upon completion. The conditional concurrence/objection letter shall be treated as an objection if the requirements are not met.

**Consistent (Consistency):** Under the ICAR process, consistent is a state of being compatible with and furthering an activity. "Compatible with" means "not in conflict" and "furthering" means "to take action in the direction of realizing goals or policies." The purpose of consistency is to determine "if," not "how," a project should be built or a service implemented.

**Central Office ICAR Coordinator:** That person designated by the Chief Planner, or equivalent, to distribute new cases to appropriate Districts and Offices for review. Most of the time, the Central Office Coordinator does not prepare, edit, or approve the Department's responses. However, they may serve as a resource for further coordination of responses, across Districts and the Central Office, for cases that involve particular complexity, sensitive issues, or other problems.

**Comment:** As used in ICAR, a comment is a statement of opinion based upon the reviewer's professional experience regarding the consistency of the proposed project based on the criteria used in the review.

**FDEP:** Florida Department of Environmental Protection

**District ICAR Coordinator:** That person designated by the District Director of Transportation Development, or equivalent, to be their designee and reviewer in that district. The coordinator will gather input from affected offices within the district to form their response.

**Environmental Commitment:** A written promise regarding a project to carry out a specific course of action relative to protection of the environment.

**Impact on the Strategic Intermodal System (SIS) and the State Transportation System:** Influencing or changing the SIS or the State Transportation System or any part of those systems.

**Inconsistent:** A determination under ICAR that the proposed activity violates or will result in a violation of a specific state law or an administrative rule promulgated under **Chapter 120, F.S.** Applicants are notified of inconsistencies by the filing of either an objection or, if the application is filed under the Coastal Management Program, a conditional concurrence/objection.

**Insufficient:** A determination under ICAR that the application does not contain adequate information to evaluate whether there is an impact, or the extent of the impact if one exists, on the SIS, the State Transportation System or the Adopted Work Program.

**Intergovernmental Coordination and Review (ICAR):** The process for state and local review, coordination and comment on proposed federal financial assistance applications and project activities and the Coastal Management Program applications and activities, developed by the state in response to **Presidential Executive Order 12372**, which superseded the **U.S. Office of Management and Budget Circular A-95** process. The ICAR process is administered by FDEP.

**Letter of Objection:** A letter to the State Clearinghouse stating that the Department objects to the funding and implementation of the project described in the application because the project represents either a violation of a specific state law or an

administrative rule promulgated under **Chapter 120, F.S.**

**Objection:** Statement that the proposed federal financial assistance or federal activity would result in a violation of a specific state law or an administrative rule promulgated under **Chapter 120, F.S.**, relative to the Department. The legal staff in the Office of General Counsel in the Department's Central Office is required to review the objection before it is submitted under the signature of the Secretary of the Department of Transportation or their designee.

**Reviewer:** Central Office Program Managers, District Directors of Transportation Development or their equivalent or designee.

**State Agency Identifier Number (SAI#):** A number assigned to federal financial assistance applications and federal projects by the State Clearinghouse for tracking purposes. The first two digits represent the year in which the application was received in the State Clearinghouse, the third and fourth digits represent the month received, the fifth and sixth digits represent the day received, and the last four digits represent a sequential numbering of applications.

**State Clearinghouse (SCH):** Office of Intergovernmental Programs, Florida Department of Environmental Protection.

**Strategic Intermodal System (SIS):** A transportation system comprised of facilities and services of statewide and interregional significance, as designated pursuant to **Sections 339.61-63, F.S.** The SIS includes appropriate components of the Florida Intrastate Highway System; the National Highway System; airport, seaport and spaceport facilities; and rail lines and rail facilities. It also includes selected intermodal facilities, passenger and freight terminals, and appropriate components of the State Highway System, county road system, city street system, inland waterways, and local public transit systems that serve as existing or planned connectors between the components listed above. Existing or planned corridors that serve a statewide or interregional purpose may also be included. The SIS Highway component includes selected streets and roads that are not part of the State Highway System.

**State Highway System:** For purposes of this procedure, the State Highway System is those state owned highway facilities and services that provide a means for the transportation of people and property from place to place that are constructed, operated, or maintained in whole or part from public funds.

## 1.0 EVALUATION PROCESS

- 1.1 An ICAR application is transmitted by e-mail from FDEP to the Central Office ICAR Coordinator in the Office of Policy Planning (MS 28). The cover sheet is normally attached to the e-mail message as an Adobe Acrobat (.pdf) file. This document designates the date by which responses to the applications are to be returned to the SCH, the SAI#, and

the type of reviews required by the SCH. The assignment of the alphabetic designation of "C" following the SAI# indicates those applications which are to be reviewed under both ***Presidential Executive Order 12372*** and the Coastal Management Program. An SAI number without an alphabetic designation indicates an application which is to be only reviewed under ***Presidential Executive Order 12372***.

**1.2** The Central Office ICAR Coordinator determines the district office or offices to review the application and, if appropriate, one or more units within the Central Office division to also be requested to review.

**1.3** The Central Office ICAR Coordinator will electronically forward the notice of application to the appropriate district and central offices.

## **2.0 REVIEWER'S RESPONSIBILITIES**

The application is received in the reviewing office and examined by the reviewer for its impact upon the SIS, the State Transportation System, or the Adopted Work Program. If the reviewer determines that the project has no impact, the reviewer will enter "No comment" for a ***Presidential Executive Order 12372*** review, or "Consistent" for a Coastal Management review, into the SCH electronic response system. If additional time is needed to review complex applications, the reviewer will immediately request an extension of the due date through the SCH electronic response system and notify the Central Office ICAR Coordinator of the request.

## **2.1 INSUFFICIENCY DETERMINATION**

If the application has insufficient information to evaluate whether there is an impact, or the extent of the impact if one exists, on the SIS, the State Transportation System or the Adopted Work Program, the reviewer will immediately contact the applicant and enter a request for an extension of the due date into the SCH electronic response system and notify the Central Office ICAR Coordinator of the request. If the information cannot be provided in a timely manner, and the applicant is willing to provide the information, then the SCH will either "table" or close the application. If the Department is unable to obtain the information needed, then the Department can file an objection or conditional concurrence/objection based on insufficient information, depending on the type of application.

**2.1.1** Note that on large federal projects that will have several phases, the information requested should be reasonable, based on the phase covered in the pending application. During early phases of a large project, the reviewer can state that the application is "Consistent with Reservations," with the reservations provided in the comments. In this way, a project can be guided toward an acceptable

design. As the project progresses, the reservations should be resolved by the applicant. A “Consistent with Reservations” is processed in the same manner as a “Consistent with Comments.” Consistency concerns are likely to arise during the review of the draft environmental document since this is usually the point at which sufficient information on the design and its impacts will be known.

### 3.0 EVALUATION CRITERIA

If the application is complete and has an impact on the SIS, the State Transportation System, or in the adopted work program, it will be evaluated for consistency using the following criteria according to the type of project:

- (a) Is the proposed project consistent with the most current Florida Transportation Plan, Strategic Intermodal System Plan (if it will impact the SIS), applicable modal plan and Adopted Work Program?
- (b) Does the application address the following Department or local policies as appropriate to the type of application?
  - (1) Level of service. Will the proposed project ensure consistency with the Department's and, if applicable (e.g., if there is an impact on a locally-owned SIS connector), local level of service standards?
  - (2) The Access Management Program. Does the proposed project provide for coordination with the Department and, if applicable, (i.e., if there is an impact on a locally-owned SIS connector) local government(s) to manage and control the number and type of access points connecting to the SIS or the State Highway System? Is it consistent with the adopted access management standards?
  - (3) Right of way considerations. Does the proposed project provide for protecting land, airspace, and riverine and marine navigation space necessary to promote efficient operation of the existing and planned SIS and State Transportation System?
  - (4) Permitting prior to project approval. Does the proposed project provide for coordinating with the Department and, if applicable, (e.g., if there is an impact on a locally-owned SIS connector) local government(s) to ensure that all required permits are issued prior to project approval?
  - (5) Intergovernmental coordination with adopted local plans and policies. Does the proposed project reflect coordination with adopted local, regional and MPO plans, policies, and programs?

**NOTE:** This list of issues is not all-inclusive. Other issues should be considered as appropriate to further the priorities of the district or reviewing office.

### **3.1 HIGHWAY APPLICATIONS**

- (a) Is the proposed project consistent with the most currently approved Transportation Improvement Program (TIP)?
- (b) Is the proposed project consistent with the most currently approved Strategic Intermodal System/Florida Intrastate Highway System Plan?

### **3.2 AVIATION APPLICATIONS**

- (a) Is the proposed project consistent with the most currently approved TIP?
- (b) Is the proposed project consistent with the Florida Aviation System Plan?
- (c) Is the proposed project consistent with the most currently approved local airport master plan?

### **3.3 TRANSIT APPLICATIONS**

- (a) Is the proposed project consistent with the most currently approved TIP?
- (b) Is the proposed project consistent with the most currently approved Transit Development Program (TDP)?
- (c) Is the proposed project consistent with the applicable MPO Comprehensive (Long-Range) Transportation Plan?

### **3.3 RAIL APPLICATIONS**

- (a) Is the proposed project consistent with the most currently approved TIP?
- (b) Is the proposed project consistent with the most currently approved Florida Rail System Plan?

### **3.5 SEAPORT APPLICATIONS**

- (a) Is the proposed project consistent with the most currently approved TIP?
- (b) Is the proposed project consistent with the Florida Seaport Mission Plan?

### **3.6 ENVIRONMENT APPLICATIONS**

- (a) Will the proposed project result in structural damage to the SIS or the State Highway System? Are acceptable mitigation, repair, or restoration

measures proposed in the application?

- (b) Is the proposed project in conflict with any environmental commitments, which the Department has made on this, or any other projects?
- (c) Will the proposed project involve the location of a solid waste management facility or sludge land spreading operation within 5,000 feet of a public or private airport handling only non-turbine driven aircraft, or within 10,000 feet of a public or private airport accommodating turbine driven aircraft?

These factors, **Sections 3.1-3.6** of this procedure, are essentially the basis for preparation of the reviewer's comments; however, other unique factors or issues could be the basis for comments or consistency determinations.

## 4.0 CONSISTENCY DETERMINATIONS

### 4.1 CONSISTENT

If the application is found to be consistent, the reviewer will enter "No comment" for a **Presidential Executive Order 12372** review or "Consistent" for a Coastal Management review into the SCH electronic response system. If there are comments, the comments will be entered into the SCH electronic response system. If the comments exceed the limits of the electronic response system, the reviewer will submit the comments via hard copy, e-mail or facsimile to the SCH. The reviewer will enter into the SCH electronic response system comments section a statement that project comments are being sent separately. Included with the comments should be the name and telephone number of the contact for any questions about the comments or actions to be taken as the result of the comments.

### 4.2 INCONSISTENT

If the proposed project is inconsistent, as determined in consultation with the District Secretary and the Department's District Office of General Counsel, a copy of the application, SCH cover sheet, and a copy of the reviewer's comments as developed under **Sections 2 and 3** will be provided by e-mail to the attention of the Office of General Counsel in the Department's Central Office. The legal staff will also review the application for consistency with **Florida Statutes**. The legal review will be confined to only those state laws and administrative rules relative to the Department, and will be completed within two working days of receipt of the application package from the reviewer. The legal staff will evaluate the application to determine if the Department should file an objection for applications and activities under **Presidential Executive Order 12372**, or a conditional concurrence/objection for applications and activities under the Coastal Management Program.

**Note:** The maximum time period for the state to resolve an objection or conditional concurrence/objection is 45 calendar days from receipt of the application in the SCH. Department objections must be filed with the SCH and FDEP within 30 calendar days from the date (see SAI#) the application was received in the SCH. If the response cannot be prepared and submitted by the due date specified on the SCH cover sheet, see **Section 2** concerning a request for extension of time.

#### 4.2.1 Objection

If it is determined that an objection will be filed, a letter of objection citing the specific violation of state law or administrative rule and including the reviewer's comments will be prepared cooperatively by the Department's Central Office legal staff, the reviewer and Department management, for signature by the Secretary of the Department of Transportation or their designee. The signed letter of objection will be provided to the Central Office ICAR Coordinator.

#### 4.2.2 Conditional Concurrence/Objection

If it is determined that a conditional concurrence/objection will be filed on an application concerning the Coastal Management Program, the letter of conditional concurrence shall be prepared cooperatively by the legal staff in the Office of General Counsel in the Department's Central Office, the reviewer and Department management, for signature by the Secretary of the Department of Transportation or their designee. The signed letter will be provided to the Central Office ICAR Coordinator. The letter shall include the following:

- (a) Statement that if the requirements are not met, then all parties shall treat the conditional concurrence/objection letter as an objection and the Office of General Counsel shall be notified immediately;
- (b) Statement that if the conditions are not met, the applicants, persons and applicant agencies will have an opportunity to appeal the objection to the Secretary of the U.S. Department of Commerce (Secretary of Commerce) within 30 days after receipt of the conditional concurrence/objection or 30 days after receiving notice from the federal agency that the application will not be approved on account of the state agency's objection;
- (c) Conditions which must be satisfied;
- (d) Explanation of why the conditions are necessary to ensure consistency with specific enforceable policies, rules, or statutes;
- (e) Identification of the specific enforceable policies, rules or statutes; and

(f) Reviewer's comments.

**4.2.2.1** The federal agency, applicant, person, or applicant agency may modify the applicable plan, project proposal, or application to the federal agency pursuant to the Department's conditions. If the Department's conditions are found to be unacceptable to the federal agency, applicant, person, or applicant agency, then the SCH shall be immediately notified and **the letter of conditional concurrence/objection shall be treated as an objection**. The applicant may appeal to the Secretary of Commerce within 30 days after receipt of the conditional concurrence/objection or 30 days after receiving notice from the federal agency that the application will not be approved as amended by the Department's conditions.

**Note: Section 15 CFR 930.4, regarding conditional concurrence/objection, does not provide for an appeal to the Department nor for the Department to appeal to the Secretary of the U.S. Department of Commerce.**

**4.2.3** If the comments are prepared by a Central Office Manager, the manager will notify by e-mail the Central Office (CO) ICAR Coordinator in addition to providing the comments to FDEP. The CO ICAR Coordinator will notify the District ICAR Coordinators in all of the impacted districts.

**5.0** The reviewer will send a copy of any comments regarding the transportation disadvantaged to the Florida Commission for the Transportation Disadvantaged.

## **6.0 TRAINING**

None required.

## **7.0 FORMS**

None required.