

# NEPA Documentation

The following information provides an overview of the three levels of documentation for complying with the environmental process requirements of the *National Environmental Policy Act* (NEPA) (42 USC 4321, et seq.) and the Montana Environmental Policy Act (MEPA) (MCA 75-1-101, et seq.). Per Federal and State regulations, the following three classes of action that prescribe the level of environmental documentation required in the NEPA/MEPA process include: categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS).

## Categorical Exclusion (CE)

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

### **40 CFR 1508.4**

Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

### **23 CFR 771.117(a)**

Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

1. Significant environmental impacts;
2. Substantial controversy on environmental grounds;
3. Significant impact on properties protected by Section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
4. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

### **23 CFR 771.117(b)**

A specific list of CEs that normally do not require any NEPA documentation or FHWA approval is set forth in 23 CFR 771.117(c). Other projects, pursuant to 23 CFR 771.117(d), may also qualify as CEs if appropriately analyzed, documented, and approved by FHWA at the Division level.

## **Environmental Assessment (EA)**

When the significance of impacts of a transportation project proposal is uncertain, an environmental assessment (EA) is prepared to assist in making this determination. If it is found that significant impacts will result, the preparation of an environmental impact statement (EIS) should commence immediately.

## **Environmental Assessment**

Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

### **40 CFR 1508.9**

FHWA must approve an EA before it is made available to the public. EAs do not need to be circulated but they must be made available to the public through notices of availability in local, state, or regional clearinghouses, newspapers and other means. Depending on the FHWA-approved state public involvement procedures, a public hearing may or may not be required. A 30 day review period is required but may be reduced in rare circumstances.

After public comments are received and considered, a determination of the significance of the impacts is made:

- If at any point in the process of preparing an EA it is discovered that the project would result in significant impacts an environmental impact statement (EIS) must be prepared.
- If, after completing the EA, it is evident that there are no significant impacts associated with the project, a finding of no significant impact (FONSI) may be prepared.

## **Finding of No Significant Impact (FONSI)**

If it is determined that there will be no significant impacts a FONSI will be prepared to conclude the process and document the decision. A FONSI is issued when environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment. The FONSI document is the EA modified to reflect all applicable comments and responses. If it was not done in the EA, the FONSI must include the project sponsor's recommendation or selected alternative. No formal public circulation of the FONSI is required, but the state clearinghouse must be notified of the availability of the FONSI. In addition, FHWA recommends that the public be notified through notices in local newspapers.

## Environmental Impact Statement (EIS)

NEPA requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. An EIS is a full disclosure document that details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders. The EIS process is completed in the following ordered steps: Notice of Intent (NOI), draft EIS, final EIS, and record of decision (ROD).

The NOI is published in the Federal Register by the lead Federal agency and signals the initiation of the process. Scoping, an open process involving the public and other Federal, state and local, agencies, commences immediately to identify the major and important issues for consideration during the study. Public involvement and agency coordination continues throughout the entire process. The draft EIS provides a detailed description of the proposal, the purpose and need, reasonable alternatives, the affected environment, and presents analysis of the anticipated beneficial and adverse environmental effects of the alternatives. Following a formal comment period and receipt of comments from the public and other agencies, the FEIS will be developed and issued. The FEIS will address the comments on the draft and identify, based on analysis and comments, the "preferred alternative".

FHWA's Technical Advisory (T6640.8A) provides detailed guidance on the preparation of the NOI, the scoping process, and the information that should be included in the EIS. The following is a brief summary of the major EIS sections:

**Purpose and Need.** The Purpose and Need Section of an EIS is one of the most important and should therefore be clear and well documented. The purpose and need drives the development of the range of alternatives. Some of the common needs include transportation demand, safety, legislative direction, urban transportation plan consistency, modal interrelationships, system linkage, and the condition of an existing facility.

**Alternatives.** The Alternatives Section describes the process that was used to develop, evaluate, and eliminate potential alternatives based on the purpose and need of the project. The discussion should include how alternatives were selected for detailed study, the reasons why some alternatives were eliminated from consideration and describe how the alternatives meet the need for the project and avoid or minimized environmental harm. In developing alternatives the requirements of 23 CFR 771.111(f), which states that projects must connect logical termini, have independent utility, and not restrict the consideration of future transportation alternatives are important considerations.

In the draft EIS, all reasonable alternatives should be discussed at a comparable level of detail. There is no requirement at this stage to have a "preferred" alternative. However, if an official position has been taken on one of the alternatives, it can be stated. The final EIS must identify and describe the preferred alternative and the basis for that decision. At this stage in the process, no final decision can be made.

The "no-build" alternative is always included as a benchmark against which the impacts of other alternatives can be compared. As part of the no-build alternative, short-term minor reconstruction, such as safety upgrading and maintenance, can be considered. In addition, Transportation System Management must also be included as an alternative and can include high-occupancy vehicle lanes, ridesharing, signal synchronization, and other actions. Where appropriate, mass transit options should also be considered.

**Affected Environment.** This section provides information on the existing resources and condition of the environment. Generally this section should focus on the important issues in order to provide an understanding of the project area relative to the impacts of the alternatives. The affected environment should discuss, commensurate with the importance of the potential impacts, the existing social, economic, and environmental settings surrounding the project.

It should also identify environmentally sensitive features in the project corridor.

**Environmental Consequences.** This describes the impacts of project alternatives on the environment and documents the methodologies used in evaluating these impacts. Information in this section is used to compare project alternatives and their impacts. This section should describe in detail both the impacts of the proposed action and the potential measures that could be taken to mitigate these impacts. Mitigation must be considered for all impacts, regardless of their significance. Environmental impacts should be discussed in terms of their context and intensity.

**Comments and Coordination.** The EIS must summarize the scoping process, the results of any meetings that have been held, and any comments received during preliminary coordination. Between the draft and final EIS, the state department of transportation and FHWA must consider and respond to all substantive comments received on the draft EIS, including those from public hearings. The final EIS must include copies of the comments received and the agency's responses. If comments are voluminous, they may be summarized. If the EIS was changed in response to comments, changes should be referenced in the responses.

**List of Preparers.** This section includes a list of the individuals primarily responsible for preparing the EIS or technical reports. Preparers are identified by name, qualifications, expertise, experience, and professional discipline.

### **Record Of Decision (ROD)**

The ROD is the final step in the EIS process and may not be issued sooner than 30 days after the approved final EIS is distributed nor 90 days after the Draft EIS is circulated.

The ROD identifies the selected alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the "environmentally preferable alternative," and provides information on the adopted means to avoid, minimize and compensate for environmental impacts.