

Appendix J: Frequently Asked Questions (FAQs)

Q. How should a project that is on the CE list [23 CFR 771.117(d)], but has a significant impact, be processed?

A. Any project that has a significant impact must be processed as an EIS.

Q. If an EA indicates that there will be a significant impact but that, with mitigation, the impact may be reduced to less than significant levels, can a FONSI be made rather than preparing an EIS?

A. You may rely on mitigation measures to make a FONSI as long as you make a commitment to provide all mitigation needed to reduce impacts below the level of significance, and you make the mitigation an integral part of the original proposal.

Q. In preparing an EA, it became obvious that there was a significant impact. Should we go ahead with the EA before preparing a draft EIS?

A. No. As soon as you have determined that there is a significant impact, prepare a Notice of Intent and begin development of the draft EIS. Practically speaking, very few projects go from an EA to a draft EIS, but rather the determination that there is a significant impact occurs while the EA is being developed.

Q. A certain project requires a Section 404 permit (or Section 9 USCG permit). Should we request that the USACE (or CG) be a cooperating agency?

A. You must request permitting agencies, such as the USACE (or USCG) that have jurisdiction by law, to be cooperating agencies for projects requiring an EIS. We also recommend they be cooperating agencies for EA/FONSI projects. For CE projects, you should ensure early coordination.

Q. What do you do when an agency with jurisdiction by law refuses a request to be a cooperating agency for an EIS/ROD project?

A. Notify the Washington Headquarters (HEP-30) through normal channels. The CEQ regulations require that CEQ be notified of such a refusal.

Q. During the circulation of a draft EIS, someone suggested that a totally new alternative be studied. How should such a comment be handled?

A. As with all comments on a draft EIS, you must consider and address them. If the alternative is not reasonable, include a response discussing the rationale for that determination in the final EIS. If the alternative is reasonable and totally new, not just a design variation of one presented in the draft EIS, then prepare and circulate a supplemental draft EIS discussing the alternative. The CEQ regulations (40 CFR 1502.14[a]) require that the EIS "rigorously explore and objectively evaluate all reasonable alternatives." See CEQ's "Questions and Answers About NEPA Regulations," Question #29, for further information.

Q. The FHWA was a cooperating agency on an EIS prepared by another agency. The approved final EIS adequately discusses all aspects of the project including some highway work. Must FHWA do an EA or EIS to comply with NEPA in this case?

A. One advantage of the cooperating agency concept is that the cooperating agency may adopt another agency's environmental document to comply with NEPA. In this case, prepare a ROD to document the decision. The FHWA need not recirculate the EIS. In the case of adopting another agency's EA, prepare a FONSI or document the decision.

Q. What is the advantage of getting the USACE and/or the CG as a cooperating agency when a permit is required?

A. As noted above, those agencies with jurisdiction by law (i.e. permitting agencies) must be asked to be cooperating agencies. The FHWA has agreements with these agencies that state that if we coordinate with these agencies early and include in our environmental document the information they need for permit processing, these agencies will ordinarily accept our environmental documentation as satisfying NEPA for processing the permit. In addition, we have

an ongoing initiative to “merge” the common elements of the NEPA and 404 processes. This is outlined in Chapter 11 of the “Red Book.”

Q. The state has decided that it wants to implement an alternative that was adequately evaluated and presented in the approved final EIS, but was not identified as the preferred alternative. Must we prepare a new final EIS?

A. No. The ROD is the decision document and, as such, can be used to describe why this alternative has now been selected for implementation.

Q. What material should be in an appendix rather than the body of the EIS?

A. The body of the EIS should be a succinct statement of all the information the decision maker and public need to make the decision. The EIS must explain or summarize methodologies of analysis and the conclusions of those analyses. Lengthy technical discussions of modeling methodology, baseline studies, or other technical work should go into the appendix.

Q. How should comments on a draft EIS be handled, especially if the project generated voluminous comments?

A. The final EIS must contain responses to all substantive comments on the draft EIS. These responses may result in changes in the document, but you should also include specific answers to each significant comment. Place these specific responses in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice.