

## 2. Class of Action Determination

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- 2.1. Introduction
- 2.2. Class of Action
- 2.3. Class of Action Determination

### 2.1. Introduction

This chapter provides:

- A description of the classes of action as defined by the Federal Highway Administration's (FHWA's) National Environmental Policy Act (NEPA) regulations
- A summary of the process for determining a project's class of action (COA)
- The documentation requirements for these determinations

### 2.2. Class of Action

For every project using FHWA funding or requiring FHWA approval, the environmental documentation process begins with a COA determination. The COA is a major factor in determining the level of environmental document required, which influences the project budget and schedule.

FHWA's NEPA regulations identify three environmental classes of action ([23 Code of Federal Regulations \[CFR\] 771.115](#)), each having different documentation and compliance requirements. The classes of action are:

- *Environmental Impact Statements* (Class I) ([23 CFR 771.115\(a\)](#)) ([40 CFR 1508.11](#)) ([23 CFR 771.123](#))– Actions that significantly affect the environment require an Environmental Impact Statement (EIS) ([40 CFR 1508.27](#)). The EIS process includes a Notice of Intent, Draft EIS, Final EIS, and Record of Decision (ROD). See [23 CFR 771.115\(a\)](#) for examples of actions that normally require an EIS, and Chapter 5, Environmental Impact Statement, of this manual for EIS preparation and processing information.
- *Categorical Exclusions* (Class II) ([23 CFR 771.115\(b\)](#)) ([40 CFR 1508.4](#)) ([23 CFR 771.117](#))– Categories of actions that do not individually or cumulatively have a significant environmental effect may be excluded from the requirement to prepare an EIS or Environmental Assessment

(EA) through the Categorical Exclusion (CE) determination.

- The majority of Alaska Department of Transportation and Public Facilities (DOT&PF) projects are processed as CEs. Actions that typically meet the definition of a CE are identified on two specific lists, commonly referred to as the "c" list ([23 CFR 771.117\(c\)](#)) and the "d" list ([23 CFR 771.117\(d\)](#)). However, certain projects may not fall under a specific "c" or "d" list activity and may still be processed as a non-listed CE that satisfies the criteria in "a" ([23 CFR 771.117\(a\)](#)). Documentation requirements vary depending on the specific project activities. See Chapter 3, Categorical Exclusion, of this manual for more information on preparing and processing CEs.

- *Environmental Assessments* (Class III) ([23 CFR 771.115\(c\)](#)) ([40 CFR 1508.9](#)) ([23 CFR 771.119](#)) – Actions in which the significance of the environmental impact is not clearly established require an EA. An EA is used to determine whether or not the environmental impacts are significant and if there will be a need for further analysis and documentation. An EA is a concise document that should briefly provide sufficient evidence and analysis for determining a Finding of No Significant Impact or whether an EIS is warranted ([40 CFR 1508.9](#)). See Chapter 4, Environmental Assessment and Finding of No Significant Impact, for more information on preparing and processing EAs.

#### 2.2.1. Logical Termini

FHWA's NEPA project development regulations require the project to ([23 CFR 771.111\(f\)](#)):

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

FHWA's Environmental Review Toolkit provides discussion on [segmentation](#) and the development of [logical termini](#). Logical termini may need to be considered during the COA determination(s) for abutting projects. When aware of abutting projects, consult with the NEPA Program Manager for assistance in assessing whether to evaluate the projects together under NEPA and determining the appropriate COA.

### **2.2.2. Significant Impacts**

A project that results in significant impacts to the human environment is a Class I project and requires an EIS ([23 CFR 771.115\(a\)](#)). The Council on Environmental Quality (CEQ) NEPA regulations provide guidance on the concept of significance in the evaluation of impacts. In determining significance, CEQ regulations require consideration of both the context and the intensity of the potential impacts on the project area resources ([40 CFR 1508.27](#)).

#### **40 CFR 1508.27:**

*Significantly* as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

These factors should be kept in mind when assessing whether an action may have significant impacts during a COA determination.

### **2.2.3. Unusual Circumstances**

An action that involves unusual circumstances may not meet the requirements of a CE ([23 CFR 771.117\(b\)](#)). Any action that would normally be classified as a CE but could involve unusual circumstances will require appropriate environmental studies to determine if the CE classification is proper.

Unusual circumstances include ([23 CFR 771.117\(b\)](#)):

- Significant environmental impacts;
- Substantial controversy on environmental grounds;

- Significant impacts on properties protected by [Section 4\(f\) of the DOT Act of 1966 \(23 CFR 774.3\)](#) or [Section 106 of the National Historic Preservation Act \(36 CFR 800\)](#); or
- Inconsistencies with any federal, state or local law, requirement, or administrative determination relating to the environmental aspects of the action.

The presence of unusual circumstances is considered during the COA determination for all projects. If a project involves unusual circumstances, consult with the NEPA Program Manager for assistance in determining the appropriate COA.

### 2.3. Class of Action Determination

The COA determination is based upon the types of activities proposed with a project and an assessment of the probable impacts of those activities. The project scope, as provided in the Statewide Transportation Improvement Program ([STIP](#)) and the federal-aid funding agreement, should be reviewed when making an initial COA determination, since the environmental document must address the impacts that would result from implementation of the scope identified in the federal-aid funding agreement in order to maintain federal-aid funding eligibility for the project. The activities involved in developing the proposed project must be understood in order to assess the potential for significant impacts and whether unusual circumstances may be a factor for the project.

Some level of research is usually conducted in support of the COA determination. The level of research required depends on the complexity of the proposal and/or the setting. This information also assists in establishing accurate schedules for completing the environmental process as well as reasonable expectations for project funding and permitting. In some cases, it will be obvious that no significant impacts to environmental resources would occur within the project area. In other cases, there may be multiple sensitive resources in the project area, and it may be necessary to consult with the NEPA Program Manager and appropriate resource agencies to determine the COA. A public meeting may also be necessary to assess the potential level of public controversy in support of the COA determination. If there is not sufficient information available to determine the probable impact of the action, the Regional Environmental Manager (REM) should contact the NEPA Program Manager to discuss the work necessary to develop sufficient information.

As soon as sufficient information is available to identify and determine the probable impact of the action, the REM will identify and recommend the probable COA to the NEPA Program Manager by submitting a [Class of Action Consultation Form](#) (*COA Consultation Form*). A project action will remain in a status of undetermined COA until such time as sufficient information is available.

A *COA Consultation Form* is completed for every federal-aid highway project. The *COA Consultation Form* provides sufficient information for, as well as documents, the REM's recommendation and the NEPA Program Manager's approval.

The following information is included on the *COA Consultation Form*:

- Project Name
- Federal Project Number
- State Project Numbers
- Primary/Ancillary Project Connections
- List of Attachments (if applicable) - may include maps or figures relevant to the COA determination process
- Project Scope
- Project Description
- Brief discussion of probable impacts of the action
- Funding source(s)

For CE actions, the *COA Consultation Form* also documents:

- CE action category (“c” or “d” list actions, or satisfying “a” criteria)
- Project funding documentation for projects classified under “c” list 23 (c(23))
- For actions classified under c(26), c(27), and c(28), information verifying that the following conditions listed in [23 CFR 771.117\(e\)](#) are not present:
  - (1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
  - (2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not

meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

- (3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;
- (4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
- (5) Changes in access control;
- (6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

- Any unusual circumstances or public controversy

The NEPA Program Manager will review the *COA Consultation Form* and determine whether they concur with the recommended project classification. Upon concurrence with the COA, the NEPA Program Manager will sign the *COA Consultation Form* and return a copy to the REM via email for placement in the region project file.

If the NEPA Program Manager does not concur with the REM's COA recommendation, they will return the *COA Consultation Form* to the REM unsigned with a written explanation for the non-concurrence. The NEPA Program Manager will work with the REM to resolve concerns regarding the COA before the REM submits a new *COA Consultation Form*.

If any new project information or changes in project design during project development will affect the project's COA, the region should prepare a new *COA Consultation Form* documenting the updated information. The REM will submit the new form to the NEPA Program Manager for review and approval.

## **Technical Appendix**

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FHWA's NEPA regulations at [23 CFR 771](#) include class of action definitions.

[Class of Action Consultation Form](#)

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