

5. Environmental Impact Statement

- 5.1. Introduction
- 5.2. Preparation and Publication of the Notice of Intent
- 5.3. Preparation of the Draft EIS
- 5.4. DOT&PF Review and Approval Process
- 5.5. Public Involvement and Agency Coordination
- 5.6. Preparation of the Final EIS
- 5.7. Record of Decision
- 5.8. Combined Final EIS/Record of Decision
- 5.9. Limitation of Claims Notice
- 5.10. Supplemental EIS

5.1. Introduction

An Environmental Impact Statement (EIS) is prepared for an action that is likely to cause significant impacts on the environment. The EIS presents the evaluation of project alternatives and their potential impacts to the human and natural environment to support a decision from the Alaska Department of Transportation and Public Facilities (DOT&PF) on which alternative to approve. As noted in the Federal Highway Administration (FHWA) [Environmental Review Toolkit](#), the EIS process is completed in the following ordered steps: Notice of Intent (NOI), Draft EIS, Final EIS, and record of decision (ROD) or combined Final EIS/ROD. A Record of Decision (ROD) is prepared at the conclusion of the EIS process to document the decision and its basis. An EIS and ROD are prepared according to the procedures in this chapter.

The purpose of an EIS is to “serve as an action-forcing device to ensure that the policies and goals defined in the [National Environmental Policy] Act (NEPA) are infused into the ongoing programs and actions of the Federal Government.... [An EIS] is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions” (Council on Environmental Quality ([CEQ] 40 Code of Federal Regulations [CFR] 1502.1). An EIS documents the development of a project by describing the purpose and need for the proposed action, a full range of reasonable alternatives that would address the purpose and need, the affected environment, and providing a detailed analysis of the potential impacts resulting from each reasonable alternative. The EIS also documents the project’s compliance with other

applicable environmental laws, regulations, and executive orders.

Actions requiring an EIS under Federal Highway Administration (FHWA) regulations are considered Class I actions. The following examples of Class I actions that normally require an EIS are found at [23 CFR 771.115](#):

1. A new controlled access freeway
2. A highway project of four or more lanes on a new location
3. Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way
4. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility

5.2. Preparation and Publication of the Notice of Intent

A Notice of Intent (NOI) is the official notification that a federal agency is beginning the process to prepare an EIS. DOT&PF develops a NOI for publication in the [Federal Register](#) after it has consulted with any other project sponsor, initiated the 23 USC 139 environmental review process, and reached its decision to prepare an EIS ([23 CFR 771.123](#)). Since only federal agencies may publish notices in the *Federal Register*, under the NEPA Assignment Program DOT&PF will continue to submit the Notice of Intent to FHWA for publication in the *Federal Register*. See 7.6.3., Public and Agency Involvement, Notice of Intent for additional information.

5.3. Preparation of the Draft EIS

FHWA regulations, at [23 CFR 771.123](#), describe the requirements and processes to develop a Draft EIS. FHWA [Technical Advisory 6640.8A](#) provides detailed guidance on the preparation and processing of environmental documents, and requires that the following be included in a Draft EIS:

- Cover Page
- Summary
- Table of Contents
- Purpose of and Need for Action

- Alternatives
- Affected Environment
- Environmental Consequences
- List of Preparers
- List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
- Comments and Coordination
- Section 4(f) Evaluation (if applicable)
- Index
- Appendices (if any)

The NEPA Assignment Program Memorandum of Understanding ([MOU](#)) (Part 3.1.2) requires the following language be included on the cover page of a Draft EIS in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated November 3, 2017 and executed by FHWA and DOT&PF.

FHWA [Technical Advisory 6640.8A](#) contains detailed guidance on the format and content of an EIS. The following sections focus on three major elements of the Draft EIS: the purpose of and need for action, the development of alternatives, and the analysis of the alternatives.

5.3.1. Purpose of and Need for Action

The Purpose and Need chapter of the EIS identifies and describes the proposed action and the transportation problem(s) or other needs that the project is intended to address ([40 CFR 1502.13](#)), and may include discussion of the logical termini. Logical termini is further discussed in 5.3.2, Development of Alternatives, Logical Termini. The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an EIS and assists with the identification and eventual selection of a preferred alternative (FHWA [Environmental Review Toolkit](#)). The chapter should clearly demonstrate that a need exists and should define the need in terms understandable to the general public; i.e., the discussion should clearly

describe the problems that the proposed action would correct. The chapter describes the consistency of the proposed action with local transportation planning, local comprehensive planning, land use planning, and growth management efforts. The purpose and need statement should be sufficiently narrow to serve as an effective means to evaluate alternatives but not so narrow as to preclude reasonable alternatives. It will assist with the identification of reasonable alternatives and the selection of the preferred alternative.

The following bullets are examples of possible project purposes:

- Improve traffic flow
- Accommodate high traffic volumes
- Improve connectivity between transportation modes
- Increase safety for motorists, pedestrians, and bicyclists
- Correct roadway deficiencies
- Reduce congestion and delays

The need for the project establishes the rationale for pursuing the action. The following bullets are examples of possible project needs:

- System linkage – Is the proposed project a "connecting link?" How does it fit in the transportation system?
- Capacity – Is the capacity of the present facility inadequate for the present traffic? Projected traffic? What capacity is needed? What is the level(s) of service for existing and proposed facilities?
- Transportation Demand – Is there a relationship to any statewide plan or adopted urban transportation plan?
- Legislation – Is there a federal, state, or local governmental mandate for the action?
- Social demands or economic development – What projected economic development/land use changes indicate the need to improve or add to the highway capacity?
- Safety hazards – Is the proposed project necessary to correct an existing or potential safety hazard? Is the existing accident rate excessively high? Why?

How will the proposed project improve it?

- Roadway deficiencies – Is the proposed project necessary to correct existing roadway deficiencies (e.g., substandard or outdated geometrics, load limits on structures, inadequate cross section, or high maintenance costs)?

Further guidance regarding the development of a purpose and need statement can be found in FHWA [Technical Advisory 6640.8A](#) and FHWA Memorandum [The Importance of Purpose and Need](#). A well-developed purpose and need chapter will assist in limiting the number of alternatives that will achieve the project goals, and provide the basis for a legally defensible alternatives discussion.

5.3.2. Development of Alternatives

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.

An [FHWA memo dated November 5, 1993](#) provides additional guidance on the [development of logical termini](#).

The Alternatives chapter of the EIS describes the reasonable alternatives that are being evaluated to meet the purpose of and need for the proposed action. The CEQ defines the term “reasonable” as those alternatives that are “practical and feasible from a technical and economic standpoint using common sense” ([CEQ NEPA's 40 Most Frequently Asked Questions, Guidance](#) Question 2A). The Alternatives chapter typically includes descriptions of all alternatives considered for the proposed action and how they were screened to eliminate unreasonable alternatives, leaving a full range of reasonable alternatives and a No Action alternative to be presented and evaluated in detail in the EIS. The No Action alternative is always included in the EIS; it is

the benchmark against which the impacts of the other alternatives are compared and describes the situation that would occur without the proposed action. [CEQ NEPA's 40 Most Frequently Asked Questions](#), Guidance Question 1b and FHWA [Technical Advisory 6640.8A](#) provides a detailed guidance discussion of the factors that might be considered in determining what constitutes a reasonable range of transportation alternatives.

In preparing an EIS, it is important to be clear about DOT&PF's rationale for generating, evaluating, and eliminating alternatives. CEQ regulations require that alternatives that were considered in the planning process and subsequently rejected be briefly described and the reasons for their elimination discussed ([40 CFR 1502.14\[a\]](#)). Alternatives suggested by cooperating and participating agencies or the public during scoping that are eliminated without detailed study should be adequately documented and their reasons for elimination discussed. Include sufficient detail in the EIS to ensure that legal requirements have been met and well documented.

Each of the reasonable alternatives should be considered and discussed with a comparable level of detail, allowing the reader to evaluate the comparative merits of each. At a minimum, the discussion of each alternative should include a clear, non-technical description of the project concept, location, termini, costs, status of right-of-way needs, and any features of the project that help to clarify differences among alternatives. The Alternatives chapter of the EIS should include a concise summary and comparison of the impacts potentially resulting from each reasonable alternative.

The Draft EIS should identify the DOT&PF's preferred alternative or alternatives, if one exists. The preferred alternative is generally the one that the DOT&PF believes would best fulfill its mission and responsibilities while meeting project purpose and need and minimizing impacts to the environment (natural, cultural, and socioeconomic). Typically, the alternatives are adjusted throughout the NEPA process to accommodate avoidance measures and to minimize harm to the environment and communities. The preferred alternative is typically the alternative that achieves the best balance between needs, impacts, costs, and regulatory requirements. Under certain circumstances, [23 U.S. Code \(USC\) 139 Efficient Environmental Reviews for Project Decision-making](#) allows the preferred alternative to be developed to a

higher level of detail as long as it does not prejudice the consideration of other alternatives.

As a practical matter, the preferred alternative should be identified in the Draft EIS in order to take advantage of the combined Final EIS/ROD efficiency provided for in the Moving Ahead for Progress in the 21st Century Act (MAP-21; see Section 5.8 and the U.S. Department of Transportation's (USDOT's) [Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#) for additional information).

If there is no clear preferred alternative, one need not be identified in the Draft EIS; in this situation, the Draft EIS should explain that a preferred alternative will be identified in the Final EIS. The Draft EIS should also explain that selection of an alternative will not be made until the ROD is issued, after any additional input received on the Final EIS has been fully evaluated.

5.3.3. Analysis of Alternatives

All reasonable alternatives under consideration need to be rigorously explored and evaluated objectively in the EIS. The Affected Environment section of the EIS provides context for the evaluation of impacts of the alternatives. It identifies the existing environmental resources in the area and the condition of the environment. The Affected Environment material should discuss, commensurate with the context and intensity of potential impacts, the existing social, economic, and environmental setting. Also, it should identify environmentally sensitive features. The use of graphics and/or photographs for this purpose is especially effective. There is a tendency to include too much information in the Affected Environment chapter of the EIS: descriptions should be no longer than needed to understand the area and the potential impacts of the alternatives.

The Environmental Consequences section of the EIS describes the potential impacts of project alternatives and documents the methodologies used in evaluating these impacts. Alternatives are assessed to determine how each addresses the transportation issues identified in the purpose and need, as well as potential impacts to the identified resources. The direct and indirect environmental impacts of each of the alternatives and the potential measures that could be taken to avoid, minimize, or mitigate these impacts must be described. Cumulative impacts that would result from the action must also be discussed. Mitigation must be

considered for all adverse impacts, regardless of their significance. Environmental impacts should be discussed in terms of their context and intensity. Information in this section is used to compare the alternatives and their impacts.

The Draft EIS should be concise, clear, and to the point, and supported by evidence. The Draft EIS must also summarize the scoping process and the results of meetings, consultations, coordination, and comments received during early coordination. During the preparation of the EIS, agency and public comments and DOT&PF responses, as well as documentation of coordination efforts, are maintained in the region project file. The comments and responses are to be summarized in the EIS Comments and Coordination chapter; the complete list of comments and responses will be included in an appendix to the EIS.

The following references should be consulted for additional guidance:

- Federal Highway Administration (FHWA) Technical Advisory on National Environmental Policy Act (NEPA) document preparation (T 6640.8A)
- AASHTO's Practitioner's Handbook 15: Preparing High Quality Environmental Documents for Transportation Projects
- The FHWA Environmental Review Toolkit, particularly sections on purpose and need, alternatives, and the EIS
- 23 U.S. Code (USC) 139 Efficient Environmental Reviews for Project Decision-making can assist the reviewer in verifying that all necessary components are included in the EIS.

5.4. DOT&PF Review and Approval Process

The project development team, as established by the region, performs Quality Assurance (QA) and Quality Control (QC) review during preparation of the EIS through collaboration, project meetings, and intradepartmental review of sections, chapters, or the entire document. The Regional Environmental Manager (REM) provides the first-tier QA review and may request that subject matter experts review environmental document sections that contain information pertaining to their areas of expertise. Once comments have been addressed to the satisfaction of the REM, the REM will obtain region

preconstruction engineer recommendation for public availability and then transmit the Draft EIS to the State Environmental Office (SEO) for review. It is important to recognize that more than one review cycle with the REM or SEO may be necessary prior to document approval.

The QC review of the Draft EIS focuses on content accuracy and information consistency. The QC review also verifies that the Draft EIS is complete and conforms to all NEPA requirements and applicable guidance, policy, and procedure, and that the document is ready to advance to public review. Chapter 11, Quality Assurance and Quality Control, provides detail on the QC process.

5.4.1. Legal Review

Following REM and SEO review, the SEO submits the Draft EIS to the Alaska Department of Law (LAW) for legal review. The primary goal of legal review is to assess the document for compliance with legal requirements. At the completion of the legal review, LAW provides a written statement that the legal review has been completed and all legal comments have been appropriately addressed. The Draft EIS will not be approved for public circulation until legal review is satisfactorily completed. The LAW statement documenting completion of legal review is included in the region project file. Legal review results and communications are confidential. Legal review comments remain within DOT&PF and are not available for public or agency distribution or review.

5.4.2. Cooperating Agency Review

Cooperating agencies are typically given an opportunity to review the Draft EIS before it is approved for public circulation. This review period may be up to 30 days long, depending on the complexity of the project and related issues. DOT&PF should respond to cooperating agency comments in the Draft EIS. Cooperating agency review can be prior to legal review.

5.4.3. Approval for Circulation

To document that the Draft EIS has completed QC review and legal review, the REM and Statewide Environmental Program Manager each certify the following in separate QC review completion certification emails for the region project file.

5.5. Public Involvement and Agency Coordination

Public and agency involvement is an integral part of the EIS process. Because an EIS involves issues and impacts of greater magnitude than an Environmental Assessment, public and agency involvement is usually more robust than for other project types, and additional steps are required. The enhanced public involvement requirements are intended to increase engagement with agencies and the public and to support early identification, and efficient resolution, of issues that could delay project approval.

FHWA [Technical Advisory 6640.8A](#) provides detailed guidance on the preparation of the NOI, the scoping process, and the documentation of comments and coordination that should be included in the EIS.

5.5.1. [23 USC 139](#) – Efficient Environmental Review Process

Congress included a number of environmental streamlining provisions as part of the 2005 transportation funding act referred to as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Notable among these is Section 6002, “Efficient Environmental Review Process,” codified at 23 USC 139. The 2012 transportation funding act, MAP-21, and the 2015 Fixing America’s Surface Transportation Act (FAST Act) modified the environmental review process enacted with SAFETEA-LU. The process is mandatory for EISs with an NOI dated after August 10, 2005; it is optional (but not frequently used) for Environmental Assessments. Title 23 USC 139 environmental review process requirements include the following:

- For NEPA assignment projects, DOT&PF is the lead agency for projects, pursuant to 23 USC 139(a)(4).
- The lead agency must invite all federal, state, local, and tribal government agencies that may have an interest in the project to be participating agencies (23 USC 139(d)).
- Agencies defined as participating and cooperating agencies are required to carry out their obligations under other applicable laws concurrently and in conjunction with their NEPA review in a timely and environmentally responsible manner (23 USC 139(d)(7)).

- To the maximum extent practicable, all permits and reviews for a transportation project are to rely on a single NEPA document developed by the lead agency; that NEPA document is to be sufficient to satisfy the requirements for any federal approval or other federal action for the project, including federal agency permits (23 USC 139(d)(8)).
- The lead agency must develop a coordination plan for public and agency participation and comment during the environmental review process; the plan must include a schedule (23 USC 139(g)).
- Participating agencies and the public must be given an opportunity for input in the development of the project purpose and need and the range of alternatives to be considered (23 USC 139(f)).
- The lead agency is to collaborate with participating agencies on the appropriate methodologies to be used and the level of detail for the analysis of project alternatives (23 USC 139(f)(4)(C)).
- The lead agency and participating agencies are to work cooperatively to identify and resolve issues that could delay the completion of the environmental review process or result in denial of any approvals required for the project under applicable laws. Title 23 USC 139(h) provides an issue identification and resolution process, including referral to the CEQ and imposing financial penalties.
- There is a 150-day statute of limitations for project judicial review, provided that a notice of final agency action is published in the Federal Register (23 USC 139(l)).
- A single document that includes both the Final EIS and the ROD should be used, unless:
 - The Final EIS makes substantial changes to the proposed project relevant to environmental or safety concerns; or
 - There are significant new circumstances or information relevant to environmental concerns that bears on the proposed project or the impacts of the proposed project (23 USC 139(n)).

Additional guidance on complying with the 23 USC 139 environmental review process can be found at

FHWA/FTA's [SAFETEA-LU Environmental Review Process](#) and [Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#).

5.5.2. Participants in the Environmental Review Process

Lead Agency: Under 23 USC 139, DOT&PF serves as the lead federal agency for projects. Other federal, state, or local governmental entities may act as joint lead agencies at the discretion of DOT&PF. For more information on this topic, see the FHWA/Federal Transit Administration [SAFETEA-LU Environmental Review Process](#).

In compliance with 23 USC 139, DOT&PF must initiate the efficient environmental review process by inviting federal, state, tribal, regional, or local agencies that have jurisdiction or expertise or will comment on the project to be participating or cooperating agencies.

Participating Agencies: In order to enhance interagency coordination and identification of issues of concern, 23 USC 139 created a new category of involvement in the environmental review process, termed the “participating agency.” The intent of this category is to encourage agencies at all levels of government with an interest in the project to be active participants in the NEPA evaluation. Under 23 USC 139, any federal or non-federal agency that “may have an interest in the project” is required to be invited to become a participating agency in the project environmental review process ([23 USC 139\(d\)](#)). Participating agency invitation letters are required to be sent within 45 days of NOI publication and are to include a deadline for response. Thirty days is a common response deadline. Any federal agency invited to be a participating agency will be designated as a participating agency unless it declines, in writing, stating that the invited agency: (A) Has no jurisdiction or authority with respect to the project; (B) Has no expertise or information relevant to the project; and (C) Does not intend to submit comments on the project.

State and local agencies invited to be participating agencies will be designated as participating agencies only if they respond affirmatively in writing.

Cooperating Agencies: A federal participating agency may also be designated as a cooperating agency under NEPA ([40 CFR 1501.6](#) and [23 CFR 771.111\(d\)](#)). A cooperating agency is defined as any

federal agency with jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the EIS ([40 CFR 1508.5](#)). Any such federal agency is to be invited to be a cooperating agency. Note that any cooperating agency would also meet the definition of a participating agency and is to be invited, in writing, to serve both roles.

5.5.3. Initiation of 23 USC 139 Environmental Review Process

As the first step in the 23 USC 139 environmental review process, the REM is required to formally notify the Statewide NEPA Manager that the review process is being initiated. The notification includes the type of work, its termini, length, and general location, as well as the federal permits and approvals anticipated to be necessary for the proposed project ([23 USC 139\(e\)](#)). The draft NOI may be used for this purpose as long as it contains the required notification information.

5.5.4. Notice of Intent

An NOI is the official notification that a federal agency is beginning the process to prepare an EIS. DOT&PF develops an NOI for publication in the *Federal Register* after it has consulted with any other project sponsor, initiated the 23 USC 139 environmental review process, and reached its decision to prepare an EIS ([23 CFR 771.123](#)).

The MOU at Part 10.2.1(B)(i)(a) requires that each NOI receive a legal sufficiency determination prior to publication. Following REM and SEO review, the SEO submits the draft NOI to LAW for a legal sufficiency determination. The LAW statement documenting completion of the legal sufficiency review is included in the region project file. Legal sufficiency communications are confidential and remain within DOT&PF and are not available for public or agency distribution or review.

Because only federal agencies may publish notices in the *Federal Register*, under the NEPA Assignment Program DOT&PF will continue to submit the NOI to FHWA for publication. CEQ regulations require that the NOI include the following ([40 CFR 1508.22](#)):

- A description of the proposed action and possible alternatives, including the no-build alternative
- Information regarding the scoping process, including whether, when and where any scoping meeting will be held

- The name and address of a contact person at DOT&PF who can answer questions about the proposed project and the EIS, which will usually be a region contact

For the NOI to serve also as the 23 USC 139 initiation of environmental review, the NOI must also include:

- The type of work
- The proposed project's termini, length, and general location
- Other anticipated federal approvals required for the project, such as permits

The NOI should also be made available locally, through sources such as a local or regional newspaper, as part of a project mailer to appropriate project area zip codes, and/or published online on the State of Alaska Online Public Notices website.

For additional guidance on the content and format of an NOI, see the FHWA [Technical Advisory T 6640.8A, Appendix B](#).

5.5.5. Coordination Plan

DOT&PF must develop a coordination plan for public and agency participation during the environmental review process ([23 USC 139\(g\)](#)). The coordination plan describes how agencies and the public will participate and comment during project environmental review. The coordination plan is to be in place within 90 days of NOI publication. An environmental review schedule is required to be part of the coordination plan, and is to be established after consultation with and concurrence of each cooperating and participating agency. The schedule and any adjustments to it are to be provided to all participating agencies and made available to the public. The coordination plan will include appropriate elements of the Public Involvement Plan. Refer to Chapter 7, Section 7.3.1, Public Involvement Plan, for Public Involvement Plan considerations, and to the following sections for the required agency and public coordination under 23 USC 139.

5.5.6. Scoping

Scoping is the process through which a federal lead agency solicits input from agencies, other stakeholders, and the public regarding the scope of the issues to be addressed in the project EIS and the significant issues related to the proposed project ([40 CFR 1501.7](#)). Scoping begins after the NOI is published in the *Federal Register*. The scoping

process is used to identify the project purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS ([23 CFR 771.123\(b\)](#) and [40 CFR 1501.7](#)). The public and participating agencies must be given the opportunity to provide input in the development of the purpose and need and the range of alternatives ([23 USC 139\(f\)](#)).

Participating agency invitations, as required by [23 USC 139\(d\)](#), are sent out early in the scoping process. CEQ regulations ([40 CFR 1501.7](#)) also require the lead agency to invite the participation of affected federal, state, and local agencies, affected Indian tribes, the project proponent, and other interested parties in the EIS process.

Through collaboration with participating and/or cooperating agencies, DOT&PF develops methodologies to be used to analyze alternatives ([23 USC 139\(f\)\(4\)\(C\)](#)). DOT&PF makes the ultimate decision on the methodologies to be used, taking into account participating agency expertise.

Public meetings are not required as part of the scoping process, but are commonly held and serve as an excellent tool for sharing information with agencies and the public and for receiving input. If held, public scoping meetings should be noticed in a local or regional newspaper, sent within a project mailer to residents in appropriate project area zip codes, and/or published online on the State of Alaska Online Public Notices website.

5.5.7. Draft EIS Notice of Availability and Circulation

Notice of Availability

DOT&PF must make available and solicit comments on the Draft EIS after it is prepared. A Notice of Availability is filed with the U.S. Environmental Protection Agency (EPA) for publication in the *Federal Register* ([40 CFR 1506.9](#)). The Notice of Availability specifies the locations where the EIS can be reviewed (*required*: DOT&PF regional office; *optional*: local public library, DOT&PF website, community center, and other similar locations). The Notice of Availability also identifies the public comment period for the EIS, which will be not less than 45 days and not more than 60 days, unless DOT&PF establishes a different deadline, with the agreement of all participating agencies. DOT&PF may also extend the comment deadline for good cause ([23](#)

[USC 139\(g\)\(2\)](#)). The notice will state where comments are to be sent ([23 CFR 771.123\(i\)](#)).

If the project has impacts to floodplains, wetlands, Section 4(f) properties, and/or Section 106 properties, incorporate language in the Notice of Availability to cover the public notification requirements for these topics. The Notice of Availability should include standard language from the Civil Rights Office to address Title VI compliance and ADA accessibility.

The Notice of Availability of the Draft EIS should also be published locally, in locations such as a local or regional newspaper, within a project mailer to residents in appropriate project area zip codes, and/or on the State of Alaska Online Public Notices website.

If DOT&PF is considering the issuance of a combined Final EIS/ROD for the project, DOT&PF must provide notice on the cover of the Draft EIS of its intent to follow this approach: "DOT&PF will issue a single Final Environmental Impact Statement and Record of Decision document pursuant to Pub. L. 112-141, 126 Stat. 405, Section 1319(b) unless DOT&PF determines statutory criteria or practicability considerations preclude issuance of the combined document pursuant to Section 1319." For additional information on the combined Final EIS/ROD, see [USDOT's Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#). Additionally, if DOT&PF is considering the use of this approach it must identify a preferred alternative in the Draft EIS.

Notices should be combined when applicable. It is DOT&PF standard practice to publish a combined notification for a Notice of Availability and Notice of Public Hearing, if one is held.

Circulation

The Draft EIS must be made available to the public and circulated to agencies for comment no later than the time the Draft EIS is filed with the EPA for *Federal Register* publication ([23 CFR 771.123\(g\)](#)). The Draft EIS is transmitted to public officials, interest groups, and members of the public known to have an interest in the proposed project; federal, state, and local agencies with jurisdiction or expertise, and/or those that have been designated as participating or cooperating agencies; and affected state and federal land management agencies (see [23 CFR 771.123\(g\)](#)). DOT&PF must request comments from appropriate state and local agencies, affected Indian tribes, and any agency that has requested that it receive EISs on

actions of the kind proposed ([40 CFR 1503.1](#)). The Notice of Availability and the Draft EIS must identify where comments are to be sent ([23 CFR 771.123\(i\)](#)).

5.5.8. Public Hearing

FHWA's public involvement requirements ([23 CFR 771.111\(h\)](#)) dictate that one or more public hearings or opportunities for public hearing(s) be held for projects on which an EIS is prepared. The public hearing is held during the Draft EIS comment period. Whenever a public hearing is held, the Draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing ([23 CFR 771.123\(h\)](#)). For additional information on public hearings, see Chapter 7, Public and Agency Involvement.

5.6. Preparation of the Final EIS

At the end of the public circulation period, a summary of the comments received and a response to each substantive comment or category of comments is developed and the Final EIS is prepared. The Final EIS identifies the preferred alternative, discusses the basis for its identification as preferred, and evaluates all reasonable alternatives considered ([23 CFR 771.125\(1\)](#)). If the preferred alternative in the Final EIS is different from the preferred alternative presented in the Draft EIS, the Final EIS must clearly identify the changes, describe the reasons for the changes, and discuss the reasons why any new impacts are not of major concern. The Final EIS also includes all substantive comments received on the Draft EIS and responses to those comments. Comment responses are to be written in an appropriate and respectful manner and are to adequately address the issue or concern raised by the commenter or, when comments do not warrant further response, the Final EIS is to explain why they do not warrant further response and provide sufficient information to support that position. The Final EIS must also discuss any responsible opposing view that was not adequately addressed in the Draft EIS and provide DOT&PF's response to the issue(s) raised ([40 CFR 1502.9\(b\)](#)).

The Final EIS summarizes public and agency involvement and documents compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provides reasonable assurance that their requirements can be met ([23 CFR 771.125\(a\)\(1\)](#)). Mitigation measures that are to be incorporated into the proposed action are described. Those mitigation measures presented as commitments in the Final EIS will be incorporated into the project

as specified in [23 CFR 771.109\(b\)](#) and (d).

5.6.1. Final EIS Errata Sheet Approach

In preparing a Final EIS, if modifications to the Draft EIS are minor and are limited to factual corrections or explanations of why the comments do not warrant further response, errata sheets may be attached to the Draft EIS in lieu of rewriting the Draft EIS for the final document (see, 23 USC 139(n); 40 CFR 1503.4(c); and [USDOT's Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#)). The errata sheets must be made publicly available to the same extent as the Draft EIS, and the Draft EIS must remain available. The errata sheets must include:

- the factual corrections made to the Draft EIS with references to the relevant page numbers in the Draft EIS;
- sources, authorities and reasons that support the position of DOT&PF that the comments do not warrant modification of the Draft EIS or additional response ;
- an indication of the specific circumstances that would require further response, particularly the circumstances that could lead to a re-evaluation or a supplemental environmental impact statement; and,
- a web address or other indication of where a copy of the Draft EIS may be obtained.

The REM and the Statewide Environmental Program Manager must agree upon the use of the errata sheet approach. The public and agency comments, the responses to comments, and the errata sheet(s) must be reviewed for approval as the Final EIS (Section 5.6.2, Final EIS Review and Approval).

5.6.2. Final EIS Review and Approval

Similar to review at the Draft EIS stage, the REM and Statewide Environmental Program Manager each conduct a review of the Final EIS to confirm that it meets NEPA requirements and DOT&PF standards, and is ready for final approval. Chapter 11, Quality Assurance and Quality Control, provides details on the QC and approval process for the Final EIS.

5.6.3. Final EIS Distribution

DOT&PF must file the Final EIS with the EPA in accordance with 40 CFR 1506.9. No later than the time the document is filed with the EPA, DOT&PF

must distribute it to all individuals, organizations, and agencies that have jurisdiction, provided substantive comments on the Draft EIS, or requested a copy ([23 CFR 771.125\(g\)](#)). For lengthy documents, DOT&PF may distribute the Final EIS's Summary along with an electronic copy or electronic access to the document (23 CFR 771.125(g) and 40 CFR 1502.19). Printed copies of the Final EIS should be made available to those entities on the distribution list that specifically requested printed copies.

If the errata sheet approach is used (Section 5.6.1, Final EIS Errata Sheet Approach), only the comments on the Draft EIS, the responses to comments, and the errata sheet(s) must be distributed; however, the entire document with a new cover page must be filed with the EPA as the Final EIS.

A notice of availability of the Final EIS must be published in local newspapers (see Chapter 7, Public and Agency Involvement, for more information regarding notices), and the Final EIS must be made available for public review at the DOT&PF region office and other public locations (see [23 CFR 771.125\(g\)](#)). Usually, copies must be provided free of charge; alternatively, with SEO concurrence copies can be provided at the cost of printing, or requestors can be directed to a public location where the document can be viewed ([23 CFR 771.125\(f\)](#)).

5.7. Record of Decision

If DOT&PF does not combine the Final EIS and ROD in a single document (See Section 5.8, Combined Final EIS/Record of Decision) then DOT&PF must prepare a ROD selecting a project alternative. The ROD may be signed no earlier than 30 days after publication of the Final EIS notice in the Federal Register or 90 days after publication of a notice for the Draft EIS, whichever is later. The ROD represents DOT&PF's final decision on the project.

The ROD presents the selected alternative and the basis for its selection as specified in [40 CFR 1505.2](#). It briefly describes each alternative and explains the balancing of values that formed the basis of the alternative selection. The ROD must also identify the environmentally preferred alternative(s) and – if a different alternative is selected – state the reasons why the environmentally preferred alternative was not selected. The ROD summarizes any mitigation measures that will be incorporated in the project and documents any required Section 4(f) approval.

A ROD should identify and respond to all substantive comments received on the Final EIS.

5.7.1. ROD Review and Approval

A ROD should be submitted to the SEO for review and approval along with the Final EIS. The REM and Statewide Environmental Program Manager each perform a QC review of the ROD to confirm that it meets NEPA requirements and DOT&PF standards, and is ready for final approval. The ROD must be provided to LAW for legal review upon the completion of the REM and NEPA Program Manager QC reviews.

Chapter 11, Quality Assurance and Quality Control, provides details on the QC and approval process. No additional approvals may be given for the project, except administrative activities such as those taken to secure further project funding until the ROD has been signed.

5.7.2. ROD Distribution

Although not formally required, it is advisable to publish notice of a ROD in the same manner as the Final EIS. The ROD should be circulated to the same entities that received a copy of the Final EIS ([23 CFR 771.127](#)), to the extent practicable.

5.8. Combined Final EIS/Record of Decision

MAP-21 Section 1319(b) (codified at [23 USC 139\(n\)\(2\)](#)) directs the lead transportation agency, to the maximum extent practicable, to combine the Final EIS and ROD into a single document unless: (A) the FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or there is a significant new circumstance or information relevant to environmental concerns and that bears on the proposed action or the impacts of the proposed action.

To take advantage of this approach, DOT&PF must have identified a preferred alternative in the Draft EIS. In addition, DOT&PF must have provided notice that the Final EIS and ROD will be combined on the cover of the Draft EIS. For additional information on the combined Final EIS/ROD, see [USDOT's Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#).

The REM and SEO determine whether to combine the Final EIS and ROD based on the specifics of the proposed action, with input from the cooperating

agencies involved, and after consulting the [Final Guidance on MAP-21](#).

When a combined Final EIS/ROD is prepared, the applicable requirements for both a Final EIS and ROD must be met except to the extent those requirements directly conflict with MAP-21 Section 1319. ([MAP-21 Final Guidance](#); see also [23 CFR 771.125](#)). The combined Final EIS and ROD shall be distributed to all agencies and individuals who provided substantive comments on the Draft EIS or who requested a copy ([40 CFR 1502.19](#)).

The errata sheets provisions of MAP-21 and the combined FEIS/ROD provisions can be utilized together, as long as the conditions for the use of errata sheets are met (See, Section 5.6.1, Final EIS Errata Sheet Approach). When both provisions are used together, the combined final NEPA document would consist of a DEIS, errata sheets, responses to DEIS comments, information required in an FEIS, and ROD (See, [Final Guidance on MAP-21](#)).

5.9. Limitation of Claims Notice

[23 USC 139\(l\)\(1\)](#) establishes a 150-day statute of limitations (SOL) on legal claims against USDOT and other federal agencies for certain environmental and other approval actions, if specific circumstances apply. A Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day SOL to apply. Publication in the *Federal Register* starts the clock for the SOL. As with other *Federal Register* notices, DOT&PF prepares the notice and transmits it to FHWA for placement in the *Federal Register*.

SOL notices should list or describe all permits, licenses, and approvals by federal agencies that relate to and are within the scope of the project and are final as of the date of the notice. The SOL notice should include the key laws under which the federal agencies took final action (*PROPOSED REVISED GUIDANCE FOR PUBLIC COMMENT, ENVIRONMENTAL REVIEW PROCESS GUIDANCE*, [Appendix D: FHWA Guidance on the Statute of Limitations \(SOL\) provision under 23 U.S.C. Section 139\(l\)](#) (Question D-5)). SOL Notices require legal sufficiency review (23 USC 139(l)).

The region Environmental Impact Analyst will prepare the SOL for the REM's review and submittal to the Statewide Environmental Program Manager for review and submittal to LAW for the legal sufficiency review.

5.10. Supplemental EIS

According to the CEQ NEPA Regulations ([40 CFR 1509\(c\)\(1\)](#)), agencies "shall prepare supplements to either draft or final environmental impact statements if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The following is noted in [Forty Most Asked Questions Concerning CEQ's NEPA Regulations](#) (46 FR 18026):

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal.

When developing a supplemental Draft or Final EIS follow the procedures, exclusive of scoping, for developing the Draft and Final EISs presented earlier in this chapter. The procedures for public and agency review and comment, DOT&PF review and approval, and quality control review also apply to the supplemental Draft and Final EISs.

Technical Appendix

FHWA NEPA regulations on preparing EISs can be found at [23 CFR 771, Environmental Impact and Related Procedures](#).

The complete Council on Environmental Quality regulations for implementing NEPA can be found at [40 CFR 1500-1508](#).

FHWA's "Efficient Environmental Review Process" is designed to improve and streamline project-specific environmental decision-making. For more information, see [23 USC 139](#).

Guidance regarding environmental and Section 4(f) document preparation and processing can be found in FHWA [Technical Advisory 6640.8A](#).