

## 7. Public and Agency Involvement

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### 7.1. Introduction

Public and agency outreach is a legal requirement under the National Environmental Policy Act (NEPA) and many other laws and regulations. The regulatory purpose of public and agency involvement is to:

- Engage with agencies and the interested public on potential environmental impacts of major actions
- Collect input and integrate feedback in decision-making
- Involve the public and agencies in the decision-making process

However, public and agency involvement is about more than merely complying with legal requirements. For transportation projects, it is about giving the public and agencies a meaningful opportunity to influence transportation decisions in a manner that reflects community values. An open exchange of information between transportation users and government officials leads to better decision-making.

DOT&PF implements a public involvement program that encourages and solicits public input and provides the opportunity for the public to become fully informed about a proposed project. In addition to the requirements for public involvement delineated in the NEPA Assignment Program Memorandum of Understanding ([MOU](#)) and this manual, the Alaska Department of Transportation and Public Facilities (DOT&PF) also has approved plans for public involvement in its Civil Rights Office and Alaska Highway Preconstruction Manual (HPCM), which are consistent with the requirements of 23 CFR 771.111 and DOT&PF policy. Note that when requirements from these DOT&PF resources overlap, the more extensive process will apply. Required public involvement processes should be combined and

coordinated with the entire NEPA process, as appropriate.

#### 7.1.1. **Civil Rights Office**

DOT&PF's [Civil Rights Office](#) maintains a Title VI Program Plan and a Section 504/ADA Workplan containing specific public involvement required language and processes (periodically updated), and the Civil Rights Office should be regularly consulted for compliance with the current program plans. References to the Civil Rights Office procedures are included in this chapter. Where the Title VI Program Plan or Section 504/ADA Workplan requires additional requirements or process than this manual, the more extensive process will apply.

#### 7.1.2. **Alaska Highway Preconstruction Manual ([HPCM](#))**

DOT&PF's Federal Highway Administration (FHWA)-approved public involvement procedures have historically been included in Chapter 5, Public Involvement and Agency Coordination, of the HPCM. References to the HPCM Public Involvement and Agency Coordination are included in this chapter. However, if the HPCM's Public Involvement and Agency Coordination Chapter requires a longer review period or additional processes than described in this chapter, the more extensive process will be required.

#### 7.1.3. **NEPA Assignment Program [MOU](#)**

The NEPA Assignment Program MOU (Parts 3.1.2, 3.1.3, 3.2.5 and 3.2.6) requires DOT&PF to include the following disclosure as part of agency outreach and public involvement procedures, including any Notice of Intent (NOI) or scoping meeting notes, as well as on the cover page, in a way that is conspicuous to the reader, of each Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Environmental Impact Statement (EIS), Record of Decision (ROD), biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other analyses prepared under the NEPA Assignment Program MOU, and for memoranda corresponding to any Categorical Exclusion (CE) determination it makes:

*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.*

## **7.2. Federal Requirements for Public and Agency Involvement**

This section provides a brief overview of the different federal requirements that govern public and agency involvement during the environmental review process. Understanding the legal requirements provides a good basis for understanding the agency outreach and public involvement process. Required public involvement processes should be combined and coordinated with the entire NEPA process, as appropriate.

### **7.2.1. National Environmental Policy Act**

NEPA mandates that federal agencies encourage and facilitate public involvement in decisions that affect the quality of the human environment ([40 Code of Federal Regulations \[CFR\] 1500.2\(d\)](#)). By making information available to public officials and citizens before decisions are made, the NEPA process is intended to improve the decision-making process by fostering a better understanding of the environmental consequences of proposed federal actions. The NEPA process is centered on providing good information to the public and decision makers. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment ([40 CFR 1500.1\(c\)](#))

### **Council on Environment Quality NEPA Regulations**

The Council on Environmental Quality (CEQ) regulations for implementing NEPA, found at [40 CFR Parts 1500-1508](#), establish procedures for preparing environmental documents and requirements for administering the NEPA process, including the process for inviting comments, defining agency roles and responsibilities, and addressing interagency disputes. Parts 1500 through 1504 address general NEPA requirements including:

- Public and agency involvement from scoping through the final EIS
- Lead agencies and cooperating agencies
- Public availability of environmental documents and response to public comments received
- Public notices, meetings, and hearings

[40 CFR 1506.6](#) presents specific public involvement requirements, including:

- Providing public notice of public hearings, meetings, and availability of environmental documents to those who may be interested or affected
- Holding public hearings or public meetings when appropriate and in accordance with agency requirements
- Soliciting information from the public
- Ensuring public availability of environmental documents, the comments received, and any underlying documents pursuant to the Freedom of Information Act (FOIA)

### **Federal Highway Administration NEPA Regulations**

FHWA regulations for implementing NEPA are found at [23 CFR 771](#), Environmental Impact and Related Procedures. Section [771.105\(c\)](#) establishes FHWA policy that public involvement and a systematic interdisciplinary approach are essential elements of developing proposed projects. Section [771.111](#) provides guidance on early agency and public engagement in the environmental review process and prescribes requirements for State Departments of Transportation to develop their own public involvement/public hearing procedures. These procedures must provide for:

- Coordination of public involvement and any required public hearings with the entire NEPA process.
- Early and continuing opportunities for public involvement to identify project impacts.
- Public hearings or the opportunity for public hearings for any Federal-aid project that requires significant amounts of right-of-way; substantially changes the layout or function of connecting roadways or the facility being improved; has a substantial adverse impact on abutting property, or otherwise has a significant social, economic, environmental, or other effect; or if a public hearing is in the public interest.
- Reasonable notice of any public hearings or opportunity for public hearings, including the availability of information and information required to comply with public involvement

requirements of other laws, Executive Orders (EOs), and regulations.

- Explanation of specified information at a public hearing, as appropriate:
  - Project purpose and need, and consistency with local planning
  - Project alternatives and major design features
  - Social, economic, and environmental impacts of the project
  - Relocation assistance and the right-of-way acquisition process
  - Procedures for making oral and written public comments
- Submittal to FHWA of a transcript of any public hearing or certification that a public hearing opportunity was offered when required, along with copies of all written public comments. [Under NEPA Program Assignment, the region must provide SEO a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.]
- Public notice and an opportunity for public comment on a Section 4(f) de minimis impact finding.

Public involvement requirements for different types of environmental documents: Categorical Exclusions ([23 CFR 711.117](#)), EAs/Findings of No Significant Impact (FONSI) ([23 CFR 771.119](#) and [23 CFR 771.121](#)), and EISs/Records of Decision (RODs) ([23 CFR 771.123](#), [23 CFR 771.125](#), and [23 CFR 771.127](#)) are described below in Section 7.4, Categorical Exclusions, Section 7.5, Environmental Assessment, and Section 7.6, Environmental Impact Statement.

#### **FHWA Guidance**

FHWA's *Guidance for Preparing and Processing Environmental and Section 4(f) Documents*, [Technical Advisory 6640.8A](#) is not regulatory but provides helpful guidance on a number of topics, including distribution of environmental documents and handling comments and responses.

#### **7.2.2. Additional Public and Agency Involvement Required Actions Under the NEPA Umbrella**

When considering the proposed action, identify issues that may be important to the potentially affected population and relevant agencies. Additional public and/or agency outreach may be required if there are potential impacts to the following:

##### **Section 4(f) of the Department of Transportation Act of 1966 (23 USC 138 and 49 USC 303)**

Publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites (See 8.6.1., Section 4(f) and 6(f), De Minimis Impact Finding for a Park, Recreation Area, or Wildlife and Waterfowl Refuge, Public Review and Comment; and De Minimis Impact Finding for an historic site, SHPO and Public Review and Comment and Chapter 10, Cultural Resources).

- Prior to making a de minimis finding for parks, recreation areas, and wildlife and waterfowl refuges, public notice and an opportunity for public review and comment are required ([23 CFR 774.5\(b\)](#)).
- Prior to making a de minimis finding for historic sites, State Historic Preservation Officer and the Advisory Council on Historic Preservation (if involved) must be consulted, and a public notice must be completed ([36 CFR Part 800](#)).

It is recommended the public notification process for a de minimis finding be:

- Combined with the Notice of Availability for the EA or Draft EIS
- Made available at project public meetings and hearings, and at the same locations as the NEPA documents

##### **Section 106 of the National Historic Preservation Act (36 CFR Part 800)**

Section 106 public and agency outreach requirements include identifying consulting parties and conducting formal Section 106 consultation; providing the public with information about the project and its potential effects on historic properties; and seeking public comment. (See Chapter 10, Cultural Resources and Section 8.6.1, Section 4(f) and 6(f), De Minimis Impact Finding for an historic site, SHPO and Public Review and Comment)

## **Floodplain Management** ([Executive Order 11988](#) and [USDOT Order 5650.2](#))

If the project has the potential to impact a floodplain, DOT&PF is required to provide opportunity for early public review and comment, including identification of floodplain encroachments in public presentations, and disclosure of any potential significant encroachments in public notices such as the Notice to Begin Engineering and Environmental Studies, public hearing notices, notices offering opportunity for a hearing, and Notice of Availability.

## **Protection of Wetlands** ([Executive Order 11990](#))

The opportunity for public review of potential impacts to wetlands may occur through a statement in public notices such as the Notice to Begin Engineering and Environmental Studies, public hearings, and Notice of Availability that identifies potential impacts to wetlands.

## **Federal Actions to Address Environmental Justice in Minority Populations and Low-Income**

DOT&PF must address Environmental Justice (EJ). If a project involves potential impacts on minority and low-income populations, DOT&PF must, as part of public outreach:

- Provide meaningful opportunities for public involvement to minority and low-income populations ([USDOT Order 5610.2\(a\)](#), 5b.(1))
- Provide access to information regarding potential impacts to minority and low-income populations ([USDOT Order 5610.2\(a\)](#), 5b(2))
- Solicit input from affected minority and low-income populations in considering alternatives (USDOT Order 5610.2(a), 5c(4))

Further direction is given in [USDOT's EJ Strategy](#), specifically Section II (A-3), which encourages coordination with community leaders to develop outreach plans, and exploration of traditional and nontraditional outreach strategies to ensure participation. [CEQ Guidance on EJ](#) provides a list of potential options to consider during public involvement planning in order to overcome potential linguistic, institutional, cultural, economic, historical, or other potential barriers to public participation (Section 2, Public Participation).

## **Improving Access to Services for Persons with Limited English Proficiency (LEP)**([Executive Order 13166](#))

- Requires federal agencies to provide meaningful access to LEP populations. EO 13166 is an implementing regulation under [Title VI \(EO 13166, Section 1\)](#). If a project has potential impacts to LEP individuals, DOT&PF must provide meaningful access to those individuals throughout the NEPA process.
- The U.S. Department of Justice's ([USDOJ's](#)) [LEP Guidance](#) describes a four-factor analysis that can be used to determine what steps should be taken to provide meaningful access for LEP persons and to develop an LEP outreach program ([USDOJ LEP Guidance](#) and [USDOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient \(LEP\) Persons](#)).

## **Right-of-way acquisition and/or relocation** ([Uniform Act](#))

A public hearing or the opportunity for a public hearing is required for any federal-aid highway project that bypasses or goes through a city, town, or village; and must do the same for any Interstate Highway System project. [Title 23 U.S. Code \(USC\) 128](#)

## **Efficient Environmental Reviews for Project Decisionmaking** ([23 USC 139](#))

Public and agency involvement process requirements for transportation projects requiring an EIS.

### **7.2.3. Tribal Consultation**

[Executive Order 13175](#), Consultation and Coordination with Indian Tribal Governments, requires that USDOT honor any requests for government-to-government consultation, and is intended to strengthen the relationship between Indian tribes and the U.S. government.

While DOT&PF is authorized to consult with tribes under the standard Section 106 process, FHWA retains responsibility for direct government-to-government consultation with tribes in accordance with [36 CFR 800.2\(c\)\(2\)\(ii\)\(C\) and \(D\)](#), and Part 3.1.3 of the NEPA Assignment Program MOU. The region should immediately notify SEO if a tribe requests government-to-government consultation.

#### **7.2.4. Other Federal Laws that May Affect Outreach**

In addition to NEPA and Presidential EOs, there are several other federal laws that affect how public and agency outreach should be conducted for NEPA projects. DOT&PF must meet these requirements and should consider them when developing the PIP.

##### **Title 49 CFR, Subtitle A, Part 24, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)**

If property acquisition is anticipated as part of the project, DOT&PF makes its right-of-way brochures available to the public at public hearings.

##### **Title VI of the 1964 Civil Rights Act**

[Title VI of the 1964 Civil Rights Act](#) requires that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” ([42 USC 2000\(d\)](#)).

The DOT&PF [Civil Rights Office, Title VI of the Civil Rights Act of 1964 & Environmental Justice, webpage](#) is a resource to support compliance with applicable state and federal laws that govern public participation. The office maintains a standard statement that must be published with public meeting/hearing notices to meet Title VI requirements ([DOT&PF Title VI Nondiscrimination Program Plan](#)). Contact the Civil Rights Office for the current approved language.

At public events for projects, DOT&PF sign-in sheets include a voluntary self-identification for gender and race per [23 CFR 200.9\(b\)\(4\)](#) (also refer to the [DOT&PF Title VI Nondiscrimination Program Plan](#), p. 26 and p. 38-40). Once the event is complete, the completed sign-in sheets and a [Title VI Report](#) should be filed with the Civil Rights Office Title VI specialist ([DOT&PF Title VI Nondiscrimination Program Plan](#), p.26 and p. 38-40). Although not required, the Civil Rights Office highly encourages that DOT&PF’s [Title VI Brochure](#) be made available to the public at public meetings and hearings.

##### **Americans with Disabilities Act of 1990**

The DOT&PF [Civil Rights Office Americans with Disabilities Act \(ADA\) webpage](#) provides resources for compliance with the [Americans with Disabilities Act](#) (ADA) of 1990, as amended, which prohibits the

exclusion of individuals with disabilities from participation in the services, programs, or activities of a public entity. In addition, it encourages the engagement of people with disabilities. It is DOT&PF’s policy to ensure that communication with persons with disabilities is as effective as communication with others ([DOT&PF ADA Workplan](#), X. Communications, p. 10). When public meetings and events are planned, public notices must include DOT&PF standard language to offer assistance to individuals with disabilities ([DOT&PF ADA Workplan](#), XI. Procedures for Ensuring Accessibility for Public Meetings, p.11). Contact the Civil Rights Office to get the current approved language. All public hearings must be held in accessible facilities. Although not a requirement, it is highly encouraged by the Civil Rights Office that all public meeting facilities be ADA-accessible when possible and that all project websites be ADA-compliant.

#### **7.3. DOT&PF Public Involvement Requirements and Recommendations**

The DOT&PF HPCM is the FHWA approved manual for developing and designing federal-aid highway program projects in Alaska; the HPCM Chapter 5, Public Involvement and Agency Coordination, discusses the following topics:

- Project Development activities, including:
  - Required preparation of a Public Involvement Plan (PIP) for each project that addresses state and federal public involvement requirements and identifies responsibility for implementation of the PIP (engineering manager and REM must concur on the PIP)
  - Maintenance of a master list containing the addresses and contacts for all agencies by the Environmental Section of each region.
- Public involvement activities, including:
  - Public Meetings
  - Notice of Opportunity for Public Hearing
  - Changes in Scope/Public Hearing Opportunity
  - Public Hearings (notice and conduct of)

There are defined minimum requirements for public and agency involvement in the preparation of an

Environmental Assessment (EA) or Environmental Impact Statement (EIS). Public and agency involvement in the preparation of a Categorical Exclusion (CE) is commensurate with a project's type, complexity, and potentially affected environmental resources.

### Requirements

- DOT&PF follows the public hearing requirements specified in [23 CFR 771.111\(h\)](#), FHWA Environmental Impact Related Procedures
- Unless the project is a CE, there must be, at a minimum, an opportunity for a public hearing during the environmental process.
- There must be early public involvement for an EA or EIS
- Prior to formal public hearings, DOT&PF will provide public outreach (via one or more of the following activities):
  - An informal public meeting or workshop
  - Address concerns of local groups wanting discussion prior to the public hearing
  - Conduct face-to-face meetings with interested parties
  - Communicate with affected businesses and residents
  - Provide project data for public review at locations and times convenient for the public
  - Provide radio, television and other available media source, project announcements, including news releases, in conjunction with public meetings.
  - Schedule public meetings within accessible facilities at locations and times to allow for the most public participation.
  - Post meeting notices within the study area
  - Publish notices in the Alaska Administrative Journal, Alaska Online Public Notices, and in local or regional newspapers, and include information required to satisfy public notice requirements for state and federal permits, and federal regulations listed in Section 7.2, Federal Requirements for Public and Agency Involvement

- To satisfy the requirements to hold a public hearing:
  - Hold a public hearing, or
  - Publish two notices of opportunity for public hearing, and hold a public hearing if any written requests are received that cannot be resolved by contact with the requesting party.

See Section 7.5.6., Public Hearing, for more information on Notices of Opportunity for Public Hearing and additional public hearing requirements.

### Recommendations

- Hold a second public hearing for a project with long-term design activities or when design changes result in a re-evaluation of the environmental document.
- Hold a public meeting or workshop for CE projects.

#### 7.3.1. Public Involvement Plan

The HPCM, Public Involvement and Agency Coordination chapter, establishes the Public Involvement Plan (PIP) requirements for each project, including during the preliminary engineering and NEPA (pre-development) stages of the project.

During development of the PIP, the items below may be considered as part of shaping public and agency outreach. None of these are required, but all represent best practice.

**Potentially Affected Population:** When considering the project area and proposed action, an initial list of stakeholders who may have an interest in the project or be affected by the project can be developed. At this stage, one should also consider if there are any EJ/LEP populations that may be affected. Groups to consider include:

- Local, state, and federal government agencies
- Elected officials
- Native Tribes
- Native corporations and associations
- User groups (e.g., airlines, trucking firms)
- Other interest groups (e.g., local Chambers of Commerce, ADA advisory groups, Associated General Contractors, Trucking Association)

- Environmental organizations
- The public
- Property owners and businesses
- Community groups or organizations (e.g., community councils, special interest groups, faith-based organizations)

**Issues:** When considering the proposed action, identify issues that may be important to the potentially affected population and relevant agencies. Additional public and/or agency outreach may be required if there are potential impacts to the following:

- Publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites (Section 4(f))
- Historic properties (Section 106)
- Wetlands (EO 11990)
- Floodplains (EO 11988)
- LEP persons (EO 12898)
- Disproportionately high and adverse impacts to EJ populations (EO 13166)
- Federally recognized tribes (EO 13175)
- Right-of-way acquisition and/or relocation (Uniform Act)

**Level of Controversy:** For each issue and potential stakeholder, DOT&PF may consider the level of interest or controversy (i.e., is the issue of some concern, of moderate concern, or of high concern?) and may wish to provide additional outreach opportunities for projects that may be of higher concern or may affect a greater number of stakeholders. Gauging the potential level of controversy is helpful when developing the scope of an outreach program in order to offer the appropriate level of engagement.

The results of these analyses can inform the public and agency outreach program and create the foundation for the PIP.

## 7.4. Categorical Exclusions

Based on the absence of significant impacts, public involvement for a CE is typically commensurate with a project's type, complexity, and potentially affected environmental resources. DOT&PF may publish a

Notice to Begin Engineering and Environmental Studies to inform the public and agencies of its intent to begin environmental review of a project, even though this Notice is not required for a CE. Prior to publication, the Notice to Begin Engineering and Environmental Studies will be reviewed by the REM.

A CE does not require a public hearing or the opportunity for a public hearing. However, a public meeting or public hearing may be held if a project may have an adverse effect on an environmental resource or the project is controversial.

## 7.5. Environmental Assessment

The information presented below describes public and agency involvement requirements and DOT&PF practices for EA projects. For more information on preparing an EA, refer to Chapter 4 of this manual.

### 7.5.1. Notice to Begin Engineering and Environmental Studies

A Notice to Begin Engineering and Environmental Studies may be published to inform the public and agencies of DOT&PF's intent to begin environmental review of a project. This notice may be published in a local newspaper, sent within a project mailer to appropriate project area zip codes, and/or published online on the State of Alaska Online Public Notices website. Prior to publication, the Notice to Begin Engineering and Environmental Studies will be reviewed by the REM, and must be approved by the NEPA Program Manager.

### 7.5.2. Public Involvement Plan

A PIP should be developed for an EA. Refer to Section 7.3.1, Public Involvement Plan, above for considerations in developing the PIP, and to the following sections for the required NEPA steps.

### 7.5.3. Scoping

Scoping is the term DOT&PF uses to describe early EA activities that engage agencies and the public in:

- Determining the scope of environmental issues to be addressed
- Identifying the alternatives and measures that may mitigate adverse environmental impacts
- Identifying other environmental requirements that should be performed concurrently with the EA (23 CFR 771.119 (b))

Agency consultation must begin at the earliest

appropriate time during the EA process ([23 CFR 771.119\(b\)](#)). Early coordination with appropriate agencies and the public aids in determining the type of environmental review documents an action requires, the scope of the document, the level of analysis, and related environmental requirements ([23 CFR 771.111\(a\)\(1\)](#)). It also aids in identifying environmental impacts, determining alternatives and mitigation, establishing permit requirements, and anticipating issues or concerns that may affect the project design, cost, and scheduling.

There are no mandated scoping requirements for an EA. DOT&PF general practice for EAs is to identify agencies with jurisdiction over resources potentially affected by the proposed project and to distribute scoping letters to those agencies to introduce the project and solicit input. Copies of agency scoping letters and other substantive contacts with agencies and other stakeholders are also maintained in the project file. The EA must include summaries of public engagement activities and the results of agency coordination ([23 CFR 771.119\(b\)](#)). Public scoping meetings may also be held and, if held, should be noticed in the same manner as described in the HPCM Public Involvement and Agency Coordination chapter, Notice to Begin Engineering and Environmental Studies. Refer to HPCM Public Involvement and Agency Coordination chapter, Public Meeting / Open House, below for details on holding public meetings.

#### **7.5.4. Public Meeting / Open House**

A public meeting or open house is held by the project team to inform the public about a project, and to solicit project comments and concerns. Public meetings may be held during scoping or for circulation of an environmental decision document.

Public notice is required for NEPA-related public meetings in the same manner as described for a Notice of Availability above ([40 CFR 1506.6\(b\)](#)). When a public meeting or open house is held, refer to Section 7.2.4., Other Federal Laws that may Affect Outreach, for details on meeting Title VI and ADA requirements and recommendations for planning providing notice of the event. When the public event is complete, a memo to the project file should be prepared that summarizes the event and the nature of public comments received ([HPCM](#)).

If a public meeting or open house is held in conjunction with a public hearing or opportunity for

public hearing, follow the requirements described in Section 7.5.6., Public Hearing, below.

#### **7.5.5. Notice of Availability and EA Distribution**

DOT&PF will issue a public Notice of Availability once the Statewide Environmental Office (SEO) has approved the EA for distribution. The Notice of Availability briefly describes the project and its impacts, and specifies the locations where the EA can be reviewed. The region will distribute copies of the approved EA to the appropriate agencies for their review and comment and will publish the Notice of Availability by the following methods as appropriate:

- In local newspapers, if any
- In the Alaska Online Public Notices
- By mail or email
- By other methods, as appropriate

The region will make the approved EA available for public review as follows:

- By request
- Online (e.g., project websites, Facebook)
- At local libraries, if any
- At DOT&PF region and SEO offices
- At other locations, as appropriate (e.g., community centers)

It is recommended that public and agency review occur concurrently. The EA is made available for review for a minimum of 30 days from the date the Notice of Availability was published ([23 CFR 771.119\(e\)](#)). A 30-day review period is standard, but may be reduced or increased in rare circumstances with SEO approval.

If the project has potential impacts to floodplains, wetlands, Section 4(f) properties, and/or Section 106 properties, consider incorporating language in the Notice of Availability to cover public notification requirements for these topics. The Notice of Availability shall include language from the Civil Rights Office to address Title VI compliance and ADA accessibility (see Section 7.2.4, Other Federal Laws that May Affect Outreach, above). The REM is responsible for transmitting the draft Notice of Availability text to the SEO for review and approval for publishing.

The Notice of Availability must be mailed to those who request it ([40 CFR 1506.6\(b\)\(1\)](#)) and should be published in a local newspaper, if any, and sent by DOT&PF to affected federal, state, and local government entities and state intergovernmental review contacts ([23 CFR 711.119\(d\),\(e\),\(f\)](#)). The project team will determine the appropriate notification media based on the project's potential impacts and affected populations. FHWA guidance encourages distribution of the EA to agencies known to have interest or special expertise relative to the project, as identified during scoping, and to any agency that has permitting authority ([T 6640.8A \(IV\)\(A\)](#)).

Final technical studies may be made available for public or agency review with the EA, with the exception of technical studies and other documentation regarding cultural resources (e.g., Section 106 consultation materials) containing sensitive information, which may be restricted. The Environmental Impact Analyst or REM will consult with the region Cultural Resource Specialist for consistency with DOT&PF's [Cultural Resources Confidentiality Guidelines](#) before allowing public or agency review of materials containing potentially sensitive information.

The HPCM Public Involvement and Agency Coordination chapter requires that notices be combined when applicable. DOT&PF may publish a combined Notice of Availability and Notice of Public Hearing/Notice of Opportunity for Public Hearing, when applicable.

### **7.5.6. Public Hearing**

#### **Planning**

A public hearing is a formal meeting required by FHWA regulations, as described below, with specific requirements that must be met. SEO is responsible for the decision to hold a public hearing. While the degree of public participation and agency involvement and the means of soliciting input for EAs are commensurate with the project type and complexity, an EA project will include, at a minimum, the opportunity for a public hearing during the project development process.

If DOT&PF determines that a public hearing or opportunity for a public hearing is required in accordance with [23 CFR 771.111\(h\)\(2\)\(iii\)](#) (see Section 7.1.3., NEPA Assignment Program MOU, above), planning should begin as early as possible.

The HPCM requires formal public hearings to be preceded by public outreach activities (see suggested list of activities in [HPCM](#)).

If DOT&PF anticipates a request for a public hearing or meeting, a combined open house/ and public hearing, or public meeting and public hearing may be held. The format of the hearing can be either a formal hearing or an "open forum hearing." A formal public hearing must include a court reporter who prepares a written transcript, and usually includes a hearing officer and panel to receive comments. An "open forum" hearing allows interested parties to comment orally before a court reporter without a public audience (for more information see [FHWA Transportation Planning Capacity Building: Planning for a Better Tomorrow](#)).

#### **Notice of Opportunity for Public Hearing**

The following content should be included in the Notice of Opportunity:

- NEPA Assignment Program MOU required disclosure, as follows:

*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.*
- Explanation of the procedure to request a public hearing
- Specification of the timing of a request for a public hearing:
  - Not more than 21 days after the publication of the first notice and not more than 14 days after the publication of the second notice
  - Deadline for the request for a public hearing
- Statement that the hearing is "for the purpose of considering the economic, social, and environmental effects of the project and its consistency with the goals and objectives of such urban planning as has been carried out by the community"
- Description of the proposed project and a map or graphic
- Contact person and phone number

- Location of the following information:
  - Drawings, maps, plans, reports, or other project information
  - Environmental documents
  - Written views from agencies, private groups, and individuals

The Notice of Opportunity for Public Hearing must be published:

- Twice: two notices of opportunity
- By the following methods as appropriate:
  - In local newspapers, if any
  - In the Alaska Online Public Notices
  - By mail or email
  - In the Alaska Administrative Journal
  - By other methods, as appropriate

The Notice of Opportunity may be published jointly with the Notice of Availability, and if so must meet the same publication standards and be distributed to the same parties listed above for Notice of Availability ([40 CFR 1506.6\(b\)](#); see Section 7.5.5., Notice of Availability and EA Distribution).

All information referenced in the Notice of Opportunity must be made available for copying and/or public inspection; the information may be made available on a project website. Following publication, a copy of the Notice of Opportunity for Public Hearing should be provided to the SEO, the federal funding agency (i.e., FHWA) and the Commissioner's office (as per the [HPCM](#)). If no requests for a public hearing are received during the time specified in the notice, this should be documented in the project files.

### Notice of Public Hearing

In addition to meeting NEPA requirements, a Notice of Public Hearing is required to provide the information necessary to comply with the public involvement requirements of other laws, EOs, and regulations ([23 CFR 771.111\(h\)\(2\)\(iv\)](#)). The Notice of Public Hearing may be published jointly with the Notice of Availability, and must meet the same publication standards and be distributed to the same parties listed above for Notice of Availability ([40 CFR](#)

[1506.6\(b\)](#); see Section 7.5.5., Notice of Availability and EA Distribution).

The HPCM Public Involvement and Agency Coordination chapter identifies additional content requirements for a Notice of Public Hearing:

- Background information required for a Notice of Opportunity of Public Hearing as described above
- The procedure for submitting written comments
- The project's purpose and need, alternatives, and tentative schedules for right-of-way acquisition and construction
- Indication that relocation assistance programs will be discussed when applicable
- Mandatory ADA text and other notices required by regulation (e.g., floodplains, wetlands, Section 106)

When a public hearing will be held for an EA, [23 CFR 771.119\(e\)](#) requires that the public receive notice at least 15 days in advance of the hearing. The notice should announce the availability of the EA and tell where the EA can be obtained or reviewed. The hearing should be advertised in the same manner as the Notice of Availability. The notice also must state the deadline for submitting comments, which is 30 days from the availability of the EA, unless DOT&PF determines for good cause that a different period is warranted ([23 CFR 771.119\(e\)](#)). The HPCM Public Involvement and Agency Coordination chapter notes that the final date for submitting comments shall be at least 10 days after the public hearing.

A Notice of Public Hearing will be:

- Published at least twice in a local or regional newspaper: First publication 30 to 40 days prior to hearing; Second publication 5 to 12 days prior to hearing
- Published in the Alaska Administrative Journal
- Published in the Alaska Online Public Notices
- Mailed to appropriate agencies, local public officials and public advisory groups, property owners, and community groups
- Provided to the federal funding agency (i.e., FHWA), the commissioner's office, and the Regional Director

## Conducting the Public Hearing

Public hearings have requirements that do not apply to public meetings. According to [23 CFR 771.111\(h\)\(2\)\(v\)](#), public hearings must explain:

- (A) The project's purpose and need and consistency with local planning;
- (B) Project alternatives and major design features;
- (C) Project impacts;
- (D) Relocation assistance and the right-of-way acquisition process; and
- (E) Procedures for oral and written public comments.

The HPCM Public Involvement and Agency Coordination chapter provides additional guidance on conducting public hearings, including compiling attendance lists, providing pre-addressed envelopes to submit written comments, developing graphics, providing ADA-compliant auxiliary aids and services, holding meetings in accessible facilities during convenient times, and providing additional ways to submit comments. All written and oral public statements made at the public hearing will become part of the project record. To build awareness among the public that their comments and any information given to the project team are subject to FOIA, when requesting comments it is advisable to include language that states: "All public comments received will become part of the public record and may be subject to Freedom of Information Act requests."

For all assigned projects developed under the NEPA Assignment Program, the region must provide SEO a transcript of each public hearing and certification that a required hearing or hearing opportunity was offered, along with copies of all written comments from the hearing and received during the comment period ([23 CFR 771.111\(h\)\(2\)\(vi\)](#)), is to be prepared and submitted to SEO, and a copy placed in the region project file. The HPCM Public Involvement and Agency Coordination chapter directs that a public hearing record, summary of testimony, analysis of comments, and any recommendations should be prepared and given to the engineering manager, who distributes the information.

### 7.5.7. Comment Response

Any comments received, and responses to those comments, must accompany the Final EA ([23 CFR 771.119\(g\)](#)); comments and responses are typically

placed in an appendix. If the EA was revised as a result of a comment, the response should indicate where in the Final EA changes were made.

### 7.5.8. Availability of FONSI

Public circulation is not required for the FONSI, but a Notice of Availability must be sent to involved agencies and state intergovernmental review contacts and be made available to the public upon request ([23 CFR 771.121\(b\)](#)). While not specifically required, it is standard practice to publish the Notice of Availability in the same media outlets used to distribute the Notice of Availability and EA (see Section 5.5.4, Notice of Availability and EA Distribution).

## 7.6. Environmental Impact Statement

Public and agency involvement is an integral part of the EIS process. Because an EIS involves issues and impacts of greater magnitude than other classes of action, public and agency involvement is usually more robust and additional steps are required. The enhanced public involvement requirements are intended to increase engagement with both 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 Notice of Intent, the scoping process, and the information that should be included in the EIS.

### 7.6.1. Efficient Environmental Review Process

Congress included a number of environmental streamlining provisions in 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 Appendix A, Section 6002, "Efficient Environmental Review Process," codified at [23 USC 139](#). The 2012 transportation funding act, Moving Ahead for Progress in the 21st Century (MAP-21), and the 2015 Fixing America's Surface Transportation Act (FAST Act) modified the environmental review process enacted with SAFETEA-LU. The modified process is mandatory for EISs with a Notice of Intent (NOI) dated after August 10, 2005; it is optional (but not frequently used) for EAs. Title 23 USC 139 environmental review process requirements include the following:

- The USDOT is the lead agency for projects under 23 USC 139(c). DOT&PF SEO is the lead agency

under 23 USC 139(c) and the NEPA Assignment Program MOU, for projects designed and constructed by DOT&PF.

- 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 in 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 a notice of final agency action is published in the Federal Register (23 USC 139(i)).

- A single document that includes both the Final EIS and the Record of Decision (ROD) should be used, unless:
  - The final EIS makes substantial changes to the proposed project relevant to environmental or safety concerns
  - 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 in the FHWA and Federal Transit Authority [SAFETEA-LU Environmental Review Process Final Guidance](#) and USDOT's [Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#).

#### **Participants in the Environmental Review Process**

**Lead Agency:** Under [23 USC 139](#), USDOT (FHWA for most DOT&PF projects) serves as the lead federal agency for projects, and DOT&PF, as the direct recipient of federal-aid highway funds, is required to be a joint lead agency (23 USC 139(c), [SAFETEA-LU Environmental Review Process Final Guidance](#), question 16). Because of NEPA Assignment, DOT&PF serves both roles under 23 USC 139. DOT&PF SEO is the lead agency under 23 USC 139(c) and the NEPA Assignment Program MOU, for projects designed and constructed by DOT&PF.

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 Final Guidance](#).

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 Notice of Intent 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: (1) has no jurisdiction or authority with respect to the project, (2) has no expertise or information relevant to the project, and (3) 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 impact that should be addressed in the EIS. The selection and responsibilities of a cooperating agency are described in 40 CFR 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency ([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.

For more information regarding 23 USC 139, see Section 7.6.2., Initiation of 23 USC 139 Environmental Review Process, below.

#### **7.6.2. Initiation of [23 USC 139](#) Environmental Review Process**

As the first step in the 23 USC 139 environmental review process, the project sponsor (typically DOT&PF) is required to notify FHWA 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\(e\)](#)). Under the NEPA Assignment

Program, the REM sends this notification to the Statewide Environmental Program Manager. The draft Notice of Intent may be used for this purpose as long as it contains the required notification information.

#### **7.6.3. Notice of Intent**

A Notice of Intent is the official notification that a federal agency is beginning the process to prepare an EIS. DOT&PF develops a Notice of Intent 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*. CEQ regulations require that the Notice of Intent include the following ([40 CFR 1508.22](#)):

- NEPA Assignment Program MOU required disclosure, as follows:

*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.*

- A description of the proposed project
- A description of potential alternatives, including the no-build alternative
- Information regarding the scoping process, including when and where scoping meetings (if any) will be held
- The name and address of a contact person at DOT&PF who can answer questions about the proposed project and EIS

To use the NOI as the 23 USC 139 initiation of environmental review, it must 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](#).

#### **7.6.4. Coordination Plan**

As required by [23 USC 139](#), DOT&PF develops 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 must be in place within 90 days of NOI publication. An environmental review schedule is required as part of the coordination plan, and should be established after consultation with, and concurrence of, each cooperating and participating agency. The schedule and any adjustments to it must be provided to all participating agencies and made available to the public. The coordination plan will include appropriate elements of the PIP. Refer to Section 7.3.1, Public Involvement Plan, for PIP considerations, and to the following sections for the required agency and public coordination under 23 USC 139.

#### **7.6.5. Scoping**

Scoping is the process through which a federal lead agency solicits input from agencies, other stakeholders, and the public regarding the scope and the significant issues to be analyzed in depth in the EIS ([40 CFR 1501.7](#)). It starts after the Notice of Intent 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 on 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 will develop methodologies to be used to analyze alternatives ([23 USC 139\(f\)\(4\)\(C\)](#)). DOT&PF makes the ultimate decision on the methodologies to employ, 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 appropriate project area zip codes, and/or published online on the State of Alaska Online Public Notices website. It is standard practice to include the same information and distribution list used for a Notice of Availability (see Section 5.5.7, Draft EIS Notice of Availability and Circulation).

#### **7.6.6. Draft EIS Notice of Availability and Circulation**

##### **Notice of Availability**

After the Draft EIS is prepared, DOT&PF must make it available and solicit comments. 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 REM is responsible for transmitting the draft Notice of Availability text to the SEO for review and approval for publishing through FHWA. 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 will also identify the public comment period for the EIS, which will not be fewer than 45 days and not more than 60 days, unless SEO 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, consider incorporating language in the Notice of Availability to cover public notification requirements for these topics (see Section 7.2.4, Other Federal Laws that May Affect Outreach, above). The Notice of Availability should include standard language from

the Civil Rights Office to address Title VI compliance and ADA accessibility (see Section 5.2.4 above).

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

The HPCM Public Involvement and Agency Coordination chapter requires that notices be combined when applicable. It is DOT&PF standard practice to publish a combined notification for an NOA 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 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 to receive EISs on actions of the kind proposed ([40 CFR 1503.1](#)). The Draft EIS transmittal letter and the Draft EIS must identify where comments are to be sent ([23 CFR 771.123\(i\)](#)).

### **7.6.7. Public Hearing**

FHWA's public involvement requirements ([23 CFR 771.111\(h\)](#)) dictate that one or more public hearings or opportunity(s) for a public hearing(s) be held for projects on which an EIS is prepared. The HPCM Public Involvement and Agency Coordination chapter directs that a second public hearing should be considered for all projects with long-term design activities or where concepts change after the initial hearing, resulting in reevaluation of the environmental document. The requirements listed under Section 5.5.6, Public Hearing, apply to public hearings or opportunities for public hearings for EIS documents. In addition, whenever a public hearing is held, the Draft EIS must be available at the public hearing and for a minimum of 15 days in advance of the public hearing ([23 CFR 771.123\(h\)](#)).

### **7.6.8. Comment Response**

The Final EIS is required to discuss all substantive comments received on the Draft EIS, include responses to those comments, and summarize public involvement ([23 CFR 771.125\(a\)](#)). Comment responses are to be written in an appropriate and respectful manner and adequately address the issue or concern raised by the commenter or, when substantive comments do not warrant further response, explain why they do not warrant further response and provide sufficient information to support that position.

### **7.6.9. Distribution of the Final EIS**

The Final EIS is distributed to all agencies, organizations, and individuals who have jurisdiction, provided substantive comments on the Draft EIS, or requested a copy; the EIS must be distributed no later than the time the document is filed with the EPA ([23 CFR 771.125\(g\)](#)). Usually, copies must be provided free of charge; alternatively, 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\(f\)](#)).

Every reasonable effort is to be made to resolve interagency disputes before approving the Final EIS ([23 CFR 771.125\(a\)\(2\)](#)).

The Notice of Availability of the Final EIS must be published in local newspapers (see Section 5.5.4, for details), and the Final EIS made available for public review at the DOT&PF region office and other public locations (see [23 CFR 771.125\(g\)](#)).

### **7.6.10. Record of Decision**

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

If all conditions of MAP-21 Section 139(b) relating to a combined Final EIS and ROD (see Chapter 6, Environmental Impact Statement) are not met, the Final EIS and ROD will be issued separately. If issued separately, the ROD cannot be issued until a minimum of 30 days have passed since the Final EIS became available.

### **7.6.11. Limitation of Claims Notice**

[Title 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*.

## 7.7. Documentation

Documentation is an essential part of NEPA. The documentation and record keeping of public outreach is as important as the outreach itself. Because NEPA is a procedural law, public and agency outreach documentation should be preserved, as it may be critical information in the event of litigation.

A formal transcript of any public hearings must be prepared and included in the project files ([23 CFR 771.111\(h\)\(vi\)](#)).

Although not required, it is DOT&PF standard practice to prepare a Scoping Summary Report at the end of the scoping process. The Scoping Summary Report provides a comprehensive record of the scoping process and of the results of scoping, including significant issues to be addressed in the Draft EIS, alternatives, and purpose and need. If prepared, the Scoping Summary Report should include copies of all outreach materials prepared, certification of publication for all public notices, and copies of all public and agency comments received.

A Draft EIS must include copies of correspondence with agencies and the public, and its public and agency comments and coordination section must summarize the coordination process, including scoping, meetings, and the key input received from the public and agencies. Standard DOT&PF practice is to prepare appendices that include complete records on public and agencies requests for participation and comment, copies of all outreach materials prepared, certifications of publication for all public notices, and copies of public and agency comments received. The Environmental Impact Analyst or REM will consult with the region Cultural Resource Specialist for consistency with DOT&PF's [Cultural Resources Confidentiality Guidelines](#) before allowing public or agency review of materials containing potentially sensitive information.

A Final EIS must summarize public involvement, and discuss substantive comments on the EIS and respond to all substantive comments ([23 CFR 771.125\(a\)\(1\)](#); [40 CFR 1503.4\(a-b\)](#)). Additional public and agency

outreach that occurred between the Draft and Final EIS should be appended to the comments and responses and other relevant documentation to the Final EIS.

The ROD should identify and respond to all substantive comments received on the Final EIS if not combining Final EIS and ROD.

All public involvement materials developed for the project; comments and responses; and correspondence with agencies and the public are to be placed appropriately in the project file.

## Technical Appendix

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### **Council on Environmental Quality**

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

[CEQ Guidance Regarding NEPA Regulations](#). These documents provide the CEQ's guidance on approaches to carrying out various aspects of NEPA, including public involvement.

[CEQ Memorandum on Scoping Guidance](#).

[CEQ Guidance on EJ](#) describes potential innovative outreach measures that may be used to reach minority and low-income populations.

### **DOT&PF**

[Alaska Highway Preconstruction Manual](#) (HPCM) is the guidance document for developing and designing highway and road projects in Alaska.

[DOT&PF Civil Rights Office website](#) contains the DOT&PF VI Program Plan which identifies its requirements for complying with Title VI including those for public involvement.

[DOT&PF SEO website](#) has environmental program and resource information and forms, including the [Section 106 PA](#)

### **EPA**

[EJSCREEN](#): Environmental Justice Screening and Mapping Tool

### **Executive Orders**

[EO 12898, Environmental Justice](#), Sec. 5-5, describes public participation and access to information.

[EO 13166, Limited English Proficiency](#), Sec. 4. Consultations, describes stakeholder outreach and input.

[EO 11990 Protection of Wetlands](#) describes the requirement for early public involvement.

[EO 11988 Floodplain Management](#) includes the requirement for early public involvement.

### **FHWA**

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

These include requirements for public and agency outreach.

FHWA "Efficient Environmental Review Process" is designed to improve and streamline project-specific environmental decision-making. It includes provisions for agency and public involvement. For more information, see [23 U.S.C. 139](#).

Public and agency outreach guidance can be found in FHWA [Technical Advisory 6640.8A](#).

FHWA has developed a number of guidance documents for public and agency involvement. These include

[Public Involvement Techniques for Transportation Decisionmaking](#)

[Public Involvement and its Role in Project Development](#)

[Developing and Advancing Effective Public Involvement and Environmental Justice Strategies for Rural and Small Communities](#)

[Public Involvement/Public Participation web page](#)

FHWA [Section 4\(f\) Policy Paper](#) includes guidance on Section 4(f) outreach.

FHWA [How to Engage Low-Literacy and LEP Populations in Transportation Decision-Making](#) provides guidance on designing and implementing effective public involvement for projects that may affect these populations.

[USDOT LEP Guidance](#) describes the four-factor analysis that can be used to determine the need for and design of an LEP outreach program.

### **Section 106**

The [National Historic Preservation Act of 1966 \(as amended through 2006\)](#).

Section 106 implementing regulations can be found at [36 CFR Part 800](#).

The [FHWA Environmental Review Toolkit for Historic Preservation](#) provides information on methods and analyses regarding Section 106 compliance activities.

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