

5. Environmental Impact Statement

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5.1. Introduction

An Environmental Impact Statement (EIS) is prepared for an action 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 the DOT&PF decision on which alternative to approve. As noted in the FHWA [Environmental Review Toolkit](#), the EIS process is completed in the following ordered steps:

1. Notice of Intent (NOI),
2. Draft EIS,
3. Final EIS, and
4. Record of Decision (ROD) or combined Final EIS/ROD.

A 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 “ensure agencies consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An EIS is a document that informs Federal agency decision making and the public ([40 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 provides 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 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\(a\)](#). :

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 (ROW).
4. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within

an existing transportation ROW.

5. New construction or extension of a separate roadway for buses not located primarily within an existing transportation ROW.
6. New construction of major railroad lines or facilities (e.g., terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation ROW.

5.2. Preparation and Publication of the Notice of Intent

A NOI is the official notification that a federal agency is beginning the process to prepare an EIS. However, the timeline for completing an EIS from NOI to ROD within two years (40 CFR 1501.10 and 23 USC 139 (g)(1)(B)[iii]) will likely require public and agency outreach related to the EIS to occur prior to the NOI). Current practice for pre-NOI activities includes the following. These should be done in conjunction with any cooperating and participating agencies:

- Identify Cooperating and Participating Agencies for the project.
- Develop a draft Purpose and Need.
- Develop a draft Coordination Plan that includes a permitting timetable, including consideration of concurrence points among cooperating agencies for milestones such as Purpose and Need, Alternatives to be Carried Forward, and Preferred Alternative.
- Identify community and stakeholders affected and develop a Public Involvement Plan.
- Identify preliminary Range of Alternatives.
- Determine the extent of analysis needed for each resource.
- Initiate applicable resource surveys/studies.
- Identify potentially significant environmental issues.
- Identify potential mitigation strategies.
- Initiate permit activities as soon as possible, such as pre-application processes.

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*, DOT&PF must submit NOIs prepared under the NEPA Assignment Program to FHWA for publication in the *Federal Register* (See Chapter 7.6.3).

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. It requires 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 First Renewed 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 the Memorandum of Understanding dated April 13, 2023 and executed by FHWA and DOT&PF.

FHWA Technical Advisory 6640.8A also contains 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 briefly identifies and describes the proposed action and the transportation problem(s) or other needs which it is intended to address ([40 CFR 1502.13](#)). It may include discussion of the logical termini (See Section 5.3.2).

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](#)). 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.

This chapter should clearly demonstrate that a need exists and should define the need in terms understandable to the general public. It 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. Table 5-1, while not all inclusive, provides some examples of possible project needs.

**Table 5-1
Need for Action**

| Need | Rationale |
|--|--|
| 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](#).

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.

Alternatives Development

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 provide 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 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. Discussion of each alternative should include a clear, non-technical description of the project concept, location, termini, costs, status of ROW 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 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 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, identifying the preferred alternative in the Draft EIS takes advantage of the combined Final EIS/ROD efficiency provided for in the Moving Ahead for Progress in the 21st Century Act (see MAP-21; and the U.S. Department of Transportation's (USDOT's) [Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews](#)).

If there is no clear preferred alternative, 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 evaluated objectively in the EIS. The Affected Environment & Environmental Consequences 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 material should discuss, commensurate with the potentially affected environment, the potential impacts and the existing social, economic, and environmental setting. Also, it should identify environmentally sensitive features. Consider using graphics and photographs for this purpose. There is a tendency to include too much information in the Affected Environment discussion in the EIS. Descriptions should be no longer than needed to understand the area and the potential impacts of the alternatives.

The Environmental Consequences discussion in 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 the potentially affected environment. 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. It 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:

- FHWA Technical Advisory on NEPA document preparation ([T 6640.8A](#))
- [AASHTO 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 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 the regional preconstruction engineer’s recommendation for public availability and 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 (See EPM Chapter 11).

5.4.1. 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.

5.4.2. 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. Include the LAW legal review statement in the region project file. Legal review results and communications are confidential and remain within DOT&PF and not

available for outside 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 must provide separate QC review completion certification emails (See Section 2.4.7 of the DOT&PF Quality Assurance and Quality Control Plan) to be included in the regional 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. See Chapter 7.

5.5.1. Efficient Environmental Review Process

Congress included several 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 . 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 (23 USC 139(c)).
- 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)).
- Cooperating and participating agencies must 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)).
- 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 and schedule for public and agency participation and comment during the environmental review process (23 USC 139(g)).
- Participating agencies and the public must be given an opportunity for input early 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’s [SAFETEA-LU Environmental Review Process](#) and USDOT’s [Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews](#).

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 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” must 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 1501.8 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 1508.1[e]). 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.

5.5.2. Initiation of Environmental Review Process

As the first step in the 23 USC 139 environmental review process, the REM is required to formally notify the Statewide Environmental Program 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 if it contains the required notification information.

5.5.3. 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 8.2.5 requires that each NOI receive a legal sufficiency determination prior to publication (See EPM Chapter 5.3.2).

DOT&PF submits NOIs prepared under the National Environmental Policy Act (NEPA) Assignment Program to FHWA for publication in the *Federal Register* (See EPM Chapter 7.6.3). CEQ regulations require the NOI include the following ([40 CFR 1501.9\(d\)](#)):

- The purpose and need for the proposed action;
- A preliminary description of the proposed action and alternatives the EIS will consider;
- A brief summary of expected impacts;
- Anticipated permits and other authorizations;
- A schedule for the decision-making process;
- A description of the public scoping process, including any scoping meeting(s);
- A request for identification of potential alternatives, information, and analyses relevant to the proposed action (40 CFR 1502.17); and
- Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement.

For the NOI to serve 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 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 (OPN) website.

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

5.5.4. 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 (See Chapter 7.3.1).

5.5.5. 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 1501.9](#)). 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 1501.9](#)). The public and participating agencies must be given the opportunity to provide timely 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 within 45 days of the NOI date of publication in the *Federal Register*. 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 and in consideration of 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. 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 published online on the State of Alaska OPN website.

5.5.6. 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 1506.10](#)). The Notice of Availability specifies the locations where the EIS can be reviewed (*required*: DOT&PF regional office and project website; *optional*: local public library, 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, 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 on the State of Alaska OPN 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 [Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy](#)

[Act 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\(i\)](#)). 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 those that have been designated as participating or cooperating agencies; and affected state and federal land management agencies ([23 CFR 771.123\(i\)](#)). 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 and transmittal letter must identify where comments are to be sent ([23 CFR 771.123\(k\)](#)).

5.5.7. 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, make the Draft EIS available at the public hearing and for a minimum of 15 days in advance of the public hearing ([23 CFR 771.123\(j\)](#)). For additional information on public hearings, see Chapter 7.

5.6. Preparation of the Final EIS

At the end of the public circulation period, develop a summary of the comments received and a response to each substantive comment or category of comments and prepare the Final EIS. The Final EIS identifies the preferred alternative, discusses the basis for its selection, and evaluates all reasonable alternatives considered ([23 CFR 771.125\(a\)\(1\)](#)). 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\(c\)](#)).

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\(a\)\(1\)](#)). Proposed mitigation measures are presented in the Final EIS as commitments to be incorporated into the project as specified in [23 CFR 771.109](#)(b) and (d).

5.6.1. Final EIS Errata Sheet Approach

When preparing a Final EIS, if modifications to the Draft EIS are minor (i.e., factual corrections or explanations of why the comments do not warrant further response), then errata sheets may be attached to the Draft EIS in lieu of rewriting the Draft EIS for the final document. ([23 CFR 771.125\(g\)](#); [23 USC 139\(n\)](#); [40 CFR 1503.4\(c\)](#); and USDOT's [Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews](#)). The errata sheets and the Draft EIS must remain publicly 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 Department’s position that a comment does 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.

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 (See Chapter 11).

5.6.3. Final EIS Distribution

DOT&PF must file the Final EIS with the EPA in accordance with 40 CFR 1506.10. Follow the procedure outlined in Section 7.6.8. For lengthy documents, DOT&PF may distribute the Final EIS Summary along with an electronic copy or electronic access to the document ([23 CFR 771.125\(f\)](#) and [40 CFR 1502.20](#)). 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), 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.

5.7. Record of Decision

If DOT&PF does not combine the Final EIS and ROD in a single document (Section 5.8) 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 provides details on the QC and approval process. Until the ROD is signed, no additional approvals may be given for the project, except administrative activities such as those taken to secure further project funding.

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 the Final EIS 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 on the cover of the DEIS that the Final EIS and ROD will be combined. For additional information on the combined Final EIS/ROD, see USDOT's [Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act 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 USDOT's *Guidance on the Use of Combined Final Environmental Impact Statements/Records of Decision and Errata Sheets in National Environmental Policy Act Reviews*.

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. 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 1502.20](#)).

The errata sheets provisions of MAP-21 and the combined FEIS/ROD provisions can be utilized together, if the conditions for the use of errata sheets are met (See Section 5.6.1). 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.

5.9. Limitation of Claims Notice

In accordance with 23 CFR 771.139 and 23 USC 139(l), DOT&PF may prepare a notice of final agency action for publication in the Federal Register. This notice establishes a 150-day statute of limitations (SOL) on legal claims against DOT&PF and other federal agencies for certain environmental and other approval actions, if specific circumstances apply. The notice must be published in the *Federal Register* for the 150-day SOL to apply and publication starts the clock for the SOL.

The notice is prepared by DOT&PF and sent to FHWA for them to have published in the Federal Register. The region Environmental Impact Analyst drafts the notice for the REM's review and submittal to the Statewide Environmental Program Manager for review. Once it is approved by the SEO, it must be sent to LAW for legal sufficiency review before sending to FHWA for publishing (23 USC 139(l)).

A notice of final agency action 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 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)].

5.10. Supplemental EIS

According to the CEQ NEPA Regulations ([40 CFR 1502.9\(d\)\(1\)](#)), agencies “shall prepare supplements to either draft or final environmental impact statements if a major federal action remains to occur, and:

- 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 [CEQ NEPA’s 40 Most Frequently Asked Questions, Guidance](#) (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](#).

[Environmental Review Provisions in BIL/IIJA Questions and Answers \(9/8/2022\)](#)