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# Chapter 8

## ENVIRONMENTAL IMPACT STATEMENTS

### 8.1 ENVIRONMENTAL IMPACT STATEMENTS (EIS)

#### 8.1.1 Introduction

An Environmental Impact Statement (EIS) is prepared when it is determined that a project will likely cause significant impacts to the environment. An EIS will provide a discussion of significant environmental impacts and inform decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

See [40 CFR 1502.1 "Purpose"](#) and [40 CFR 1502.2 "Implementation"](#) for detailed guidance on the principles to be followed in preparing EIS documents.

#### 8.1.2 Environmental Impact Statement Compliance Procedures

This Section describes the procedures for preparing and processing an EIS for projects where the FHWA is the lead Federal agency (see [Figure 8.1-A](#)). If a different agency is the lead Federal agency for the project, different procedures may apply, based on the *National Environmental Policy Act* (NEPA) regulations of that agency (e.g., Bureau of Land Management).

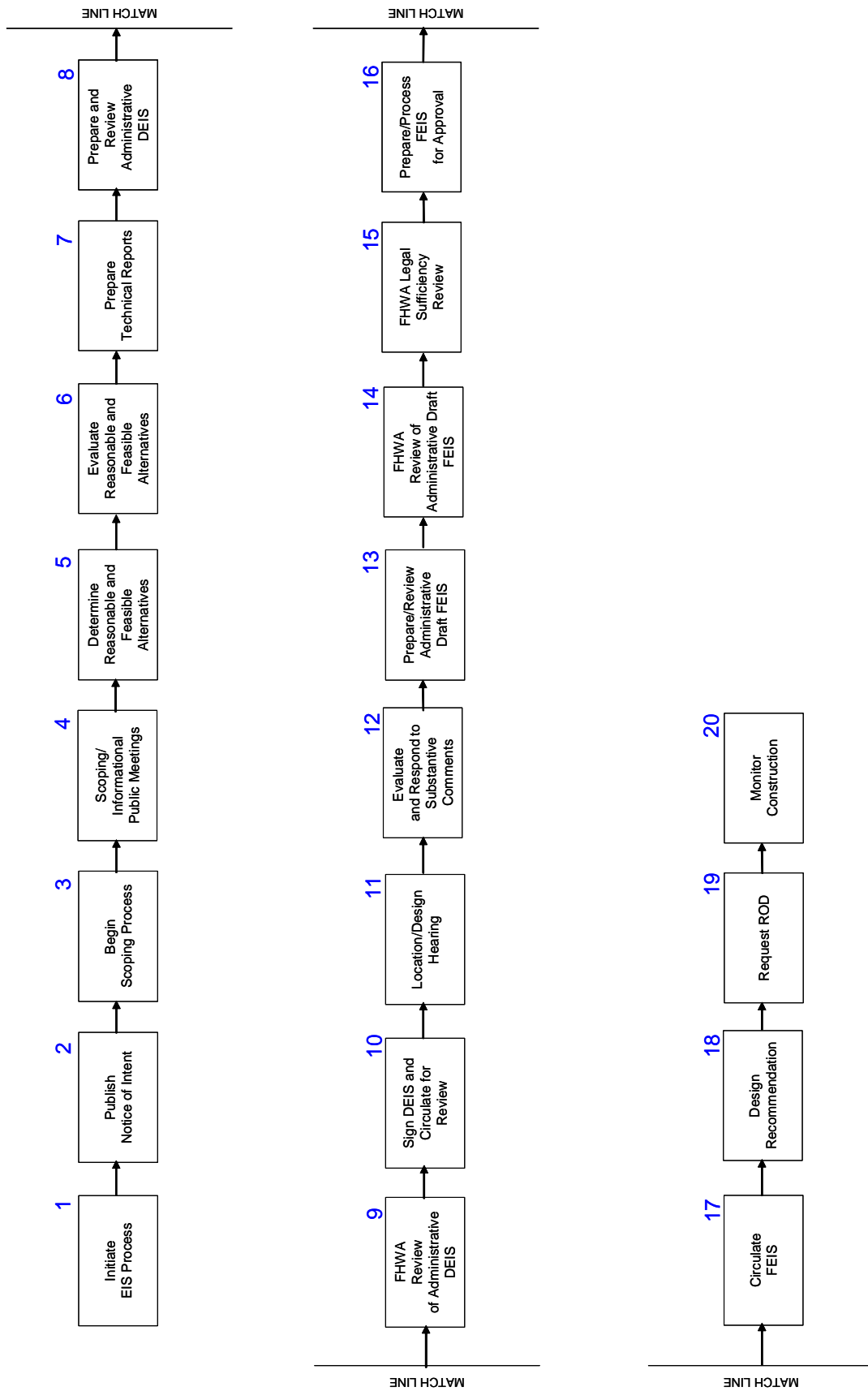


Figure 8.1-A — EIS COMPLIANCE PROCEDURES

**PROJECT ACTIVITY**

Activity Title: Initiate EIS Process

Activity No.: 1

Activity Description:

After notifying the FHWA of the decision to prepare an EIS for a project, the Environmental Services Division will compile the pertinent information from the data gathering and field review activities that provided the basis for the preliminary determination of impacts. The information will be organized by environmental impact issue areas and will be reviewed for completeness. The information will address the following potential impact areas, as applicable:

- socio-economic considerations,
- environmental justice,
- air quality,
- noise,
- hazardous materials/waste,
- floodplain and hydrologic assessment,
- water quality,
- biological resources,
- cultural resources,
- Section 4(f),
- cumulative and secondary impact issues,
- Native American concerns, and
- land use.

The Environmental Services Division will coordinate with the Project Management Team, participating and cooperating agencies and the public to evaluate and refine preliminary project alternatives based on the data gathered, the field review and the following:

- the Purpose and Need Statement for the project,
- public and participating and cooperating agency concerns,
- logical termini and independent utility,
- cost constraints,
- alternate modes of transportation, and
- the no-build alternative.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance

**PROJECT ACTIVITY**

Activity Title: Publish Notice of Intent

Activity No.: 2

Activity Description:

The Environmental Services Division will prepare a draft Notice of Intent (NOI) and submit it to the FHWA Division Office. The FHWA Division Office will submit the NOI for publication in the *Federal Register*.

The NOI will include the following five sections:

- Agency,
- Action,
- Summary,
- For Further Information Contact, and
- Supplementary Information.

Appendix B of [FHWA Technical Advisory T6640.8A](#) provides detailed guidance for preparing an NOI and the content for each of its sections. The publication *FHWA Environmental Guidebook* provides additional information.

Regulations and Guidance

[40 CFR 1508.22](#) "Notice of intent"  
[23 CFR 771.123](#) "Draft environmental impact statements"  
*FHWA Environmental Guidebook*  
[FHWA Technical Advisory T6640.8A](#)

**PROJECT ACTIVITY**

Activity Title: Begin Scoping Process

Activity No.: 3

Activity Description:

The Environmental Services Division and the FHWA will schedule a formal scoping meeting with Native American Tribes and Groups and affected Federal and State agencies, including participating and cooperating agencies, and will hold informational meetings to accomplish scoping objectives with the public and other interested organizations.

Scoping is an early and open process that will be used to identify the range of alternatives, impacts and significant issues to be addressed in the EIS. Other objectives of scoping include:

- identifying and eliminating from detailed study issues that are not significant or that have been covered by prior environmental reviews, and
- identifying other applicable environmental review and consultation requirements so that required studies and analyses can be prepared concurrently and integrated with the EIS.

See [Section 21.9 "Native American Consultation/Coordination"](#).

Regulations and Guidance

[40 CFR 1501.7 "Scoping."](#)

[23 CFR 771.123 "Draft environmental impact statements."](#)

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: Scoping/Informational Public Meetings

Activity No.: 4

Activity Description:

The Environmental Services Division, in cooperation with the FHWA Division Office and NDOT Divisions, will hold additional scoping/informational public meetings to inform the public and other interested parties of the proposed project and afford opportunities to provide their input on issues that should be considered. Information presented at these meetings will include items such as:

- project location,
- project description,
- reason(s) for project initiation,
- alternatives under study and their environmental impacts,
- tentative project schedule, and
- an explanation of the information or input requested from the public.

See [Chapter 9](#) for additional information on NDOT public involvement procedures.

Regulations and Guidance

[23 CFR 771.111 "Early coordination, public involvement and project development"](#)  
[NDOT Policy for Public Involvement/Public Hearing Procedures](#)

**PROJECT ACTIVITY**

Activity Title: Determine Reasonable and Feasible Alternatives

Activity No.: 5

Activity Description:

After the Project Management Team, including the Environmental Services Division, has completed the evaluation and refinement of preliminary alternatives, giving appropriate consideration to input from participating and cooperating agencies and the public, they will reduce the number of alternatives to those preliminarily determined to be reasonable and feasible and representative of the spectrum of alternatives that satisfy the project purpose and need.

The process for determining the reasonable and feasible alternatives is as follows:

- perform a rough evaluation of the potential impacts of each of the preliminary alternatives,
- incorporate input from participating and cooperating agencies and the public,
- estimate the overall reasonableness and feasibility of each alternative,
- ensure that each reasonable and feasible alternative satisfies the project purpose and need,
- identify the reasonable and feasible alternatives, and
- document in the project file the reason or reasons why an alternative has been eliminated.

Regulations and Guidance

*FHWA Environmental Guidebook*

*[FHWA Technical Advisory T6640.81A](#)*

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: Evaluate Reasonable and Feasible Alternatives

Activity No.: 6

Activity Description:

The Environmental Services Division will work with the project designers and members of the Project Management Team, as well as participating and cooperating agencies and the public, in conducting an evaluation of the reasonable and feasible alternatives. The evaluation will consider:

- the results of the project scoping process,
- input from participating and cooperating agencies and the public, and
- the information from the data gathering and field review activities.

This evaluation will focus on defining the issues involved with each alternative to provide a clear basis for selecting the alternatives that will be advanced for study in the EIS.

The evaluation will include environmental, social, economic, right-of-way and engineering analyses of each reasonable and feasible alternative. The level of design effort for each alternative will allow the Project Management Team to apply evaluation criteria to select alternatives.

Based on the results of the evaluation of the reasonable and feasible alternatives, the Project Management Team will select the alternatives that will be studied in the EIS. At least one build alternative and the no-build alternative will be addressed in the environmental document. Reasonable and feasible alternatives that were dismissed will be documented in the EIS, with an explanation of the reasons they were eliminated.

Regulations and Guidance

[40 CFR 1502.14 "Alternatives including the proposed action"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: Prepare Technical Reports

Activity No.: 7

Activity Description:

For each reasonable and feasible alternative selected for study in the EIS, the Environmental Services Division, in cooperation with the Project Management Team and with input from participating and cooperating agencies, will conduct in-depth studies to clearly define potential impacts of each alternative. The analyses may include any or all of the following:

- capacity analysis;
- intersection design studies;
- interchange type and design studies;
- Section 106 compliance issues;
- Section 4(f) compliance issues;
- socio-economic and environmental justice impacts;
- wetlands/Waters of the US involvement/impacts;
- storm water management;
- floodplain and hydrology assessment;
- threatened or endangered species impacts;
- Native American concerns;
- *Migratory Bird Treaty Act* compliance issues;
- invasive species/noxious weeds issues;
- material sites;
- air quality impacts;
- noise impacts;
- hazardous materials/waste involvement;
- staging areas;
- utility corridors;
- construction easements; and
- other issues, as applicable (e.g., Section 6(f), impaired waters/TMDLs, Wild and Scenic Rivers, temporary work in waterways discharge permit, farmland protection).

For environmental issues involved with the selected reasonable and feasible alternatives, the Environmental Services Division will prepare Technical Reports and/or preliminary compliance documentation to provide details on the specific environmental issues and impacts involved. The Technical Reports and/or preliminary compliance documentation will address requirements for resource avoidance and impact minimization and mitigation. The Environmental Services Division will coordinate the Technical Reports and compliance documentation with regulatory and resource agencies and will document the results of the coordination so they may be summarized in the EIS.

For detailed information on the environmental studies performed by the Environmental Services Division, see [Part III "Environmental Studies"](#) of this *Manual*.

**PROJECT ACTIVITY**

Activity Title: Prepare and Review Administrative Draft EIS (DEIS)

Activity No.: 8

Activity Description:

The Environmental Services Division will prepare the Administrative DEIS by considering the following:

- preliminary engineering information for the reasonable and feasible alternatives;
- Technical Reports and preliminary compliance documentation; and
- the results of the scoping process, including coordination with participating and cooperating agencies and the public.

The Administrative DEIS will include the following components:

- cover;
- title/approval page;
- table of contents;
- summary;
- discussion of project purpose and need;
- description of alternatives, including screening methods and results, reasons to eliminate alternatives and a description of alternatives carried forward ;
- description of environmental resources, impacts, including indirect and cumulative impacts, and mitigation;
- public comments and agency coordination;
- Section 4(f) evaluation;
- comparison and selection of alternatives, including a description of the preferred alternative and the reasons for its selection as the preferred;
- list of preparers;
- references;
- distribution list;
- index; and
- appendices.

**PROJECT ACTIVITY**

Activity Title: Prepare and Review Administrative Draft EIS (DEIS)  
(Continued)

Activity No.: 8

Activity Description (continued):

The Environmental Services Division will review the Administrative DEIS and will distribute the document to NDOT Divisions (e.g., road design, bridge design, right-of-way) for review and comment. The Environmental Services Division will incorporate the necessary changes to respond to comments received as a result of the review within the NDOT.

Regulations and Guidance

[40 CFR 1502 "Environmental Impact Statement"](#)

[23 CFR 771.123\(c-d\) "Draft environmental impact statements"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

AASHTO Standing Committee on Environment, *Synthesis of Data Needs for EA and EIS Documentation – A Blueprint for NEPA Document Content*, January 2005

AASHTO/ACEC/FHWA *Improving the Quality of Environmental Documentation*, May 2006

**PROJECT ACTIVITY**

Activity Title: FHWA Review of Administrative DEIS

Activity No.: 9

Activity Description:

The Administrative DEIS will be submitted to the FHWA Division Office for review and comment.

The Environmental Services Division will incorporate changes in the Administrative DEIS as necessary to respond to comments provided by the FHWA Division Office.

**PROJECT ACTIVITY**

Activity Title: Sign DEIS and Circulate for Review

Activity No.: 10

Activity Description:

The NDOT Director and the FHWA Division Administrator will sign the DEIS. The following describes the processing of the DEIS by the FHWA and the USEPA:

1. The DEIS will be circulated for comment and made available for public inspection at the NDOT headquarters, the appropriate District office and at the FHWA Division office. Concurrently, the public hearing (typically a Location/Design Hearing) will be scheduled.
2. The FHWA Division Office will submit five signed copies directly to the USEPA, Office of Federal Activities in Washington, DC for filing.
3. Concurrently, the FHWA Division Office will submit the DEIS to the FHWA Headquarters and the FHWA Resource Center.
4. The USEPA will publish the Notice of Availability for the DEIS in the *Federal Register*. The Notice will be published on Friday of the week following that in which the USEPA received the DEIS. Note that the minimum time period of availability for comment is calculated based on the date of publication in the *Federal Register*.
5. Upon request, the FHWA Division Office will provide interested parties with information or status reports on the DEIS and other elements of the NEPA process.

Regulations and Guidance

[40 CFR 1502.19 "Circulation of the environmental impact statement"](#)

[40 CFR 1503.1 "Inviting comments"](#)

[40 CFR 1506.9 "Filing requirements"](#)

[40 CFR 1506.10 "Timing of agency action"](#)

[23 CFR 771.123\(f-i\) "Draft environmental impact statements"](#)

[23 CFR 771.111\(h\) "Early coordination, public involvement and project development"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: Location/Design Hearing

Activity No.: 11

Activity Description:

The Environmental Services Division, in cooperation with the NDOT Special Projects/Hearings Officer and the FHWA Division Office, will hold a Location/Design public hearing.

See [Chapter 9](#) for information on different public hearing types and other aspects of the NDOT public involvement procedures.

Regulations and Guidance

[23 CFR 771.111\(h\)](#) "Early coordination, public involvement and project development"

[23 CFR 771.123\(h\)](#) "Draft environmental impact statements"

[NDOT Policy for Public Involvement/Public Hearing Procedures](#)

**PROJECT ACTIVITY**

Activity Title: Evaluate and Respond to Substantive Comments

Activity No.: 12

Activity Description:

The Environmental Services Division, in cooperation with the FHWA Division Office will evaluate comments and prepare responses. Possible responses include:

- modifying alternatives including the proposed action;
- developing and evaluating alternatives not previously given serious consideration;
- supplementing, improving or modifying analyses;
- making factual corrections; or
- explaining why the comments do not warrant further agency response by citing the sources, authorities or reasons that support that position and, if possible, indicating those circumstances that would trigger reappraisal or further response.

It is not necessary nor appropriate to respond to all comments by letter. The responses will meet the requirements of [40 CFR 1503.4](#) which includes, as one example, using the FEIS as the mechanism for the response.

Regulations and Guidance

[40 CFR 1503.4](#) "Response to comments"

[23 CFR 771.125\(a\)](#) "Final environmental impact statements"

[CEQ Q&A Question 14d](#) "Rights and Responsibilities of Lead and Cooperating Agencies"

[CEQ Q&A Question 29](#) "Responses to Comments"

**PROJECT ACTIVITY**

Activity Title: Prepare/Review Administrative Draft Final EIS (FEIS)

Activity No.: 13

Activity Description:

The Environmental Services Division will prepare an Administrative Draft FEIS. The Administrative Draft FEIS will reflect responses to comments (see [Activity 12](#)), identify the preferred alternative for the project and evaluate reasonable alternatives considered. It also will discuss substantive comments and responses received on the DEIS, summarize public involvement, including coordination with participating and cooperating agencies, and describe the mitigation measures to be incorporated. The document also will document compliance with environmental laws and Executive Orders.

The Environmental Services Division will review the Administrative Draft FEIS and will coordinate the document with NDOT Divisions for review and comment. The Environmental Services Division also will coordinate the Administrative Draft FEIS with participating and cooperating agencies and the public for their input. The Environmental Services Division will incorporate changes in the document as necessary to respond to comments resulting from the review within the NDOT and the coordination with participating and cooperating agencies and the public.

Regulations and Guidance

[40 CFR 1502.9\(b\) "Draft, final, and supplemental statements"](#)

[23 CFR 771.125 "Final environmental impact statements"](#)

[23 CFR 771.135\(j\) "Section 4\(f\)"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: FHWA Review of Administrative Draft FEIS

Activity No.: 14

Activity Description:

The Environmental Services Division will submit the Administrative Draft FEIS to the FHWA Division Office for review and comment.

The Environmental Services Division will incorporate changes in the Administrative Draft FEIS as necessary to respond to comments provided by the FHWA Division Office and will prepare the Administrative Draft FEIS for the FHWA Legal Sufficiency Review (see [Activity 15](#)).

**PROJECT ACTIVITY**

Activity Title: FHWA Legal Sufficiency Review

Activity No.: 15

Activity Description:

The Environmental Services Division will submit the Administrative Draft FEIS to the FHWA Division Office with a request for legal sufficiency review in accordance with [23 CFR 771.125\(b\)](#).

The FHWA Division Office will coordinate the Administrative Draft FEIS for review by the FHWA Legal Counsel to determine if it meets legal sufficiency requirements. The FHWA Division Office will provide the Environmental Services Division with comments provided by the FHWA Legal Counsel.

Regulations and Guidance

[23 CFR 771.125 "Final environmental impact statements"](#)

**PROJECT ACTIVITY**

Activity Title: Prepare/Process FEIS for Approval

Activity No.: 16

Activity Description:

The Environmental Services Division will incorporate changes in the Administrative Draft FEIS to respond to legal sufficiency comments. The NDOT Director will sign the FEIS and the Environmental Services Division will submit the FEIS to the FHWA Division Office. With the FEIS, the Environmental Services Division also will submit to the FHWA a draft Record of Decision (ROD), a transcript of each public hearing held and a certification that a required hearing was held.

For those actions that do not require prior concurrence from the FHWA Headquarters, the FHWA Division Administrator, or his/her designee, may adopt and sign the FEIS. After adoption and signature, the FHWA Division Administrator will ensure that the Environmental Services Division, the FHWA Headquarters, the FHWA Legal Counsel and the FHWA Resource Center each receives one copy of the signed FEIS.

For projects in the categories described in [23 CFR 771.125\(c\)](#), FEIS's will be submitted to the FHWA Washington Headquarters, Office of Program Development, for prior concurrence. The FHWA Washington Headquarters will notify the FHWA Division Administrator when the FEIS may be released to the public and the USEPA, at which time the FHWA Division Administrator will adopt and sign the FEIS. After adoption and signature, the FHWA Division Administrator will ensure the Environmental Services Division, the FHWA Headquarters, the FHWA Legal Counsel and the FHWA Resource Center each receive one copy of the signed FEIS.

Regulations and Guidance

[23 CFR 771.113\(a\)\(2\)](#) "Timing of Administration activities"  
[23 CFR 771.125\(c\)](#) "Final environmental impact statements"  
[23 CFR 771.125\(e\)](#) "Final environmental impact statements"  
[23 CFR 771.135\(l\)](#) "Section 4(f)"  
[CEQ Q&A Question 6](#) "Environmentally Preferable Alternative"  
[CEQ Q&A Question 34b](#) "Records of Decision"

**PROJECT ACTIVITY**

Activity Title: Circulate FEIS

Activity No.: 17

Activity Description:

The Environmental Services Division will circulate the document to entities and the public that made substantive comments on the DEIS or requested a copy of the FEIS. Circulation will be accomplished no later than the date the document is filed with the USEPA. The following describes the processing of the FEIS by the FHWA and the USEPA:

1. The FHWA Division Office will submit the signed FEIS directly to the USEPA Office of Federal Activities in Washington, DC.
2. The USEPA will publish the Notice of Availability for the FEIS in the *Federal Register*. The publication date will be on Friday of the week following that in which the USEPA received the FEIS. The date of publication in the *Federal Register* will establish the beginning of the 30-day period that will elapse before the FHWA can sign the ROD.
3. Upon request, the FHWA Division Office will provide interested parties with information or status reports on the EIS and other elements of the NEPA process.

The Environmental Services Division will circulate the FEIS in accordance with the regulations and guidance cited below. The Environmental Services Division will evaluate comments received on the FEIS. The Environmental Services Division will also identify and respond to substantive comments in the draft ROD prepared for the project and will summarize and respond to other comments.

Regulations and Guidance

[40 CFR 1502.19 "Circulation of the environmental impact statement"](#)

[40 CFR 1506.9 "Filing requirements"](#)

[40 CFR 1506.10 "Timing of agency action"](#)

[23 CFR 771.125\(f\) "Final environmental impact statements"](#)

[23 CFR 771.125\(g\) "Final environmental impact statements"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

**PROJECT ACTIVITY**

Activity Title: Design Recommendation

Activity No.: 18

Activity Description:

The Environmental Services Division, in cooperation with the Project Management Team, will evaluate:

- project impacts,
- engineering and other constraints, and
- comments received.

Based on the above evaluation, the Roadway Design Division, in cooperation with the Project Management Team, will prepare the Design Recommendation. The Design Recommendation will include responses to comments on the FEIS and will identify and describe the preferred alternative.

The recommendation on the preferred alternative will be coordinated with participating and cooperating agencies and the public. After incorporating any changes to respond to the input from the participating and cooperating agencies and the public, the preferred alternative will be submitted to the Assistant Director for Engineering for approval.

Regulations and Guidance

*FHWA Environmental Guidebook*

*[FHWA Technical Advisory T6640.8A](#)*

*FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance*

**PROJECT ACTIVITY**

Activity Title: Request ROD

Activity No.: 19

Activity Description:

The Environmental Services Division will prepare a revised draft ROD reflecting the selected project alternative. The draft ROD will be circulated among the appropriate NDOT personnel and will be coordinated with participating and cooperating agencies and the public prior to submitting the document to the FHWA.

After circulation/coordination of the draft ROD and responding to any substantive issues raised, the Environmental Services Division will submit the draft ROD to the FHWA Division Office. The FHWA will complete and sign a ROD no sooner than 30 days (the FHWA may adopt or revise the draft ROD) after publication of the FEIS notice in the *Federal Register*, or 90 days after publication of a notice for the DEIS, whichever is later.

The ROD will address the following key items:

- identification of the selected alternative;
- description of each alternative considered and identification of the environmentally preferred alternative or alternatives;
- explanation of the balancing of values that formed the basis for the project decision;
- explanation of the basis for any Section 4(f) approval, if applicable;
- description of the specific measures adopted to minimize environmental harm and identification of standard measures (e.g., erosion control) appropriate for the proposed action;
- description of any monitoring or enforcement program that has been adopted for specific mitigation measures;
- identification of and response to substantive comments received on the FEIS; and
- summarization of and response to other comments provided, where appropriate.

See [Section 2.3 "Preparing an Administrative Record"](#).

Regulations and Guidance

[40 CFR 1505.2 "Record of decision in cases requiring environmental impact statements"](#)

[23 CFR 771.127 "Record of decision"](#)

*FHWA Environmental Guidebook*

[FHWA Technical Advisory T6640.8A](#)

**PROJECT ACTIVITY**

Activity Title: Monitor Construction

Activity No.: 20

Activity Description:

During the implementation phase of the project, the Environmental Services Division will monitor construction activities to ensure the contractor complies with the specifications and special provisions in the Construction Contract Documents, especially those concerning:

- permit obligations,
- environmental commitments, and
- environmental mitigation measures.

Representatives of the Environmental Services Division will attend preconstruction conferences for projects involving permit obligations, environmental commitments or environmental mitigation measures.

See [Section 2.4](#) for additional information on environmental commitments/permit obligations, including a sample Environmental Commitment Checklist.

Regulations and Guidance

FHWA/FTA SAFETEA-LU Environmental Review Process Final Guidance  
AASHTO Practitioner's Handbook 04 *Tracking Compliance with Environmental  
Commitments/Use of Environmental Monitors*



## 8.2 SUPPLEMENTAL EIS

The regulations and guidance cited below describe those circumstances where preparation of a Supplemental EIS may be appropriate (e.g., substantial changes in the proposed action, significant new information regarding environmental concerns) and provide direction on the format, content and processing of a Supplemental EIS:

1. [40 CFR 1502.9\(c\) "Draft, final and supplemental statements"](#)
2. [23 CFR 771.130 "Supplemental environmental impact statements"](#)
3. [FHWA Technical Advisory T6640.8A](#)



### 8.3 RE-EVALUATIONS

The regulations and guidance cited below describe the triggers (e.g., timeframes) for re-evaluating NEPA documents and approvals:

1. [23 CFR 771.129 "Re-evaluations"](#)
2. [FHWA Technical Advisory T6640.8A](#)
3. [CEQ Q&A Question 32 "Supplements to Old EISs"](#)

