

FTA

FEDERAL TRANSIT ADMINISTRATION

Introduction to NEPA Compliance March 29, 2017

Mark A. Assam, AICP
Environmental Protection Specialist

Elizabeth Breiseth
Environmental Protection Specialist



U.S. Department of Transportation
Federal Transit Administration



What is NEPA?

NEPA

- The National Environmental Policy Act of 1969 (42 USC 4321 et seq.), as amended
- The primary law governing the Federal Transit Administration's environmental protection process

NEPA Background

- Signed into law by President Nixon on January 1, 1970
- NEPA is short, simple, and comprehensive
- It established a national policy to protect the environment
- Created the Council on Environmental Quality (CEQ)
- Required that environmental impact statements be prepared for major federal actions having a significant effect on the environment



NEPA Umbrella

- Native American Graves Protection and Repatriation Act
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Executive Order 13045 (Protection of Children)
- Section 4(f) of the DOT Act (49 USC 303)
- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Farmland Protection Policy Act
- Endangered Species Act of 1973
- Fish and Wildlife Coordination Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Resource Conservation and Recovery Act of 1976
- National Historic Preservation Act of 1966
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- American Antiquities Act
- American Indian Religious Freedom Act
- Land and Water Conservation Fund Act
- Water Bank Act
- Executive Order 11988 (floodplains)
- Executive Order 11990 (wetlands)
- Executive Order 13514 (federal leadership in Environmental, Energy, and Economic Performance)
- Executive Order 13112 (Invasive Species)

NEPA Purpose

CEQ's NEPA regulations at 40 CFR 1500.1(c) state:

Ultimately, of course, it is not better documents but **better decisions** that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to **foster excellent action**. 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**. These regulations provide the direction to achieve this purpose.





What does NEPA require?

"Action-forcing" provisions of NEPA Sec. 102(c) (42 USC 4332)

- To the extent possible, policies, regulations, and laws of the federal government must be interpreted and administered in accordance with NEPA
- Federal agencies must use an interdisciplinary approach in planning and decision-making on actions that impact the human and natural environment
- The preparation of an EIS is required on all major federal actions that may significantly affect the human or natural environment



What does this mean to you?

NEPA Compliance Is Required

Under the federal surface transportation statutes (23 USC Highways and 49 USC Transportation), the Secretary of Transportation must ensure NEPA mandates have been met before approving applications for federal financial assistance





How do we comply?

NEPA Regulations

23 CFR 771

- Codifies the joint FTA/FHWA process for complying with NEPA and the federal surface transportation statutes
- Provides agencies' policy of combining all environmental analyses and reviews into a single process
- Defines the roles and responsibilities of FTA and its grant applicants in preparing documents, and in managing the environmental process within the various project development phases



Key Point: FTA owns the NEPA process and is responsible for ensuring NEPA compliance

Initial Project Development

- Talk to your FTA grant manager— talk early and often
- Consider NEPA early in your project development



Project Description

- Develop a complete project description
- Includes the “what”, “where”, “why”, “when”, and “how” of your project



Project Description

A good project description has these components:

- Summary of prior planning work
- Project's general purpose and need or a general statement of need
- Decision process that arrived at the project
- Graphics/maps/design layouts of the planned facility, project location, proposed termini, and station locations/sizes
- Maintenance facility details (existing or proposed)
- Other project features
- Proposed NEPA Class of Action and justification rationale

NEPA Class of Action

- Determines the breadth and depth of the environmental review and technical analysis, and whether certain requirements apply
- Establishes the level of involvement and review by the public and resource agencies
- Influences project budget and schedule
- Affects the success of potential legal challenges
- Knowing the triggers for each class of action can save time and effort

NEPA Class of Action Definitions

23 CFR 771.115

Class I – Environmental Impact Statement (EIS)

- New major capital projects
- Projects with substantial public controversy
- Projects with significant, unavoidable adverse impacts

Class II – Categorical Exclusion (CE)

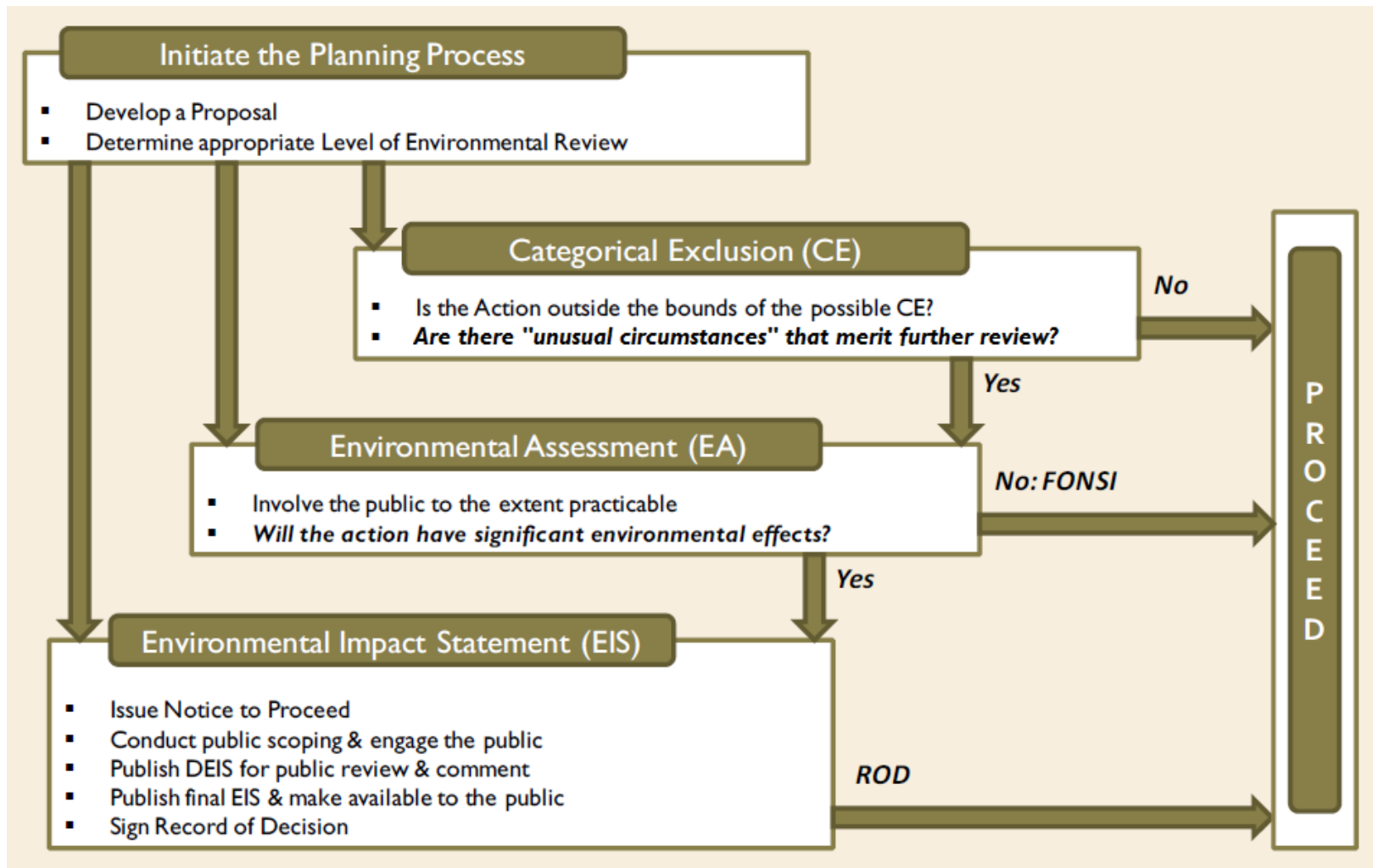
- Projects with none to a few minor impacts
- Often entirely within existing transportation right-of-way
- Typically no public involvement required

Class III – Environmental Assessment (EA)

- Projects that do not qualify for CE
- Unclear whether impacts are significant



NEPA Class of Action



NEPA Class of Action Examples

Class I – Environmental Impact Statement (EIS)

- Central Corridor LRT Project – Metropolitan Council, Minnesota
<http://metrocouncil.org/Transportation/Projects/Current-Projects/Central-Corridor/Environmental.aspx>

Class II – Categorical Exclusion (CE)

- Red North Station Interim Improvements – Chicago Transit Authority, Illinois
<http://www.transitchicago.com/rednorth/>

Class III – Environmental Assessment (EA)

- The Milwaukee Streetcar – City of Milwaukee, Wisconsin
<http://www.themilwaukeeestreetcar.com/EA-and-FONSI.php>

Categorical Exclusion (CE)

- Categorical Exclusions (CEs) are actions which do not individually or cumulatively have a significant effect on the human and natural environment (40 CFR 1508.4)
- CEs are those projects that are either listed in 23 CFR 771.118(c), or other actions shown not to have the potential for a significant environmental effect through documentation under 23 CFR 771.118(d)
- Have no “Unusual Circumstances” pursuant to 23 CFR 771.118(b)
- Neither an EA nor an EIS is required
- If the proposed project and its impacts are very unclear, a CE is not appropriate

Categorical Exclusion (CE) Unusual Circumstances

23 CFR 771.118(b)

1. Significant environmental impacts
2. Substantial controversy on environmental grounds
3. Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act
4. Inconsistencies with any federal, state, or local law, requirement or administrative determination relating to the environmental aspects of the action

Categorical Exclusion (CE) examples with potential issues or Unusual Circumstances

- **Bus Garages**
 - Locating near residential uses
 - Locating near a park
- **Transit Centers**
 - Locating in a historic district
 - Contaminated land acquisition
- **Streetcars**
 - Traffic/parking impacts
 - Noise
 - Vibration



Potential Unusual Circumstances



Categorical Exclusion (CE) Documentation

- No set format or documentation requirement, however, FTA Region 5 has a standardized checklist
- Specific documentation required is at the discretion of the FTA reviewer. Typically documentation to clearly demonstrate no significant impacts and no Unusual Circumstances.
- Grant applicant typically prepares the CE document for FTA concurrence and approval
- All necessary documentation should be recorded in TEAM

Date _____
Grant Applicant _____

INFORMATION REQUIRED FOR PROBABLE
CATEGORICAL EXCLUSION
(23 CFR 771.118)

___ A. DETAILED PROJECT DESCRIPTION:

___ B. LOCATION (INCLUDING ADDRESS): Attach a site map or diagram, which identifies the land uses and resources on the site and the adjacent or nearby land uses and resources. This is used to determine the probability of impact on sensitive receptors (such as schools, hospitals, residences) and on protected resources.

___ C. METROPOLITAN PLANNING AND AIR QUALITY CONFORMITY: Is the proposed project "included" in the current adopted MPO plan, either explicitly or in a grouping of projects, or are appropriate phases of the project included in the TIP? What is the conformity status of the TIP?

___ D. LAND USE AND ZONING: Describe existing land use and zoning in the project area, and consistency with proposed use.

___ E. TRAFFIC IMPACTS: Describe potential traffic impacts; including whether the existing roadways have adequate capacity to handle increased bus and other vehicular traffic.

___ F. CO HOT SPOTS: If there are serious traffic impacts at any affected intersection, and if the area is nonattainment for CO, demonstrate that CO hot spots will not result.

___ G. HISTORIC RESOURCES: Describe any cultural, historic, or archaeological resource that is located in the immediate vicinity of the proposed project and the impact of the project on the resource.

___ H. VISUAL QUALITY: Describe the existing visual setting and identify any sensitive viewers. Describe the visual impact of the proposed project.

1

Environmental Assessment (EA)

- Not in either CE list; **uncertainty** exists as to potential for significant impacts, more information needed
- Need for **public involvement**
- Need for extensive **agency coordination**
- Numerous **protected resources** are present and affected by the project
- Process ends with a **Finding of No Significant Impact (FONSI)**, or elevated to an EIS if significant impacts are identified that cannot be mitigated or if public controversy warrants it

Environmental Assessment (EA) Sections

- **Need** (why are you doing the project?)
- **Alternatives:**
 - No Build and Proposed Action (minimum)
 - Need sufficient detail (and mitigation)
- **Impact Analysis:**
 - Consider human and natural environment
 - Reasonable steps to minimize adverse effects (49 USC 5324 (b))
- **Mitigation:**
 - Distinguish between mitigation that reduce impacts to less than “significant” (per CEQ) and “other” mitigation
 - Include mitigation measures for adverse impacts that will support a FONSI



Environmental Impact Statement (EIS)

- Typically for large capital projects and major federal actions
- Chosen based on **complexity, scale, and significance** of environmental issues (natural and/or human environment), or **public controversy**
- Helps to **limit legal liability risk** with documented structured decision-making and robust technical analysis
- Need for **enhanced public engagement** and advertisement
- Process ends with a **Record of Decision (ROD)**

Environmental Impact Statement (EIS) Sections

An EIS has similar core requirements as EA (additional items required are **in red**):

- **Front Matter:** Cover sheet, Table of Contents, Abstract
- **Executive Summary** (may be published separately)
- **Purpose and Need**
- **Alternatives:** development process and description of alternatives
- **Affected Environment**
- **Impact Assessment** (direct, indirect, cumulative and construction impacts)
- **Mitigation Measures**
- **Evaluation of Alternatives**
- **List of Preparers**
- **Distribution List**
- **Index**
- **Appendices:** supporting documentation for EIS analyses

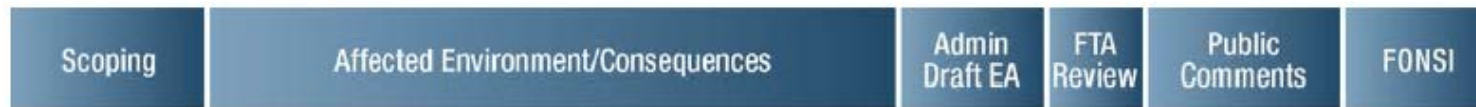


NEPA Process Components and Sequencing

Categorical Exclusion

Coordination and Required Documentation

Environmental Assessment



Environmental Impact Statement



Other Federal Statutes and Requirements

Under 23 CFR 771, FTA is required to combine all environmental analyses and reviews into a single process. Other key reviews/processes combined with NEPA:

- Section 106 of the National Historic Preservation Act (36 CFR 800)
- Section 4(f) of the Department of Transportation Act (23 CFR 774)
- Section 7 of the Endangered Species Act (50 CFR 402)
- Environmental Justice (Executive Order 12898, FTA Circular 4703.1)
- Section 404 of the Clean Water Act
- Section 176(c) of the Clean Air Act
- Hazardous Materials Environmental Site Assessment review (ASTM International standards)



NEPA Streamlining and the FAST Act

- **EO 13274 Environmental Stewardship and Transportation Infrastructure Project Reviews**, September 18, 2002
- **CEQ Memorandum – Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act**, November 23, 2010
- **EO 13563 Improving Regulation and Regulatory Review**, January 18, 2011
- **Obama Administration, Memorandum on Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review**, August 31, 2011
- **CEQ Memorandum – Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act**, March 6, 2012
- **EO 13604, Improving Performance of Federal Permitting and Review of Infrastructure Projects**, March 22, 2012
- **Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141)**, July 6, 2012
- **Fixing America’s Surface Transportation Act (Fast Act) (Pub. L. No. 114-94)**, December 4, 2015

FAST Act Environmental Highlights

Section 1304 – Efficient Environmental Reviews for Project Decision-making

- Strengthens many provisions and efficiency strategies introduced in MAP-21 with additional requirements for transparency, such as the obligation to make public through a website the status and progress of environmental review documents

Section 1305 – Integration of Planning and Environmental Review

- Allows for the adoption or incorporation by reference of a planning document for a variety of purposes in the environmental review process

Section 1309 – Program for Eliminating Duplication of Environmental Reviews

- Establishes a new pilot for up to five states to test whether state environmental law can be substituted for NEPA and related regulations and Executive Orders

Section 1310 – Application of Categorical Exclusions for Multimodal Projects

- Allows the lead authority to apply categorical exclusions in implementing regulations or procedures of a cooperating authority for multimodal projects

FAST Act Environmental Highlights

Section 1311 – Accelerated Decision-making in Environmental Reviews

- Provides additional criteria, broadening the provisions in Section 1319 of MAP-21, for the use of errata sheets attached to the DEIS in-lieu of a FEIS, for combined FEIS/ROD documents, and to adopt and incorporate by reference documents and information to avoid duplication of analyses

Section 1313 – Aligning Federal Environmental Reviews

- Seeks to develop coordinated and concurrent environmental review and permitting processes among Federal agencies for transportation projects
- Requires DOT to create a checklist for the responsibilities and requirements of agencies with jurisdiction and to host annual collaboration sessions with its modes and other agencies with jurisdiction

Section 1317- Modernization of the Environmental Review Process

- Requires consideration of the use of current technology to improve the information presented in NEPA documents, including, searchable databases, better mapping and geographic information, integrating fiscal information, and other innovative technologies

Stay tuned. More to come ...





So why do we do all this?

NEPA Purpose

CEQ's NEPA regulations at 40 CFR 1500.1(c) state:

Ultimately, of course, it is not better documents but **better decisions** that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to **foster excellent action**. 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**. These regulations provide the direction to achieve this purpose.



NEPA Resources

For further information:

- FTA Environmental Analysis & Review Website (http://www.fta.dot.gov/13835_5222.html)
- FTA Environmental Procedures, 23 CFR 771 (Access at <http://www.ecfr.gov/>)
- CEQ Regulations Implementing NEPA, 40 CFR 1500-1508 (Access at <http://www.ecfr.gov/>)
- NEPA Statute (<http://ceq.hss.doe.gov/nepa/regs/nepa/nepaeqia.htm>)
- CEQ NEPA Home (<http://ceq.hss.doe.gov/>)
- FHWA Environmental Review Toolkit (<http://environment.fhwa.dot.gov/index.asp>)
- FHWA Summary of Environmental Legislation Affecting Transportation (http://www.fhwa.dot.gov/environment/env_sum.cfm)

Mark A. Assam, AICP

312-353-4070

mark.assam@dot.gov

Elizabeth Breiseth

312-353-4315

elizabeth.breiseth@dot.gov

Jay Ciavarella

312-353-1653

jason.ciavarella@dot.gov



Questions