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1.0 ENVIRONMENTAL REGULATIONS OVERVIEW

This chapter provides background information on the federal laws and regulations that the Utah Department of Transportation (UDOT) must follow for transportation projects and gives an overview of the environmental evaluation process. The basis of the environmental evaluation of these transportation projects is the National Environmental Policy Act, or NEPA. While the basic tenets of NEPA remain unchanged since it was signed in January 1970, numerous environmental laws, executive orders, and agency policies and guidelines have been put into place to help interpret the mandates of NEPA. Recent federal transportation acts have established provisions intended to improve efficiency of the review process required under NEPA, including NEPA Assignment which allows States to assume day-to-day responsibility for NEPA (see Section 1.5, NEPA Assignment), efforts to link planning and NEPA, consolidation of environmental documents, and expanded authority for the use of Categorical Exclusions (CEs).

This chapter identifies the role of UDOT in the environmental process and provides an overview of the regulations that serve as the basis for performing and documenting environmental reviews for transportation projects. Always check with UDOT Environmental Services for the most recent policies and procedures.

1.1 National Environmental Policy Act (NEPA)

The United States Congress enacted the National Environmental Policy Act of 1969 (NEPA) to establish a national policy to protect the environment. The act is codified in Title 42 of the United States Code (USC), Sections 4321 through 4347 (abbreviated as 42 USC 4321–4347). On January 1, 1970, NEPA was signed into law by President Richard Nixon.

NEPA requires federal agencies to consider environmental issues before making any major decisions on projects that have federal involvement (such as funding or permitting). To determine a project's potential benefit or harm to the environment, NEPA requires an assessment of environmental impacts and an evaluation of alternatives to avoid any identified adverse impacts to the environment.

Many other federal and state regulations, including those pertaining to individual environmental resources, fall under the NEPA umbrella and are discussed later in this manual. Please see Chapter 5, Project Impact Analyses, of this manual for specific information on complying with these regulations.

1.2 Council on Environmental Quality Regulations

The Council on Environmental Quality (CEQ) was created by NEPA to oversee the federal implementation of NEPA by interpreting the law and developing regulations and guidance. To help federal agencies with NEPA implementation, CEQ issued *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, which is contained in the Code of Federal Regulations (CFR), Title 40, Parts 1500 through 1508 (abbreviated as 40 CFR 1500–1508) in 1978. The regulations state that NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.

The regulations also identify the three categories of actions (Categorical Exclusions [CE], Environmental Assessments [EA], and Environmental Impact Statements [EIS]) as well as documentation requirements and format, the commenting process and public involvement requirements, and document filing requirements. Lastly, CEQ regulations require each federal agency to develop its own regulations for agency compliance with NEPA.

In March 1983, CEQ issued the guidance document *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*. CEQ has since issued additional guidance and other information covering a variety of issues relevant to the NEPA process. The Federal Highway Administration's (FHWA) [NEPA Implementation](#) website provides links to NEPA regulations and associated guidance.

1.3 Federal Highway Administration Environmental Impact and Related Procedures

To address the NEPA responsibilities established by CEQ, two U.S. Department of Transportation (USDOT) agencies, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), have developed detailed guidance for applying NEPA to highway and transit projects. Those regulations are codified in 23 CFR 771, Environmental Impact and Related Procedures. In 2017 UDOT entered into the NEPA Assignment program which allowed UDOT to assume day-to-day responsibility for FHWA's NEPA procedures (see Section 1.5, NEPA Assignment).

The USDOT regulations require agencies undertaking transportation activities with federal funding or a major federal action to take the following steps:

- Comply with all applicable environmental requirements, including NEPA and Section 4(f) of the Department of Transportation Act of 1966.
- Prepare documentation of compliance to a level appropriate to the undertaking's potential to cause significant harm to the environment.

- Evaluate alternatives (including a no-action or no-build alternative) and make decisions that balance the need for the project with the social, economic, and environmental impacts of the project.
- Inform governmental entities and the public and give them an opportunity to be involved in decision-making.
- Implement measures to avoid, minimize, or mitigate environmental impacts.

Section 771.115 of 23 CFR defined the three classes of actions that determine how compliance with NEPA is carried out and documented for transportation projects:

- **Class I – Environmental Impact Statement (EIS)** is prepared for projects that would cause a significant effect on the environment.
- **Class II – Categorical Exclusion (CE)** is prepared for projects that do not individually or cumulatively have significant environmental effect.
- **Class III – Environmental Assessment (EA)** is prepared for larger-scale projects that do not meet the requirements for a CE or those for which the significance of the environmental impact is not clearly established. If the environmental analysis and interagency review during the EA process find that a project would have no significant impacts on the environment, a Finding of No Significant Impact (FONSI) is issued. If the review finds that the project would have significant impacts, an EIS must be prepared.

The various types of environmental documents are described in more detail in Chapter 3, Environmental Documentation – Description and Process Steps, of this manual.

On October 30, 1987, FHWA issued guidance that complements the regulations in 23 CFR in the form of a Technical Advisory ([T6640.8A](#)), *Guidance for Preparing and Processing Environmental and Section 4(f) Documents* (hereafter referred to as the Technical Advisory). The Technical Advisory provides detailed information on the contents and processing of environmental documents. Additional guidance and information on the NEPA process, specific environmental topics, and other environmental requirements are found on FHWA's [Environmental website](#), [Environmental Review Toolkit](#), and [Environmental Guidebook](#). Publications issued by the [AASHTO Center for Environmental Excellence](#) are another resource.

1.4 Recent Federal Transportation Acts

A. SAFETEA-LU

In August 2005, President George W. Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (known as SAFETEA-LU). The act incorporated changes aimed at improving and streamlining the

environmental process for transportation projects. FHWA's final guidance to implement the requirements of SAFETEA-LU Section 6002 and the environmental review process was published in the *Federal Register* on November 15, 2006. The guidance can be found on the [FHWA SAFETEA-LU website](#).

B. MAP-21

On July 6, 2012, President Barack Obama signed into law the Moving Ahead for Progress in the 21st Century Act (known as MAP-21). MAP-21 creates a streamlined, performance-based, and multimodal transportation program. FHWA's guidance for implementing the requirements of MAP-21 is provided on the [FHWA MAP-21 website](#).

The program establishes several changes, including the following, to streamline the environmental process:

- Expanded use of programmatic agreements
- Combination of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) to accelerate environmental review
- Expansion of the list of CEs for emergency projects, projects within the right-of-way and projects of limited federal assistance (Sections 1315–1317)
- Implementation of a NEPA Assignment Program which allows States to assume FHWA responsibility under NEPA.

C. FAST Act

On December 4, 2015, President Barack Obama signed the Fixing America's Surface Transportation (FAST) Act into law. In addition to providing long-term funding for surface transportation, the FAST Act also made changes and reforms to many Federal transportation programs, including streamlining the approval processes for new transportation projects. FHWA's guidance for implementing the requirements of the FAST Act is provided on the [FHWA FAST Act website](#).

1.5 NEPA Assignment

Many projects sponsored by State Department of Transportations (DOTs) include some federal assistance or permitting approval and are therefore subject to federal environmental laws. Ultimate accountability for ensuring compliance with these federal laws rests with the USDOT and its partner federal resource agencies. To ensure compliance, they traditionally oversee each project, requiring documentation of impacts and individual review prior to approval, even for routine projects where environmental impacts are well understood and are typically minimal. In contrast to the close oversight of environmental requirements, FHWA has successfully delegated much of its day-to-day

responsibility for overseeing critical engineering and accounting aspects of federal-aid projects to states. Pursuant to 23 USC 327, a Surface Transportation Project Delivery Program was established that allows the Secretary of the USDOT to assign, and a State to assume, the USDOT Secretary's responsibilities under NEPA of 1969 (42 U.S.C. 4321, et seq.) and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law with respect to one or more highway projects within the State. UDOT assumed these responsibilities under a Memorandum of Understanding (MOU) with FHWA, hereafter referred to as the 327 NEPA Assignment MOU. UDOT is now responsible for FHWA's NEPA and other federal environmental laws such as the Endangered Species Act and Section 106 of the National Historic Preservation Act (NHPA).

Pursuant to 23 USC 326, FHWA and UDOT have a MOU (hereafter referred to as the 326 CE MOU) under which FHWA assigns responsibility to UDOT for determining whether certain designated activities are categorically excluded from the preparation of an EA or an EIS. The 326 CE MOU delegates to UDOT the responsibility for conducting and approving environmental reviews, consultations, and related activities for projects UDOT determines are categorically excluded.

Under the 327 NEPA Assignment MOU and the 326 CE MOU, UDOT is required to comply with all applicable federal environmental laws and FHWA environmental regulations, policies, and formal guidance. The MOUs do not change or weaken federal environmental protection standards. Assuming NEPA responsibility, UDOT is solely responsible and liable for NEPA decisions on assigned highway and local roadway projects in the state without any involvement by FHWA.

1.6 Overview of UDOT Environmental Procedures

A. Background

UDOT recognizes the impacts of transportation systems on the environment and the importance of maintaining environmental quality for the citizens of Utah. UDOT will use practical methods, technical expertise, and financial resources to perform environmental reviews of state transportation projects. Measures to minimize harm to the environment and to preserve important cultural and natural resources for current and future generations will be implemented as appropriate.

Transportation projects proposed by UDOT that have federal involvement through funding and/or permitting are subject to NEPA. For projects with no federal involvement, document preparers must follow UDOT's Environmental Policy for State Projects.

B. Environmental Review and Documentation

The environmental review process provides decision-makers with the necessary information to make the best project decision while balancing the anticipated benefits with likely impacts and planned mitigation measures. Thus, it is UDOT's responsibility to:

- Follow all state and federal laws when performing and documenting environmental reviews for proposed transportation projects.
- Plan, design, construct, and maintain facilities that meet the transportation need, are an asset to the community, and are compatible with the natural and built environments.
- Conduct public involvement activities as described in Chapter 4, Public and Agency Involvement, of this manual.
- Conduct appropriate studies and prepare impact analyses for proposed transportation projects and maintenance activities.
- Establish reasonable mitigation measures to minimize adverse impacts.

Chapter 3, Environmental Documentation, provides detailed information on the types of environmental documents that can be prepared for transportation projects and the requirements for each.

1.7 Project Identification and Development

The project development process begins with UDOT's recognition of a transportation need through the actions of the metropolitan planning organizations (MPOs), local officials, legislators, or through UDOT's own long-range planning process. This section discusses the early steps in identifying and developing a project before an environmental document is initiated.

A. UDOT's Project Development Process

UDOT's Planning Division is primarily responsible for the managing, developing, and planning of all travel data and operations; safety planning; conceptual planning; and all statewide project planning studies for state and federal projects.

Before environmental studies are conducted, a large amount of research and work takes place to define proposed projects. Most of this work occurs through long-range planning, where the project is initially identified. UDOT's statewide long-range transportation plan is an investment guide for Utah's state highway system for the next 30 years. The plan provides a coordinated, multimodal plan for improvements to the state's transportation system. The plan is fiscally responsible, is constrained by decade, and includes enough

financial information to determine which projects and strategies can be implemented using projected revenues.

The project delivery process begins once funds are defined for a project in the Statewide Transportation Improvement Program (STIP). UDOT's STIP is a five-year plan of highway and transit projects for the state of Utah. The STIP is regularly maintained and can include transportation projects in the state, city, and county highway systems as well as projects in national parks, national forests, and Native American reservations. These projects use various federal and state funding programs. The [STIP](#) reflects the latest information available including approved funding and project amendments and modifications. Because of the dynamic nature of the document, users should be aware that the reports are accurate as of the date and time they are published.

STIP funding can include sufficient funds for the whole project, or it can include only partial funds for a specific phase, such as for the preparation of a larger environmental document. UDOT's standard practice for developing environmental documents is to prepare EAs and EISs under separate project identification numbers (PINs) in the concept phase of the project. Completing environmental studies in the concept phase results in more accurate project scopes, schedules, and budgets for future planning and programming efforts. For projects identified as CEs, environmental studies are generally completed during the initial stages of the design process. Once a proposed project is defined, funds are allocated, and a PIN is set up in [ePM](#) (UDOT's electronic project management system).

UDOT has developed a series of project delivery networks that outline the process for project development. Figure 1-1 details the steps of the Environmental Document Process (for EAs and EISs) from project initiation to obtaining the environmental decision document. The process details each activity, identifies project milestones, and outlines the responsibilities for both consultants and UDOT environmental staff.

Figure 1-1. UDOT Environmental Document Process

