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## 3.0 ENVIRONMENTAL DOCUMENTATION – DESCRIPTION AND PROCESS STEPS

This chapter provides general instructions for the preparation of Categorical Exclusions (CE), Environmental Assessments (EA), Environmental Impact Statements (EIS), and State Environmental Studies (SES). For each type of document, the chapter presents a brief overview of the applicability of the class of action, the required and suggested content and format of the documentation, procedures for review and approval, document circulation for agency and public comment, and requirements for public hearings.

[FHWA's Technical Advisory T6640.8A](#) provides detailed guidance on preparing and processing environmental and Section 4(f) documents. FHWA and CEQ [associated guidance](#) provide additional information on NEPA implementation. Always check with Environmental Services and for the most recent policies and procedures.

### 3.1 NEPA Process Options

There are three classes of action that prescribe the level of documentation for assessing impacts to the environment under NEPA. This section defines the three classes of action and explains how the appropriate class of action is determined for a project.

#### A. Classes of Action

Transportation projects vary in type, size and complexity, and potential to affect the environment. Transportation project effects can vary from very minor to significant impacts on the human and natural environment. To account for the variability of project impacts, three basic “classes of action” are allowed under NEPA and 23 CFR 771.115. The class of action determines how compliance with NEPA is carried out and documented.

- **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 effects.
- **Class III – Environmental Assessment (EA)** is prepared for projects that do not meet the requirements for a CE or those for which the significance of the environmental impact is not clearly established.

## B. Determination of Class of Action

For federal projects, UDOT, assuming the responsibilities of FHWA per the terms of the 327 NEPA Assignment MOU, determines the appropriate class of action for a specific project. The determination is based on the FHWA NEPA implementing regulations in 23 CFR 771.115–130 and is explained in FHWA's Technical Advisory. The class of action determination includes reviewing existing environmental conditions and can include geographical information systems (GIS) data of potentially affected resources using UDOT's uPlan Preliminary Environmental Linkage tool. The class-of-action documentation is prepared and placed in the project file.

## 3.2 Categorical Exclusion (CE)

A Categorical Exclusion (CE) is prepared for actions that do not individually or cumulatively have a significant effect on the environment. Under 23 CFR 771.117 and CEQ Section 1508.4, and based on past experience with similar actions, FHWA has developed lists of actions that are to be documented as a CE (23 CFR 771.117(c) and (d)). These are actions that do not:

- Induce significant impacts to planned growth or land use for the area;
- Require the relocation of significant numbers of people;
- Have a significant impact on any natural, cultural, recreational, historic, or other resource;
- Involve significant air, noise, or water quality impacts;
- Have significant impacts on travel patterns; and
- Otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)).

The level of documentation for a particular CE depends on which category the action falls under. If the likelihood of significant impacts is uncertain even after CE-related studies have been conducted, UDOT should determine whether an EA or an EIS should be prepared. If significant impacts are likely to occur, an EIS must be prepared (23 CFR 771.123(a)).

As described in Section 1.5, UDOT is assigned FHWA's responsibility for conducting and approving environmental reviews, consultations, and related activities for projects UDOT determines are categorically excluded. UDOT separates and processes CE projects using the following three categories:

- Federally funded projects included under the 326 CE MOU
- Federally funded projects excluded from the 326 CE MOU
- State-funded projects

## A. Federally Funded CE Projects Included under the 326 CE MOU

### 1. Applicability

Under the 326 CE MOU between FHWA and UDOT, any project that is listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) can be processed under the terms and conditions of the 326 CE MOU if it meets the following two conditions:

- It conforms to the provision of 23 CFR 771.117(a).
- UDOT assesses the project according to 23 CFR 771.117(b) for unusual circumstances and determine that a CE classification is proper.

### 2. Archive and Records Retention

The UDOT Region environmental staff provides a digital copy (PDF) of the completed and signed CE document and all relevant clearance memos, determinations, correspondence, and technical studies to UDOT Central environmental staff. Additionally, a digital copy will be uploaded to the project folder in ProjectWise for electronic storage (any hard copy records or other non-archived files are maintained for a minimum of three years). Records will be available for inspection by FHWA at any time.

### 3. UDOT Process Review

Central environmental staff regularly reviews federally funded CE documents completed according to the 326 CE MOU to ensure that:

- a. The projects were classified correctly under the 326 CE MOU.
- b. The Environmental Study form in ePM (screen 770) was filled out correctly and was signed and dated, all applicable mitigation commitments have been entered and assigned, and the completion date was entered in ePM.
- c. The purpose and need statements and descriptions are clearly written and accurately described.
- d. The Environmental Study contains all relevant clearance memos, determinations, correspondence, and technical studies.

If Central environmental staff finds any errors during the document review, they will immediately notify and work with the Region Environmental Manager to amend the CE so that the errors are corrected. Central Environmental will document any errors that are found on the CE Quality Control Form (Project Tracking Sheet). This is a record of the errors found during the quality control process and the actions taken to ensure that the errors were corrected. Central Environmental also maintains the statewide list of CEs completed under the 326 CE MOU and reports all completed CE projects on a bi-annual

basis to the FHWA Utah Division Office. UDOT Environmental Services is continually identifying ways to ensure that the errors are not repeated on future projects.

4. Approval

The Region Environmental Manager approves CEs covered under the 326 CE MOU by signing and dating the signature page. Before a CE is approved, it should be reviewed by someone other than the preparer. It is strongly encouraged that CEs not be reviewed and approved by the same individual. Central environmental staff is available to perform these reviews if needed. Additionally, certain resource impacts and consultation actions may require review and/or approval by Central Environmental before the final CE is approved.

5. Section 4(f) Impacts

If a CE project that is processed under the 326 CE MOU requires either a programmatic 4(f) or an individual 4(f) evaluation, Central Environmental must review the 4(f) evaluation before the CE is approved. Programmatic 4(f) evaluations require written concurrence from Central Environmental. All individual Section 4(f) evaluations require a legal sufficiency review by the Utah Attorney General's office and/or outside environmental counsel. Central Environmental must also review and concur in writing on *de minimis* impacts to parks, recreation areas, and wildlife and waterfowl refuges.

6. Endangered Species Act Section 7

If a CE project that is processed under the 326 CE MOU involves a formal Endangered Species Act section 7 consultation for a threatened or endangered species, Central Environmental serves as the lead in consultation with USFWS. USFWS must issue a concurrence on a Biological Assessment or Biological Opinion before the CE can be approved.

7. Native American Consultation

Per Stipulation II (B) of the 326 CE MOU, for a CE project that is processed under the 326 CE MOU, Region environmental staff provides the FHWA Utah Division Office with the appropriate documentation and information necessary for the Native American consultation. The 326 CE MOU requires government-to-government consultation with Native American tribes as described in 36 CFR 800.16(m). FHWA and UDOT have executed a number of Section 106 Programmatic Agreements (PAs) with Native American tribes that authorize UDOT to initiate and conduct the consultation. Where the PAs apply, the UDOT Region Archaeologist conducts the consultation.

## B. CE Projects Excluded from the 326 CE MOU

### 1. Applicability

Any project that is not listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) is excluded from assignment according to the provisions of the 326 CE MOU and must be processed according to the procedures listed in this section and approved by Central Environmental. These are referred to as documented CEs.

### 2. Preparation

UDOT Region environmental staff, or the Consultant, prepares a request for classification of documented CE letter and submits it to Central Environmental. Central Environmental reviews the letter and may concur with the class of action in writing on the letter and indicates any additional environmental requirements. Once Central Environmental has concurred with the project classification as a documented CE, the Region environmental staff (or Consultant) prepares the CE using the ePM CE module. A completed CE document (digital PDF copy) as well as all relevant clearance memos, determinations, correspondence, and technical studies are assembled for approval.

### 3. Approval

The UDOT Region Environmental Manager signs (as Reviewer), dates the signature page and sends a digital copy (PDF) of the complete CE document to Central Environmental. The Director of Environmental Services reviews and approves the document. The CE title page will include the following:

- a. *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

### 4. Archive and Records Retention

A final copy will be provided to the UDOT Region Environmental Manager. Digital copies will be uploaded to the project folder in ProjectWise for electronic storage (any hard copy records or other non-archived files are maintained for a minimum of three years).

## C. CE Process Steps

For uniformity and consistency, UDOT uses ePM for all CEs. The ePM form allows the user to select the applicable classification from 23 CFR 771 (c) or (d) for federal-aid projects that qualify as CEs. Users will need to obtain access to ePM through the [ePM website](#). Once a user request has been submitted, ePM staff will assign each individual a

username and password. Once access has been granted, the CE form will be completed with the following steps:

- Under the Environmental tab, select the Environmental Study Form.
- Enter the PIN and Preparer's name.
- Select the appropriate document type and classification.
- Complete each section/tab (section status will indicate if complete).
- Watch the document status indicator.
- Print the form (this generates a PDF document).
- Attach supporting documentation to the PDF.
- Review for quality and completeness.
- Save the CE as one PDF file with all supporting documentation included.
- Circulate for signature per the requirements in the previous sections.
- Upload the final signed copy to the project folder in ProjectWise and mark for advertising in ePM.
- Submit final copy to Central Environmental.
- Document the CE approval date in ePM.

#### 1. CE Content

Each section of the Environmental Study form is described below. Other useful references are the [UDOT Categorical Exclusion Reviewer QC Checklist](#), the FHWA Technical Advisory, and the applicable individual regulations. Check each of the appropriate boxes of the Environmental Study form and add information as needed. For detailed discussion regarding project impact analyses by resource, see Chapter 5 - Project Impact Analyses, of this manual.

1. **Title/Signature.** Categorize the project as either a 326 CE or Documented CE. For CEs processed under the 326 CE MOU, the Region Environmental Manager reviews, signs, and dates the CE as the Approver. The Preparer and the Reviewer cannot be the same person. For Documented CEs, the Region Environmental Manager signs the document as the Reviewer and the Director of Environmental Services reviews, signs, and dates the CE as the Approver.
2. **Purpose and Need.** Clearly describe the transportation problems and deficiencies in the project area and describe why the project is necessary. See UDOT's [Guidance on Purpose and Need Statements](#). The Purpose and Need *should not* include a description of the proposed action.
3. **Description.** Clearly and accurately describe what actions are proposed with the project. The proposed actions detailed in the Description section should address the identified needs for the project. Describe the length and location of the project (including route, mileposts, city, and county). Include any referenced maps, typical sections, etc. in the appendix or as an attachment(s).

4. **Public Involvement.** Determine and document the appropriate level and type of public involvement (open house, public hearing, etc.). For guidance see Chapter 4, Public and Agency Involvement, of this manual.
5. **Right-of-Way.** If there are right-of-way impacts, summarize in the comment section the number of parcels and number of acres affected.
6. **Impacts to Individual Resources.** For detailed discussion regarding impacts to each resource, see Chapter 5, Project Impact Analyses, of this manual. Attach all clearance memos, technical reports, and relevant correspondence to the CE document. Consult with Central environmental staff as needed. Be aware that Central environmental staff may need to review and/or approve certain impact evaluations, or participate in the consultation process, before the CE is approved.
7. **Conclusion.** If the project could create substantial controversy or could have significant impacts, a CE is not applicable.
8. **Mitigation Commitments.** Include all applicable mitigation commitments in the CE. Enter mitigation commitments in the Project Commitment database in ePM (screen 775). The Region Environmental Manager signs the Environmental Commitments Signature Page and the Region environmental staff ensures that the Region Project Manager and District Engineer are aware of all mitigation commitments. The Region Project Manager and District Engineer are required to sign the Environmental Commitments Signature Page if any of the mitigation commitments are not a UDOT standard specification,

### 3.3 Environmental Assessment (EA)

Unless specified in Section 3.3 of the 327 NEPA Assignment MOU, UDOT has assumed FHWA's roles and responsibilities for all Environmental Assessment documents.

#### A. EA Process

An Environmental Assessment (EA) helps UDOT determine whether a project would have significant impacts. The EA documentation focuses on those resources or features that UDOT has determined could potentially cause an adverse impact. If at any point in the EA process it appears that the action is likely to have significant impacts on the environment, an EIS must be prepared. For EA projects, the decision on the use of Section 6002 of the [SAFETEA-LU](#) is made by UDOT, with the concurrence of the other lead agencies, on a case-by-case basis for individual projects or classes of projects. The default assumption is that the Section 6002 environmental review process is not generally applied to EAs. The decision to apply Section 6002 to a particular EA or class of EAs depends on the benefits that would result by following this process. The decision to follow these procedures for an EA or class of EAs should be documented in the coordination plan or other project record.

## B. EA Content

The EA is intended to be a concise document that does not include detailed or lengthy descriptions of the information that has been gathered for the analyses. EAs are prepared to determine the nature and extent of social, economic, and environmental impacts for proposed actions that do not meet the requirement for CE designation. In the EA, provide enough evidence and analysis for determining whether to prepare an EIS or whether a FONSI is applicable. Reference the technical studies that form the basis of the conclusions presented in the EA. UDOT maintains copies of those studies in the project files. Once the EA is approved by UDOT, the technical studies, with the exception of precise archaeological location data (written descriptions and maps) or threatened or endangered species data, can be made available to the public. The EA should incorporate good-quality maps and/or exhibits and tables to help reduce the volume of documentation and to help present background data and summarize technical analyses.

## C. Sample EA Outline and Format

The FHWA Technical Advisory suggests the following format for an EA.

1. **Cover Sheet.** The cover page provides the name and location of the project and identifies the state and federal lead agencies (including contact information), cooperating agencies, and the due date for comments. The cover sheet should provide the following statement:
  - a. *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*
2. **Introduction.** Include a description of the project location, the locations where copies of the document can be viewed, the date and location for the public hearing, the date when comments on the EA are due, and the postal mail and email address where the comments should be sent.
3. **Purpose of and Need for Action.** This chapter includes a description of the proposed action, the length and termini of the project, the project background, its consistency with existing plans, and the transportation or other needs that the proposed action is intended to satisfy. Technical studies may be required to complete the purpose and need statement. Examples of these could include, but are not limited to, technical studies that document the study area boundaries, logical termini locations, needs assessment study area, independent utility, traffic studies, design issues and deficiencies, and socioeconomic data assumptions. See Section 3.5 B of this manual and [UDOT's guidance](#) on purpose and need

statements for more detail on information that should be considered in this chapter.

4. **Alternatives.** This chapter discusses the alternatives that are under consideration in the EA, including the no-action or no-build alternative, which serves as a baseline for comparison, and one or more build alternatives. Technical studies may be required to complete the alternatives chapter. Examples of these could include, but are not limited to, technical studies that document the logical termini locations, screening criteria, screening process and alternatives evaluation, cost estimates, and the basis or rationale for other screening assumptions. See Section 3.5 B of this manual for more detail on information that should be considered for the alternatives chapter.
5. **Existing Conditions and Environmental Consequences.** This chapter briefly describes the affected environment so that the reader understands the environmental setting and describes the social, economic, and environmental impacts and consequences of the proposed action. Provide a level of analysis that adequately addresses the impacts and appropriate mitigation measures and addresses known and foreseeable public and agency concerns. Focus the resource discussions on the technical areas described in Chapter 5, Project Impact Analyses, of this manual. If resources are not present or not relevant to the project, state this in the document or a technical memo along with a reason or basis for this determination.
6. **Mitigation Commitments.** In the EA, describe all applicable mitigation commitments. Enter mitigation commitments in the Project Commitment database in ePM (screen 775) or in a shared database accessible to the project team after the FONSI has been approved. The UDOT Region environmental staff ensures that the Region Project Manager and District Engineer are aware of all of the listed mitigation commitments.
7. **Comments and Coordination.** This chapter describes the early and ongoing coordination activities, summarizes key issues and pertinent information received from the public and agencies, and lists those agencies and persons that were consulted.
8. **Appendices.** The appendix or appendices generally contain analytical information that substantiates an analysis that is important to the document, such as a biological assessment of threatened or endangered species or the noise impact analysis.
9. **Section 4(f) Evaluation.** If a Section 4(f) resource is encountered in the project, a Section 4(f) evaluation must be prepared and circulated. The draft Section 4(f) evaluation is usually included in the EA document, either as a separate chapter or in an appendix. See Section 5.3 of this manual for more detail on preparing a Section 4(f) evaluation.

#### D. EA Approval Process

Once the EA is drafted, the document will be reviewed in accordance with the procedures outlined in the UDOT NEPA Assignment Program Quality Assurance / Quality Control (QA/QC) Plan. EAs may be sent to legal counsel for review at the discretion of the Director of Environmental Services. The Environmental Document QC form will be signed by the Environmental Program Manager and the Director of Environmental Services documenting the completion of their review and approval for circulation to the signatory official. If it appears that the action is likely to have significant impacts on the environment, Central Environmental may recommend that an EIS be considered.

#### E. Public and Agency Review and Comments

Neither NEPA nor the CEQ regulations require the EA to be circulated to agencies and the general public; however, the EA must be made available for public review and, according to 23 CFR 771.119, a Notice of Availability (NOA) briefly describing the action and its impacts must be sent to the affected federal, state, and local governmental agencies. This NOA, which is placed in statewide and local newspapers, specifies the locations where the document can be reviewed.

During the public review period, provide a copy of the EA to participating agencies for their review and comment. Make copies of the EA available at UDOT's main office and regional offices as well as at public libraries in the county (or counties) where the proposed project would occur. UDOT may also place electronic versions of the EAs on the UDOT website.

Although federal regulations do not require a public hearing for an EA, UDOT's general practice is to hold a public hearing. If a public hearing is not held, an opportunity for public hearing must be provided as described in Chapter 4, Public and Agency Involvement, of this manual. Whether or not a public hearing is held, 23 CFR 771.119 requires comments to be accepted during the 30-day period following the date that the EA is made available (the date of the NOA).

When a public hearing is held, 23 CFR 771.119(e) requires that at least 15 days' notice be provided in advance of the hearing. Advertise the hearing in local newspapers, and state in the advertisement where the EA can be obtained or reviewed and the deadline for submitting comments (30 days from the date of the NOA). UDOT allows written public comments to be sent in during the public review period.

After the public/agency comment period is closed, the project team prepares the public comment summary. The comment summary includes comments from the public hearing(s) and those submitted in writing.

The project team coordinates with appropriate UDOT staff to determine how the comments will be resolved. The project team then prepares a response to each comment or category of comments.

#### F. Selection of the Preferred Alternative

Agency input and public comments are considered by UDOT when selecting the preferred alternative. The EA might have addressed only the No-Build and a Build alternative, in which case UDOT must make only one decision: whether or not to proceed with the proposed action. If the EA evaluated more than one build alternative, UDOT determines which of the build alternatives is the preferred alternative and documents this decision in the FONSI.

### 3.4 Finding of No Significant Impact (FONSI)

A FONSI is both the decision by UDOT that the project has no significant impacts and the documentation of that decision. A determination that the project will have no significant impacts is made by UDOT, following consideration of the analysis presented in the EA, consideration of comments on the EA made by agencies and the public, UDOT's selection of the preferred alternative, and any changes in the proposed action based on the comments received.

#### A. Preparation of FONSI Document

The EA is used as the basis for the FONSI document, with the text revised to identify the preferred alternative. The most substantial changes generally occur in the Alternatives and Coordination chapters of the EA. However, throughout the document text and on the graphics, the name of the alternative chosen is changed to "Selected" or "Preferred" Alternative. The coordination chapter includes a summary of the public comments. Graphics are also revised to show the preferred alternative.

The following items are incorporated in the FONSI document:

- a. Identification of the preferred alternative and explanation of its selection over other alternatives that were evaluated in the EA
- b. Description of changes in the preferred alternative resulting from the comments received, and any impact of the changes
- c. Summary of the final mitigation measures for the project
- d. Discussion of the public and agency comments received and appropriate responses to those comments
- e. Discussion of FONSI requirements from 23 CFR 771.111(f)

- f. Concluding statement
- g. Determination paragraph:
  - i. *UDOT has determined that this project will not have any significant impact on the human environment. This Finding of No Significant Impact is based on the attached Environmental Assessment, which has been evaluated by UDOT and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required. UDOT takes full responsibility for the accuracy, scope, and content of the attached EA.*
- h. The FONSI includes the following statement:
  - i. *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

## B. FONSI Approval Process

Once the FONSI is drafted, the document will be reviewed in accordance with the procedures outlined in the UDOT NEPA Assignment Program QA/QC Plan. A FONSI may be sent to legal counsel for review at the discretion of the Director of Environmental Services, The Environmental Document QC form will be signed by the Environmental Program Manager and the Director of Environmental Services documenting the completion of their review and approval for circulation to the signatory official.

UDOT Environmental Services submits a final draft of the FONSI to the UDOT signatory official along with a copy of the public hearing transcript and a request that a Finding of No Significant Impact be made. The signatory official will review the FONSI and Central Environmental or the consultant will revise the document per any comments received. Once all comments have been addressed or if there are no comments from the signatory official, the FONSI is signed and final copies of the FONSI are printed and distributed.

As provided in 23 CFR 771.119(h), when UDOT expects to issue a FONSI for an action, a minimum of 30 days is required between the date when the EA is made available for review and the date when UDOT makes its final decision.

## C. Distribution of the FONSI

Send copies of the signed FONSI and EA to federal, state, and local agencies likely to have an interest in the project. Formal distribution of the FONSI and EA to the general public is not required; however, the document will be available to the public on request.

## 3.5 Environmental Impact Statement (EIS)

Unless specified in Section 3.3 of the 327 NEPA Assignment MOU, UDOT has assumed FHWA's roles and responsibilities for all EIS documents.

### A. Overview of the EIS Process

When a proposed federal action is likely to have a significant impact on the environment, an EIS must be prepared. The purpose of an EIS is to provide full and open evaluation of environmental issues and alternatives and to inform decision-makers and the public of reasonable alternatives that could meet the project purpose, avoid or minimize adverse impacts, and enhance the quality of the environment.

For most projects processed under the 327 NEPA Assignment MOU, UDOT will be the lead agency. However, local governments may also be joint lead agencies on some projects. The determination on lead agencies should be made prior to initiating the project.

As soon as practical after the decision has been made to prepare an EIS, the project team prepares the Notice of Intent (NOI) in accordance with the UDOT Environmental Document (EA/EIS) Process. After all required reviews are complete, UDOT Environmental submits the NOI to the FHWA Utah Division office for publication in the *Federal Register*. Guidelines for preparing the NOI are in the FHWA Technical Advisory. A more recent document, [Federal Register Document Drafting Handbook](#) (October 1998 revision), provides detailed instructions on preparing notices for the *Federal Register*. The NOI should include the following statement:

- a. *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

When the NOI is published, UDOT also publishes a similar announcement in statewide and local newspapers and sends a package of information to federal, state, and local agencies and organizations with a possible interest in the project. This package can be referred to as the early or initial coordination package or a scoping information package. The packages sent to agencies, organizations, and the public should also include the statement that UDOT is assuming the FHWA NEPA roles and responsibilities for this project.

The NOI initiates the early agency coordination and public involvement process that provides information for the definition of alternatives, issues, and impacts. This is also called *scoping*, a term with a specific meaning under the CEQ regulations.

Coordination plans are developed for EISs to outline how the lead agencies have divided the responsibilities for complying with the various aspects of the environmental review

process, such as issuing invitations to participating agencies, and how the lead agencies will provide the public and other agencies with opportunities for input according to applicable laws, regulations, and policies.

The EIS is prepared in two stages—draft and final, both of which are official documents with a specific status under CEQ regulations. The Draft EIS, or DEIS, provides the opportunity for government agencies and the public to review the proposed project, its alternatives, the purpose of and need for the project, the affected environment, the environmental consequences of the proposed action, and potential mitigation measures. The Final EIS, or FEIS, is prepared after the circulation and comment period for the DEIS, the evaluation of comments that were received, and the identification of the preferred alternative. The FEIS may be combined with the Record of Decision, or ROD, which describes the basis of UDOT’s decision, identifies alternatives that were considered, and confirms the specific mitigation measures that will be incorporated into the project.

## B. Preparation of the Draft EIS (DEIS)

The FHWA Technical Advisory contains detailed information on the format and content of an EIS. The following sections summarize the format, content, and the process by which the DEIS is reviewed and approved for circulation and public comment.

One of the major risks to a NEPA project is an undocumented decision or decisions that do not have clear basis, rationale, or supporting information. When preparing the DEIS, it is necessary to have documentation, either in the DEIS or in technical memoranda that describes the rationale and basis for all key project decisions.

For the purpose and need chapter, examples of these important topics could include, but are not limited to, technical studies that document the needs assessment study area boundaries, logical termini locations, independent utility, traffic studies, no-action alternative assumptions, planning period used for the project, design issues and deficiencies, and socioeconomic data assumptions. For the alternatives chapter, examples of these topics could include, but are not limited to, technical studies that document the logical termini locations, screening criteria, screening process and alternatives evaluation, cost estimates, and the basis or rationale for other screening assumptions. For the affected environment and environmental consequences sections, examples could include, but are not limited to, documentation that provides details on methodologies that were used to identify the presence or absence of resources, the impact determinations for resources, or specific modeling inputs, assumptions, and procedures that were used to model or measure impacts for particular resources. Technical memoranda that document the basis or rationale for major project decisions, like the preferred alternative, may also be warranted if this discussion is too long to include in the body of the DEIS.

## 1. Format and Content of DEIS

The Technical Advisory contains a recommended format for all EISs. This format is used for both a DEIS and an FEIS. For consistency with the CEQ regulations, include the following 12 sections in an EIS (descriptions of the sections are provided below):

1. Cover
2. Summary
3. Table of Contents
4. Purpose of and Need for Action
5. Alternatives
6. Affected Environment
7. Environmental Consequences
8. List of Preparers
9. List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
10. Comments and Coordination
11. Index
12. Appendices (if any)

### a. Cover

The Technical Advisory specifies that an EIS should have a cover sheet that includes the following items.

- EIS number (assigned by UDOT)
- Name of the project to include route, termini, city or county, and state
- Identify that it is a Draft Environmental Impact Statement (or Final or Supplemental EIS)
- Statement of applicable federal regulation: 42 USC 4332(2)(c)
- Name of lead agency (UDOT) and statement that UDOT is assuming the role of FHWA per the terms of the 327 NEPA Assignment MOU for this project.
  - *The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

- Names of cooperating agencies
- One-paragraph abstract of the DEIS
- Signature line for UDOT and any Joint Lead and date
- Names, addresses, and telephone numbers of the UDOT persons to contact for additional information on the DEIS
- Date, name, and address for submitting comments on the DEIS

#### **b. Summary**

The summary, or executive summary, includes the following items:

- A brief description of the project
- A description of major actions proposed by other governmental agencies in the same geographic area
- A summary of all reasonable alternatives considered
- A summary of major environmental impacts, both beneficial and adverse
- Any areas of controversy
- Any unresolved issues with other agencies
- A list of other federal actions likely to be required for the project (such as permits, land transfers, Section 106 MOA, etc.)

The summary or permits and clearances chapter of the EIS should also include a statement regarding the statute of limitations (SOL) on filing claims that challenge permits, licenses, or approvals issued by federal agencies for certain transportation capital projects. If an SOL notice is published, the period for filing claims is limited to 150 days from the date the SOL is published in the *Federal Register*. The following paragraph is a sample of the language that can be used, as suggested by FHWA (please check FHWA latest guidance for updates regarding the SOL):

UDOT may publish a notice in the *Federal Register*, pursuant to 23 USC §139(l), indicating that one or more federal agencies have taken final action on permits, licenses, or approvals for the subject transportation project. If such notice is published, claims seeking judicial review of those federal agency actions will be barred unless such claims are filed within 150 days after the date of publication of the notice, or within such shorter time period as is specified in the federal laws pursuant to which judicial review of the federal agency action is allowed. If no notice is published, then the periods of time that otherwise are provided by the federal laws governing such claims will apply.

#### **c. Table of Contents**

The table of contents includes major sections of chapters, a list of figures or exhibits, a list of tables, and the titles of appendices.

#### d. Purpose and Need Chapter

The EIS Purpose and Need chapter is one of the most important elements of the project and needs to be well-documented in the EIS. The DEIS Purpose and Need chapter forms the basis of the No-Build or No-Action alternative discussed in the Alternatives chapter of the DEIS and will help identify reasonable alternatives and the selection of the preferred alternative. This chapter generally provides the following types of information, in addition to a discussion of the purpose of and need for the project:

- Concise definition of the project
- Description of the project setting or study area
- Discussion of the background of the project and related projects
- Explanation of the project's consistency with other plans
- Discussion of the project's logical termini and independent utility

The purpose should be a clear and succinct justification for why the project is being proposed while the needs represent a factual foundation for the statement of purpose and include a description of the transportation conditions (e.g., congestion, safety) underlying the problem.

The purpose and need statement is intended to clarify the expected outcome of a public expenditure and to justify that expenditure—that is, what is to be accomplished and why it is necessary. In addition to guiding the development of a reasonable range of alternatives to be studied, the purpose and need statement will also be used as a fundamental element when developing criteria for choosing among alternatives. The purpose and need statement drives the alternatives development and analysis tasks, but should not be so narrowly defined that it points to a single solution.

##### 1) Purpose and Need Guidance

The elements of a purpose and need statement are further described in the FHWA Technical Advisory. General direction on developing concise and discernible purpose and need statements is found in the [CEQ/USDOT letter exchange](#) and in the [FHWA/FTA Joint Guidance](#) issued July 23, 2003. Additional guidance is available in [Executive Order 13274, Purpose and Need Work Group Baseline Report](#) (revised draft dated March 15, 2005) and UDOT's [Guidance on Purpose and Need Statements](#). Additional information can be found in AASHTO Practitioner's Handbook 07.

The purpose and need should be defined in terms that are easily understood by the general public and should justify why the transportation improvement should be implemented. Regarding project need, the text in the environmental document should summarize the main problem or problems that point to the need for some action. The purpose and need section should describe the existing conditions and the projected problems if no action is taken.

Every effort should be made to develop a concise purpose and need statement that focuses on the main transportation problems to be addressed. It is important to understand terminology when preparing purpose and need statements.

The *need* should establish the evidence that a problem exists, or will exist if projected population and planned land-use growth occur. The following considerations should be taken into account when defining the project need.

- The need should be factual and numerically based.
- The need should support the assertion made in the purpose statement. For example, if the purpose statement is based on safety improvements, the need statement should support the assertion that there is or will be a safety problem to be corrected.

The *purpose* is analogous to the solution. The following elements should be included as part of the project purpose.

- The purpose should be stated as the positive outcome that is expected. For example, “The purpose of the project is to reduce congestion in the interstate corridor.”
- The purpose should avoid stating a specific solution. For example, the purpose statement *should not* say, “The purpose of the project is to build a bypass.”
- Where appropriate, the purpose should be stated broadly enough so that more than one mode can be considered and multimodal solutions are not dismissed prematurely.
- Similarly, the purpose should be stated broadly enough so that more than one alternative can be considered and alternatives are not dismissed prematurely.

#### e. Alternatives Chapter

The EIS Alternatives chapter identifies and describes the alternatives that are under consideration in the DEIS, discusses how they were selected and refined to represent a reasonable range of alternatives for the action, and demonstrates how they meet the purpose of and need for the project. The alternatives discussed in this chapter of the DEIS will provide a clear basis for choosing among the options.

Where alternatives were identified early in project development and found not to be reasonable (that is, they would not meet the purpose of and need for the project or would have unacceptable consequences), the chapter should briefly explain why these alternatives were dismissed from further consideration (23 CFR 771.123(c)).

In the DEIS stage, all reasonable alternatives should be discussed at a comparable level of detail. There is no requirement for a preferred alternative to be identified prior to the publication of the DEIS, but according to 40 CFR 1502.14(e), if the agency has officially

identified its preferred alternative(s), the DEIS must state that and explain why the alternative is preferred. Additionally, to support a combined FEIS/ ROD it is recommended that the preferred alternative be identified in the DEIS. The other viable alternatives must still be evaluated sufficiently.

The FHWA Technical Advisory states that the following range of alternatives should be considered when determining reasonable alternatives:

- **No-Action or No-Build Alternative.** This alternative must be addressed in the EIS. The No-Action Alternative should include all projects identified on transportation plans in the study area except for the proposed action. The No-Action Alternative should provide a baseline for what the project area will look like in the future without the proposed action.
- **Transportation System Management (TSM) Alternative.** This alternative includes design options such as high-occupancy vehicle (HOV) lanes, ridesharing, or signal synchronization to enhance the operation of the existing facility. The TSM alternative must clearly describe what options (such as HOV lanes, ridesharing, etc.) are specifically being considered for this project.
- **Mass Transit Alternative.** This alternative could include vanpools, bus systems, and rail systems and is typically considered for urban areas. The transit alternative must specifically identify what transit improvements or facilities are being considered in the study area. This alternative can be considered by referring to the regional or area transportation plan or by an independent analysis during early project development.
- **Build Alternative(s).** Present and evaluate all reasonable build alternatives in the DEIS, as required by 40 CFR 1502.14(a). The FHWA Technical Advisory advises that, where a large number of reasonable build alternatives exist, only a representative number of the most reasonable alternatives, covering the full range of options, must be presented.

Clearly describe the alternatives development, alternatives considered and screening process. Include graphics of the alternatives and comparison tables to show alternatives that were not considered reasonable or did not meet the project's purpose. Include comparison tables to illustrate how the reasonable alternatives all met the project's purpose. Additionally, provide alternative comparison tables that show the difference or similarity in environmental impacts, engineering considerations, or other relevant factors between the alternatives. Provide enough information to clearly describe the alternatives development, screening, and refinement processes. If necessary, prepare technical memorandums that provide the details of the information summarized in the EIS.

State that the final decision on the preferred alternative will be made after the alternatives' impacts and comments on the DEIS have been fully evaluated and the

public has had the opportunity to comment, even if an agency preferred alternative has been officially identified by UDOT.

**f. Affected Environment Chapter**

This chapter provides a concise description of the existing social, economic, and natural environmental character of the project area to set the stage for the evaluation of impacts.

The FHWA Technical Advisory suggests that the description of the existing environment should provide a single description of the general project area rather than separate descriptions for the individual alternatives. Resources which may be present in the project area and should be described in this chapter of the NEPA document are detailed fully in Chapter 5, Project Impact Analyses, of this manual.

Include the specific characteristics and issues include those that were identified during early coordination and scoping. The document should limit the discussions for individual topics to data, information issues, and values that have a bearing on possible impacts, mitigation measures, and the selection of an alternative. Include an amount of data and analysis that is commensurate with the importance of the impact.

Use tables, figures, and photographs to help readers understand the area. Label sensitive locations and features on figures and briefly describe them in the text. Do *not* show the specific locations of archaeology sites and T&E species on report graphics.

**g. Environmental Consequences Chapter**

Even though the Technical Advisory lists the Environmental Consequence chapter separately from the Affected Environment chapter, FHWA allows state DOTs to combine Affected Environment and Environmental Consequences into a single chapter to enable existing conditions, potential impacts, and mitigation measures for each impact type to be discussed together. UDOT prefers the combined approach.

The Environmental Consequences discussion, whether it is a standalone chapter or combined with Affected Environment, describes the probable impacts to the affected environment of all of the alternatives under consideration and documents the methodologies used in the evaluations and analyses. The impact assessment identifies both beneficial and adverse impacts as well as indirect and cumulative impacts. The Environmental Consequences chapter also describes the measures proposed to mitigate adverse impacts. The information is used to provide a basis for comparison among the no-action and action alternatives and among the action alternatives.

Figures and tables are helpful in illustrating the differences in impacts among the various alternatives. Individual tables can be used to present impacts such as relocations, noise impacts, historic/archaeological impacts, etc. Using a summary matrix of impacts at the beginning or end of the chapter provides a concise, side-by-side comparison of alternatives for each impact category.

Include the following information in the DEIS for each reasonable alternative:

- A summary of studies undertaken, any major assumptions made, and supporting information on the validity of the methodology if it is not generally accepted as state-of-the art
- Sufficient supporting information or results of analysis to establish the reasonableness of the conclusions regarding the impacts
- A discussion of potential mitigation measures
- A discussion, evaluation, and resolution of important issues for each alternative

Take care not to loosely use the words *significant* or *significantly* when describing levels of effect. The terms have a particular meaning when used in the NEPA process. CEQ states that *significantly* as used in NEPA requires consideration of context and intensity (40 CFR 1508.27). If an impact is determined to be significant, the determination must be supported by factual information.

As required in the CEQ regulations (40 CFR 1502.16), the chapter must also discuss the relationship between local short-term uses and maintenance and enhancement of long-term productivity as well as any irreversible and irretrievable commitment of resources. Since FHWA published the Technical Advisory in 1987, additional impact categories have been identified that should be addressed in the impacts discussion (for example, environmental justice, invasive species, and indirect and cumulative impacts). The technical studies and other impact analyses needed for the DEIS are described in Chapter 5, Project Impact Analyses, of this manual.

#### **h. List of Preparers**

CEQ regulations (40 CFR 1502.17) require that the DEIS provide the names of those persons primarily responsible for preparing the DEIS documentation or substantial background studies.

#### **i. List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent**

This section of the DEIS can be either a chapter or an appendix. It contains the names of all agencies, organizations, and individuals who are sent a copy of the DEIS (40 CFR 1502.10).

#### **j. Comments and Coordination**

This chapter summarizes the early coordination or scoping process, agency and community meetings, and the key issues and pertinent information and comments received from agencies and the public through these efforts.

**k. Index**

An optional element of the DEIS is the index. The index lists the subjects alphabetically, with page numbers where the subjects are found. An EIS index should have a level of detail sufficient to focus on areas of the EIS that are of reasonable interest to any readers. It is not restricted to the most important topics, nor does it have to identify every conceivable term or phrase in the EIS.

**l. Appendices**

The purpose of an appendix is to incorporate material that provides greater detail than the summaries contained in the DEIS main text.

**2. DEIS Review and Approval Process**

The initial internal review of the administrative DEIS is conducted by the Environmental Program Manager with support from other Environmental Services staff as necessary. The UDOT Environmental Document (EA/EIS) Process and the UDOT NEPA Assignment QA/QC Plan outline the DEIS review and approval procedure. At the discretion of the project team, cooperating and/or participating agencies can be given the opportunity to review and comment on the administrative DEIS.

The project team compiles comments from UDOT and cooperating and/or participating agencies and incorporates comments as appropriate. At the discretion of the Director of Environmental Services, a legal review may be conducted on the DEIS.

After all comments are addressed, the Environmental Program Manager signs the Environmental Document QC form and submits the document to the Director of Environmental Services with a recommendation for approval. The Director of Environmental Services signs the Environmental Document QC form and submits the document to the UDOT Signatory Official for final approval. Once the UDOT Signatory Official has approved the DEIS and has signed and dated the cover page, print and distribute copies of the approved DEIS.

**3. DEIS Distribution and Circulation Process****a. Notice of Availability (NOA)**

A NOA is required to be published in the Federal Register and is prepared by the project team. The NOA includes the name of the project, the locations where copies can be obtained or reviewed, the date by which comments must be received, and the address of the person to which comments are to be sent. The minimum timeframe for commenting is 45 days, as set forth in 23 CFR 771.123(i).

The Notice of Availability should include the following statement:

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

If UDOT is intending to prepare a combined Final Environmental Impact Statement and Record of Decision, the cover sheet for the DEIS should also include the following statement (see Section 3.5 C for more detail):

*UDOT will issue a single document that consists of the Final Environmental Impact Statement and Record of Decision pursuant to Pub. L. 112-141, 126 Stat. 405, Section 1319(B) unless it is determined that statutory criteria or practicability considerations preclude issuance of such a combined document.*

The project team prepares the NOA and submits it to the Environmental Program Manager for approval. The Environmental Program Manager approves the NOA and forwards the NOA to legal counsel for review prior to publishing. If legal counsel has any comments, the Consultant revises the NOA accordingly. Documentation of the legal review should be maintained in the project file.

The Environmental Program Manager submits the final NOA to the EPA Office of Federal Activities (see 40 CFR 1506.9) along with a copy of the signed DEIS. All submissions must be made using EPA's [e-NEPA](#) system. The EPA Regional Office prefers two paper copies and one CD containing electronic files.

After receiving the DEIS, the Office of Federal Activities EIS Filing Section publishes the NOA of the DEIS for publication in the *Federal Register*. EPA assigns a unique identifier number to each EIS; this number is used for the FEIS and any other correspondence with EPA or publication in the *Federal Register* pertaining to the project.

Notices of Availability are published only on Fridays in the *Federal Register*. A DEIS must be received by the end of the preceding week before the notice can be published on the following Friday. At the same time as the publication in the *Federal Register*, UDOT publishes an NOA in statewide and local newspapers.

#### **b. Circulation of DEIS**

FHWA's NEPA regulations, 23 CFR 771.123(g), state that the DEIS must be made available to the public and transmitted to agencies for comment no later than the time when the document is filed with EPA. It also lists the types of agencies and persons that should be sent a copy of the DEIS which include:

- Public officials, interest groups, and members of the public known to have an interest in the proposed action or the DEIS
- Federal, state, and local agencies expected to have jurisdiction over, responsibility for, or interest or expertise in the action

- State and federal land management entities that could be significantly affected by the proposed action or any of the alternatives

Environmental Services transmits copies of the DEIS to the Advisory Council on Historic Preservation and the Department of the Interior.

#### 4. DEIS Public Hearing

Under 23 CFR 771.111(h), States must develop procedures approved by FHWA to carry out public involvement and public hearings for the federal-aid highway program. Consistent with Utah Administrative Code (UAC) R930-2, UDOT's practice is to hold one or more public hearings for a DEIS. The purpose of this hearing is to present the plans for the project and obtain public input on the project, its alternatives, and its environmental impacts. Under 23 CFR 771.123(h), the DEIS must be available at least 15 days before the public hearing. A NOA must be placed in statewide and local newspapers that announces the public hearing and advises where the DEIS is available for review, how copies can be obtained, and where comments should be sent.

Section 771.111(h) of 23 CFR lists the information that should be explained (as appropriate) at the public hearing:

- Purpose of and need for the project and its consistency with local plans
- Alternatives and major design features
- Impacts of the project
- Relocation assistance program and right-of-way acquisition process
- UDOT's procedures for receiving public comments, both oral and written

UAC R930-2 requires a court reporter to be present at the public hearing(s) to record public comments. Written comments submitted at the hearing or during the comment period are incorporated into a public hearing transcript, which is made available for public review in the same locations where copies of the DEIS were placed (see Chapter 4, Public and Agency Involvement, of this manual).

#### 5. Public and Agency Comments on DEIS

Section 771.123(i) of 23 CFR requires at least a 45-day comment period for a DEIS; the 45-day clock starts with the date of the NOA. Section 6002, subsection 139(g)(2), of SAFETEA-LU requires that the comment period for a DEIS cannot end more than 60 days from the NOA, unless (1) a different deadline is established by agreement of the lead agency, the project sponsor, and all participating agencies; or (2) the deadline is extended by the lead agency for good cause (for all other comment periods for agency or public comments in the environmental review process, a period of no more than 30 days is allowed from the availability of the materials on which comments are requested).

Following the close of the public/agency comment period and receipt of the public hearing transcript, summarize the comments made at the hearing(s) and those made in writing in a comment summary. This summary is prepared by the project team.

UDOT determines how the comments will be resolved, and a response to each comment or category of comments is prepared. A summary of the comments and how the comments were resolved is included in the FEIS.

#### 6. Selection of Preferred Alternative

The comments from agencies and the public are used by UDOT to help select the preferred alternative to be identified in the FEIS. The decision on the preferred alternative is made by UDOT with full consideration of public comments and environmental impacts, as well as constructability and funding issues.

CEQ requires that the FEIS identify the agency's preferred alternative in the Alternatives chapter per 40 CFR 1502.14(e) (see CEQ's [Forty Most Asked Questions, Question 4](#)).

#### C. Final EIS (FEIS) Process

Refer to the FHWA Technical Advisory for details pertaining to the preparation of the FEIS.

Section 1319(b) of MAP-21 (see [FHWA's Final Guidance](#)) includes a provision for a combined FEIS/ROD. This states that the lead agency shall, to the maximum extent practicable, combine the FEIS and ROD unless 1) the FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or 2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action. Central Environmental will determine for which projects this approach may be appropriate.

Central Environmental will make the determination whether a project is eligible to have a combined FEIS and ROD pursuant to the guidance referenced above. If Central Environmental determines that a project will likely qualify for a combined FEIS and ROD, it should include the following statement on the cover sheet of the DEIS:

*UDOT will issue a single document that consists of the Final Environmental Impact Statement and Record of Decision pursuant to Pub. L. 112-141, 126 Stat. 405, Section 1319(B) unless it is determined that statutory criteria or practicability considerations preclude issuance of such a combined document.*

The following sections describe the requirements for both the FEIS and ROD. If combining the FEIS and ROD, there does not need to be a separate review period between the publication of the FEIS and publication of the ROD.

## 1. FEIS Purpose

The FEIS is prepared as a revision of the DEIS to address substantive comments on the DEIS and to identify the preferred alternative. Possible responses to comments can include modifying the alternatives, conducting additional analysis, making factual corrections, and/or explaining why comments do not warrant further agency response. Additional environmental and engineering studies may need to be completed on the preferred alternative to resolve substantive comments raised during the review of the DEIS. The FEIS describes the mitigation measures that will be incorporated into the proposed action and documents compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provides reasonable assurances that their requirements can be met. If significant issues remain unresolved, the FEIS identifies those issues and the consultation efforts made to resolve them (23 CFR 771.125(a)).

## 2. FEIS Format and Content

FHWA offers three variations of the format and content of the FEIS, which are described below and in more detail in the FHWA Technical Advisory:

- Traditional FEIS (format same as DEIS)
- Condensed FEIS (incorporates the bulk of the DEIS by reference)
- Abbreviated FEIS (appropriate when only minor corrections are needed to the DEIS and when DEIS comments do not warrant additional response in the FEIS)

The traditional FEIS approach is the most commonly used approach. Under this approach, the FEIS uses the same format as the DEIS while addressing the substantive comments. The FEIS also updates the DEIS with respect to the following information:

- Public involvement and agency coordination activities completed during and after circulation of the DEIS
- Modifications to the preferred alternative
- Changes in the assessment of alternatives as the result of additional engineering or environmental studies
- Final mitigation measures, if appropriate
- Unresolved issues with other agencies
- Final Section 4(f) evaluation (if applicable)
- Fully executed Section 106 MOA in an appendix, as needed

Section 1319(a) of MAP-21 (see FHWA's [Final Guidance](#)) includes additional criteria for when the Abbreviated FEIS option is appropriate, and specifies particular content of the errata sheets accompanying the DEIS. This option is appropriate when comments

received on a DEIS are minor, and the lead agency's responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response.

In addition to the bulleted items listed above, the errata sheets should include:

- A list of the factual corrections made to the DEIS with references to relevant page numbers in the DEIS
- A list and explanation of why the DEIS comments do not warrant further response in the FEIS (include sources or reasons supporting this position)
- If appropriate, an indication of specific circumstances that would trigger further response, or could lead to a re-evaluation or SEIS
- A web address or other indication of where a copy of the DEIS may be obtained.

### 3. FEIS Review and Approval Process

The review and approval process for the FEIS follows the process that was described for the DEIS in Section 3.5(B)(2) except UDOT requires a legal sufficiency review on each FEIS before it is approved. The UDOT Environmental Document (EA/EIS) Process and the UDOT NEPA Assignment QA/QC Plan outline the FEIS review and approval procedure.

### 4. FEIS Distribution and Circulation Process

#### a. **Notice of Availability (NOA)**

A NOA is required to be published in the Federal Register and is prepared by the project team. The Notice of Availability should include the following statement:

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated January 17, 2017, and executed by FHWA and UDOT.*

The project team prepares the NOA and submits it to the Environmental Lead for approval. The Environmental Lead approves the NOA and forwards the NOA to legal counsel for review prior to publishing. If legal counsel has any comments, the Consultant revises the NOA accordingly. Documentation of the legal review should be maintained in the project file. The Environmental Lead submits the final NOA to the EPA Office of Federal Activities (see 40 CFR 1506.9) along with a copy of the signed FEIS. EPA requires electronic filing of EIS documents and no longer accepts paper or hard copies. All submissions must be made using EPA's [e-NEPA](#) system. The EPA Regional Office prefers two paper copies and one CD containing electronic files.

After receiving the FEIS copies, the Office of Federal Activities EIS Filing Section publishes an NOA of the FEIS in the *Federal Register*. EPA uses the unique identifier number assigned at the time the DEIS NOA was published. The publication of the notice in the *Federal Register* initiates the minimum 30-day review period, after which the ROD can be issued by UDOT, unless the FEIS and Rod are being combined.

Notices of Availability are published only on Fridays in the *Federal Register*. A FEIS must be received by the end of the preceding week before the notice can be published on the following Friday.

**b. Distribution of FEIS**

Provide the FEIS to any persons, organizations, or agencies that made substantive comments on the DEIS or that have requested a copy. Provide the document no later than the time the document is filed with EPA.

UDOT's FEIS coordination list, prepared as part of this process, includes the number of copies of the FEIS that must be sent to each specific agency.

Environmental Services transmits copies of the FEIS to ACHP.

UDOT publishes a NOA in statewide and local newspapers that states how copies can be obtained, locations where copies are available, and contact information for submitting comments. Copies of the FEIS are placed in libraries in the counties and cities where the project is located and at the appropriate UDOT regional office. Also, submit an electronic copy of the FEIS to the UDOT website manager, who will place the document on UDOT's website.

No public hearing is required for the FEIS.

**D. Record of Decision (ROD)**

**1. ROD Purpose**

As 23 CFR 771.126(e) explains, the FEIS is not an Administrative Action and does not commit UDOT to approve any future grant request to fund the preferred alternative. To obtain final approval of the proposed action under NEPA, UDOT must indicate its acceptance in the form of a concise public Record of Decision, or ROD (40 CFR 1505.2). The signed ROD constitutes the official federal decision and action for the project under NEPA, meaning that UDOT can proceed with right-of-way acquisition and final design of the project.

## 2. ROD Format and Content

Although the ROD cross-references and incorporates by reference the FEIS, the ROD must explain the basis of UDOT's decision on the project as completely as possible.

Additionally, the following issues must be addressed in the ROD:

- Where the selected alternative is different from the environmentally preferable alternative, clearly state the reasons for not selecting the environmentally preferable alternative (40 CFR 1505.2(b)).
- If lands protected by Section 4(f) are a factor in the selection of the preferred alternative, state how the Section 4(f) lands influenced the decision.
- If significant impacts are expected, explain the merits of the proposed action that justify the impacts.

The Technical Advisory states that the following key items must be addressed in the ROD:

- **Decision.** Identify the selected alternative. (Incorporating information in the FEIS by reference is recommended to reduce detail and repetition.)
- **Alternatives Considered.** Briefly describe each alternative considered and explain the basis for the decision. Identify the important factors used in the decision-making process and provide justification for selecting the preferred alternative.

This section identifies the environmentally preferable alternative. If this alternative is not the selected alternative, clearly state the reasons for not selecting it. The environmentally preferable alternative is the alternative that promotes the national environmental policy as expressed in NEPA Section 101. This is the alternative that "causes the least damage to the biological and physical environment; it also means the alternative that best protects, preserves, and enhances historic, cultural and natural resources" (CEQ's [Forty Most Asked Questions, Question 6a](#)).

- **Section 4(f).** Summarize the basis for any Section 4(f) approvals, if applicable.
- **Measures to Minimize Adverse Impacts.** Describe the specific measures adopted to minimize adverse impacts, and identify standard measures such as erosion control. State whether all practicable measures to minimize adverse impacts have been incorporated into the decision and, if not, why such measures were not included. Enter mitigation commitments listed in the ROD in the Project Commitment database in ePM (screen 775) or in a shared database accessible to the project team. Assign the completion of each commitment to a project phase and a person who is responsible for implementing the commitment.

- **Monitoring/Enforcement Program.** Describe any monitoring or enforcement program that has been adopted for specific mitigation measures, as outlined in the FEIS.
  - **Comments on the FEIS.** Identify all substantive comments received on the FEIS and provide appropriate responses. Note that this section will not be applicable for a combined FEIS and ROD.
3. Approval of ROD and Distribution

By law, UDOT cannot sign the ROD any sooner than 30 days after publication of the NOA of the FEIS in the *Federal Register*, or 90 days after the publication of the NOA of the DEIS, whichever is longer (23 CFR 771.127(a)). If the FEIS and ROD are combined, they cannot be signed any sooner than 90 days after the publication of the NOA of the DEIS.

## 3.6 Statute of Limitations (SOL)

The Statute of Limitations (SOL) established by SAFETEA-LU, and amended by MAP-21, applies to a permit, license, or approval action by a federal agency if the following conditions are met:

- 1) The action relates to a transportation project.
- 2) An SOL notification is published in the *Federal Register* announcing that a federal agency, or UDOT if it is assuming FHWA's responsibilities, has taken an action on a transportation project that is final under the federal law pursuant to which the action was taken.

If an SOL notice is published, the period for filing claims is limited to 150 days from the date the SOL is published in the *Federal Register*. All SOL notices to be published in the *Federal Register* must go through legal counsel review prior to publishing. The final SOL notice will be submitted to the FHWA's Utah Division Office for publication in the *Federal Register* on behalf of UDOT.

The SOL provision is intended to expedite the resolution of issues and risk that affect transportation projects. The determination of risk and the decision to file an SOL is made by UDOT.

An SOL notice can be used for a highway project regardless of the category of documentation used under NEPA. UDOT anticipates that it will publish SOL notices for most EIS projects and many EA projects. UDOT does not expect SOL notices to be used for projects that are CEs under 23 CFR 771.117(c). UDOT anticipates that the notice could be appropriate for documented CE projects under 23 CFR 771.117(d).

## 3.7 Continuous Activities and Re-evaluations

The approved CE, FONSI, and ROD documents are final federal decisions that result from the NEPA process. Since many projects require extensive time to develop and many projects undergo staged construction, there is often a lag time between final federal decisions and construction advertising. If right-of-way acquisition, utility relocations, design, and other routine project activities have occurred since the final federal decision, that is evidence of continuous activity on the project. Advertising sections of the project for construction also constitutes evidence of continuous activity. If there has been continuous activity and the scope of the project has not changed, no re-evaluation or Supplemental EA/EIS is required.

However, if the scope of the project has changed or if there has not been continuous activity, an environmental re-evaluation or Supplemental EIS may be required before further approvals are granted. That decision is made by Central Environmental and is documented in the re-evaluation.

### A. Re-evaluations

#### 1. Purpose and Applicability of Re-evaluations

**Purpose.** Re-evaluations have the following two purposes:

- To ensure that the project design is being developed in a way that is consistent with previous commitments in the CE, FONSI, or ROD
- To address changes in the design, projected impacts, or planned mitigation measures

**Applicability.** In addition, under 23 CFR 771.129, written re-evaluations of EISs are required in the following circumstances:

- A re-evaluation of the DEIS is required if an acceptable FEIS has not been received within three years after the date of circulation of the DEIS. The purpose of this re-evaluation is to determine whether to supplement the DEIS or to develop a new DEIS.
- A re-evaluation of the FEIS is required before further approvals can be granted if major steps to advance the action have not occurred within three years after the approval of the FEIS, Supplemental FEIS, or the last major approval or grant. Examples of major steps to advance the action are authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates.

## 2. Format and Content of Re-evaluations

According to FHWA's Technical Advisory, written re-evaluations do not have a required format. Because the original NEPA document is the approved environmental documentation, the approved document is not rewritten or amended. Instead, the re-evaluation is documented separately and included in the project file.

The re-evaluation is written by the project team in consultation with Central Environmental. The re-evaluation focuses on changes in the project, its surroundings, and impacts and any new issues identified since the last environmental documentation. Projects are often divided into smaller sections for funding and/or construction purposes. The re-evaluation for the various sections considers the entire project addressed in the original environmental document. The re-evaluation mentions which section(s) of the project is (are) now being advanced to right-of-way or construction plans.

To perform the re-evaluation, the project team reviews current right-of-way or construction plans to ensure that no significant changes have occurred; it might be necessary to conduct field reviews, additional studies, and agency coordination. The results of these reviews, studies, and written coordination are included in the re-evaluation documentation. Any additional public involvement that has occurred since the final environmental document was approved should also be included in the re-evaluation. The project team documents and describes all efforts to re-evaluate the project. If the project team determines that no adverse impacts are likely, this is stated in the re-evaluation.

If the project team determines that adverse impacts are likely, the project team coordinates with Central Environmental to determine if a Supplemental EIS should be prepared.

## 3. Approval of Re-evaluations

The written re-evaluation is prepared by the project team and submitted to Central Environmental for review and approval. A copy of the written re-evaluation and the approval are placed in the project file.

## B. Supplemental EIS (SEIS)

### 1. Purpose and Scope of SEISs

A Supplemental EIS (SEIS) is necessary when major changes, new information, or further developments occur in the project that could result in significant environmental impacts not identified in the most recently distributed DEIS or FEIS (40 CFR 1502.9(c)).

A SEIS is needed in the following cases:

- Changes are made in the design or scope of the project after the DEIS, FEIS, or ROD, and these changes would result in significant environmental impacts not evaluated in the EIS.
- New information or circumstances relevant to the environment would result in significant adverse environmental impacts not evaluated in the DEIS or FEIS.

A SEIS is not needed if:

- The changes to the proposed action, new information, or new circumstances would result in a lessening of the adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS.
- UDOT decides to approve an alternative that was fully evaluated in an approved FEIS but not identified as the preferred alternative. In this case, a revised ROD would be issued.

When the significance of the new impacts is uncertain, the project team develops appropriate environmental studies to assess the impacts of the changes, new information, or new circumstances. In some instances, Central Environmental could direct that an EA be prepared.

In some cases, a SEIS might be required to address issues of limited scope, such as the extent of proposed mitigation, a location change, or a design variation for a limited portion of the overall project. In these situations, preparing the SEIS does not necessarily prevent the granting of new approvals, require the withdrawal of previous approvals, or require the suspension of project activities not directly affected by the SEIS.

## 2. Format and Content of SEISs

The SEIS is developed using the same process and format as the original document (the DEIS, FEIS, or ROD), except that scoping is not required.

In the SEIS, provide enough information to briefly describe the proposed action, the reasons why a supplement is being prepared, and the status of the previous environmental document. Also, reference the valid portions of the previous EIS rather than repeating them. Unchanged impacts can be briefly summarized and referenced. Address new environmental requirements that have become effective since the previous EIS was prepared, to the extent that the new regulations apply to the portion of the project that is being evaluated and is relevant to the subject of the SEIS. Summarize the results of any re-evaluations that have been performed for portions of the project or for the entire project. The SEIS is thus an up-to-date consideration of the project and its environmental effects.

### 3. Approval and Distribution of SEISs

The SEIS is reviewed and distributed in the same manner as a DEIS and FEIS.

According to the FHWA Technical Advisory, the transmittal letter of the SEIS indicates that copies of the EIS being supplemented are available and will be provided to anyone who requests one.

## 3.8 State Environmental Study (SES)

### A. Overview

NEPA does not apply to projects that are completely state funded with no federal approval required. For these types of projects, UDOT conducts appropriate environmental reviews and public involvement activities. The results of these activities are documented in State Environmental Studies (SES). The environmental review process for state projects provides decision-makers with the necessary information to make the best project decision while considering the anticipated benefits and impacts. This process allows decision-makers to balance the expected transportation benefits, impacts, and planned mitigation measures.

### B. NEPA Applicability for State Projects

NEPA would apply to state-funded transportation projects that require a federal approval or other federal action. For this type of project, the federal agency with jurisdiction serves as the lead agency along with appropriate cooperating and participating agencies. Depending on the project scope and anticipated impacts, the NEPA document could be a CE, EA, or EIS. Examples of state-funded projects that would likely require the preparation of a NEPA document include:

- A new interchange on an interstate highway. Under the terms of the 327 NEPA Assignment MOU, UDOT would act as the lead federal agency for these projects.
- A project that would result in significant impacts to waters of the U.S. as determined by USACE. NEPA would apply only to the actions described in the Clean Water Act Section 404 permit, not the entire project.

### C. Types of State Projects

State projects are classified as either Type A or Type B. The project classification is based on the overall scope, region input, and the results of preliminary environmental reviews. The UDOT Director of Environmental Services makes the final decision on the classification of state projects.

Environmental review procedures for Type A and Type B projects are described below.

## D. Preparation

### 1. Type A Project Procedures

For Type A projects, the document preparer performs appropriate environmental studies for the project and documents the findings using the Environmental Study form in ePM (screen 770). Type A projects are similar in scope to NEPA CE-type documents as described in 23 CFR 771.117(c) and (d).

The document preparer attaches supporting documentation in PDF format, such as maps, typical sections, drawings, clearance memos, agency correspondence, public involvement efforts, stakeholder comments, and UDOT's responses to comments. The completed document is stored electronically in PDF format in ProjectWise.

- **Review.** The SES must be reviewed by a person who was not the preparer. The reviewer must sign and date the signature page on the line labeled Reviewer's Signature.
- **Approval.** The UDOT Region Environmental Manager approves the SES by signing and dating the signature page.
- **Mitigation Measures.** Enter mitigation commitments in the Project Commitment database in ePM (screen 775). Assign the completion of each commitment to a project phase and a person who is responsible for implementing the commitment.
- **Archive and Records Retention.** The UDOT Region environmental staff archives the SES documents in ProjectWise. The Region environmental staff keeps a copy of all documents for at least three years from the signature date.

### 2. Type B Project Procedures

Environmental reviews for Type B projects are based on the overall scope, Region input, and the results of preliminary environmental reviews. Type B studies should use the UDOT-format as the basis for the organization and content of the document. Type B environmental studies for state projects include the following elements and characteristics:

- **Scoping.** Provide opportunities early in the process for public and agency stakeholders to gain information about the proposed project and to submit comments. Invite the participation of the general public, Native American tribes, state agencies, local communities, interested organizations, and federal agencies, if applicable.

- **Purpose, Need, and Goals.** Describe current and future deficiencies and specific needs and goals that the project is intended to address. Deficiencies can include issues related to demand, capacity, legislation, economic development, safety, pavement condition, roadway standards, or structural sufficiency. Use this information along with environmental resource data to develop alternatives to be studied in detail.
- **Stakeholder Coordination/Public Involvement.** Conduct public involvement activities to identify, inform, and solicit feedback from stakeholders about the project's purpose and need, potential alternatives and impacts, mitigation options, and project schedule.
- **Affected Environment.** Describe the existing setting for the area that would be affected by the alternatives.
- **Impact Analyses.** If project alternatives could cause adverse impacts, perform appropriate studies to analyze and document such impacts.
- **Alternatives and Environmental Consequences.** Describe the alternatives studied and provide details on those that were studied but eliminated. For each alternative studied in detail, include an analysis of impacts, likely benefits, and proposed mitigation measures.

Describe each action alternative and the No-Action alternative. Action alternatives studied in detail must satisfy the project needs or they are not considered reasonable alternatives. The No-Action alternative is studied in order to establish a baseline for comparing alternatives. Alternatives are evaluated according to how well they meet the project purpose, provide an asset to the community, and are compatible with the natural and built environment. If an alternative does not meet the project's purpose, it is eliminated.

During the environmental study and preliminary design process, UDOT tries to avoid or minimize impacts to environmental resources. If impacts cannot be avoided, UDOT investigates measures to minimize impacts and determines measures to mitigate adverse impacts with input from applicable agencies and stakeholders.

- **Draft Environmental Study.** Make the completed Draft Environmental Study available to the public and all stakeholders for review and comment according to UAC R930-2.
- **Public Hearing.** Following the publication of a Draft Environmental Study, provide a public hearing or opportunity for public hearing on the proposed project according to UAC R930-2.
- **Final Environmental Study.** The Final Environmental Study includes modifications where applicable and lists and responds to comments provided on

the draft document. Consider stakeholder comments along with the outcome of the environmental study process. Recommend the selected alternative for approval based on the information and findings in the Final Environmental Study.

- **Decision Document.** Prepare a formal decision document that describes the basis for the project decision. This document includes a description of the selected alternative, reasons for selection, and mitigation measures to be included in the project. This decision document can be included with the Final Environmental Study.
- **Approval.** The Region Environmental Manager and the Director of Environmental Services submit the Final Environmental Study and decision document with a recommendation of approval to the UDOT Project Development Director. The Project Development Director reviews the submittal package and, if he or she concurs, signs the decision document indicating approval.
- **Mitigation Measures.** Enter mitigation commitments in the Project Commitment database in ePM (screen 775). Assign the completion of each commitment to a project phase and a person who is responsible for implementing the commitment.
- **Archive and Records Retention.** The UDOT Region environmental staff archives the SES documents. The Region environmental staff keeps a copy of SES documents for at least three years from the signature date.

### 3.9 Project File and Administrative Record

This section provides information for maintaining the project file during the NEPA process and for compiling the administrative record if a lawsuit is filed challenging the decisions made in the NEPA process. There is always potential for legal challenge of a NEPA document and federal permits that can seriously delay or even cancel a project that UDOT has spent years planning. Managing the risk of possible litigation should be part of good project planning. In addition to diligent adherence to NEPA procedures, careful, coordinated preparation of the administrative record by UDOT and its contractors is an important component of risk management.

Maintaining an accurate and up-to-date project file is an important task in any NEPA study, regardless of whether litigation is anticipated. The project file allows the project team to locate important documents quickly, which reduces inefficiency and duplication of effort while also reducing the risk of overlooking information. The project file also enables an agency to respond to document requests under the Freedom of Information Act (FOIA) and similar state public records laws.

If a lawsuit is filed, the project file provides a starting point for preparing the administrative record. The administrative record includes the materials that were considered by the agency in reaching its decision. The administrative record is important

because the court is required to base its review of the agency's decision on the information contained in the administrative record. A strong record greatly enhances an agency's ability to defend its decision; a weak or incomplete record increases the chances that the agency's decision will be overturned by a court.

Since the NEPA process itself is often lengthy and complex, it is common for the administrative record in a NEPA case to include tens of thousands of pages. For that reason, compiling the administrative record requires a substantial effort, which typically involves both program staff and attorneys from the agency or agencies involved. The best way to expedite the preparation of the administrative record during litigation is to maintain accurate and up-to-date project files during the NEPA process.

## A. Maintaining a Project File

Agencies have considerable discretion regarding the procedures to be used for maintaining project files during the NEPA process. These procedures vary greatly from agency to agency and even within the same agency. Nonetheless, most public agencies must follow some requirements regarding the handling of agency documents. These types of requirements apply to project files that are maintained by an agency during the NEPA process. For more information, see AASHTO Practitioner's Handbook 01, [Maintaining a Project File and Preparing an Administrative Record for a NEPA Study](#)

### 1. Freedom of Information Act (FOIA) and Other Public Record Laws

Most government agencies are subject to public records laws, such as FOIA and similar state laws. The Utah public records law that UDOT is subject to is the Utah Government Records Access and Management Act (GRAMA). The range of documents that are subject to disclosure under FOIA and GRAMA is quite broad. As a result, these laws can result in the release of documents well beyond those that would typically be included in an administrative record. For example, a request under a state public records law could result in disclosure of internal state agency or consultant documents. It also is important to note that a public records request can be received at any time, so it could result in the release of documents during the NEPA process, well before litigation begins (and even if there is never any litigation).

## B. Archives and Record Retention

In accordance with the 327 NEPA Assignment MOU and 2 CFR 200.333 the following retention periods are maintained for each type of record:

- EISs and/or Section 4(f) Statements: Files containing Records of Decision, Draft and Final EISs, Section 4(f) evaluations will be maintained by UDOT for a period of eight years after approval of the final statement. After eight years, UDOT will transmit its EIS and/or Section 4(f) files (in paper or electronic form) to FHWA to

be managed in accordance with FHWA records retention and disposal policies and procedures.

- **Noise Barriers:** UDOT will maintain an inventory of all constructed noise abatement measures containing the information required to comply with 23 CFR 772.13(f). UDOT will retain the required information for a period of four years after the end of the Federal fiscal year in which construction of the particular noise abatement measure is completed.
- **Environmental Files:** All other environmental files and supporting documentation related to the project will be retained for a period of three years.

### 3.10 Improving Quality of Environmental Documents

FHWA, in conjunction with AASHTO, has issued a report on an initiative to improve the quality of EISs and EAs written to comply with NEPA. The report, titled [\*Improving the Quality of Environmental Documents\*](#), identifies the core principles for improving the quality of NEPA documents.

- **Principle 1.** Tell the story of the project so that the reader can easily understand the purpose of and need for the project, how each alternative would meet the project goals, and the strengths and weaknesses associated with each alternative.
- **Principle 2.** Keep the document as brief as possible, using clear, concise writing, an easy-to-use format, effective graphics and visual elements, and discussion of issues and impacts in proportion to their significance.
- **Principle 3.** Ensure that the document meets all legal requirements in a way that is easy to follow for regulators and technical reviewers.

The recommendations stress the use of plain language with effective visual elements (such as pictures, simulations, graphs, figures, and tables).

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