

Title: Review and Distribution of Environmental Assessments
Date: March 2019
SOP No.: 9
Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance for the review and processing of environmental assessments (EA).

### **2. Applicability/Scope**

This guidance applies to all EAs.<sup>1</sup> EAs are needed for actions in which the significance of the environmental impact is not clearly established (23 CFR 771.115). EAs are prepared when the actions are not categorically excluded and do not require the preparation of an environmental impact statement (EIS) because no significant impacts are anticipated, or when the agency believes preparation of an EA would assist in determining the need for an EIS.

### **3. Responsibilities**

FTA Regional staff is responsible for managing the environmental review process, including for projects that require an EA. Managing the process includes providing guidance to the project sponsor regarding EA document development as well as the environmental review process. FTA Regional staff is also responsible for entering project information on the Federal Permitting Dashboard.<sup>2</sup>

Per 23 CFR 771.119(c), the EA is subject to Administration approval before it is made available to the public as an FTA document. Administrative approval is usually assigned to the Regional Office in consultation with the Regional Counsel. Therefore, the Regional Administrator, or designee, must approve/sign the EA prior to its public distribution.

### **4. Standard Procedures for Environmental Assessments**

**4.1. Annotated outline.** After informal scoping for an EA (if conducted) or project review by Regional staff (see SOP No. 7, Scoping, Section 4.2), FTA recommends the project sponsor prepare an annotated outline (see SOP No. 8, Annotated Outline) for review, revision, and approval by FTA Regional staff. The Region should provide direction to the project sponsor on key environmental issues and how these issues will be addressed during the environmental review process. Consistent with Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA), the annotated outline should reflect that an EA is a concise public document that should not contain long descriptions or detailed data (40 CFR 1502.10). CEQ recommends that EA document length be about 10 to 15 pages, though the length of the EA should be commensurate with the potential impacts and issues. Data or other supporting studies may be provided in technical reports appended to the EA.

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<sup>1</sup> This guidance is based in part upon FTA's interpretation that 23 U.S.C. § 139 is limited to projects for which an EIS is prepared and does not apply to projects for which an EA is prepared unless FTA decides to apply it (see 23 U.S.C. § 139(b)).

<sup>2</sup> <https://www.permits.performance.gov>

**4.2. Content of EA.** The EA must contain brief discussions of the need for the proposed action, reasonable alternatives to the proposed action, an evaluation of the environmental impacts of reasonable alternatives (including mitigation), and a list of agencies and persons consulted (40 CFR 1508.9). The EA should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met (23 CFR 771.119(g)).

**4.2.1. Alternatives.** Alternatives should be described in sufficient detail that their impacts can be evaluated and mitigation measures can be designed into the project, where appropriate. The alternatives evaluated in an EA will normally include the proposed action and the no action alternative, though others may be included. For example, another build alternative might be developed in order to comply with Section 4(f) of the DOT Act (49 U.S.C. § 303).

**4.2.2. Impacts.** EAs must disclose the impacts of the proposed action on the human and natural environment, and include mitigation measures, as appropriate. When informal scoping raises major transportation-related issues, the EA should address transportation-related impacts with the focus on how transportation affects the human and natural environment (e.g., how congestion may affect localized air quality impacts).

**4.3. Sufficient analysis of impacts before publishing an EA.** Prior to publishing an EA, Regional staff must review the EA to ensure that sufficient analysis and consultation have been completed to disclose potential environmental impacts and to identify reasonable mitigation measures. Reviewers should also assure that the EA is concise and clearly written.

**4.4. Cooperating agency review.** It is rare for FTA to invite cooperating agencies to participate in EA development and review. However, if there are cooperating agencies involved due to anticipated permits or other authorization decisions, then FTA should provide an opportunity for these agencies to review administrative drafts of the EA or sections thereof with sufficient time to incorporate their input. Cooperating agency participation should be established during any scoping that is held.

**4.5. Approval by FTA.** As discussed in Section 3, the EA is subject to FTA approval before it is made available to the public (23 CFR 771.119(c)). FTA's approval may be in the form of an FTA signature on the EA (preferred), or in the form of a letter, memo, or email to the project sponsor from the Regional Administrator or designee. The EA signature date must be recorded in the Federal Permitting Dashboard within 10 days of signature, pursuant to USDOT's *Federal Permitting Dashboard Reporting Standard* (Dec. 2018) (internal only).

**4.6. Copies for FTA.** Regional staff should direct the project sponsor to send at least one hardcopy set of the EA and any associated technical reports to the Regional Office, along with CDs (number to be determined by the Regional staff, but should include at least one CD/DVD for FTA's Office of Environmental Programs).

**4.7. Public availability of EAs.**

**4.7.1. Distribution and notice of EAs.** Availability of an EA is governed by 23 CFR 771.119, paragraphs (d) through (f). Acceptable methods for providing access to the EA include

publishing it on the project website, CD distribution, or hard copy distribution; FTA recommends posting the EA prominently on the project website and maintaining it there until the project is in operation. The EA must be available at the project sponsor's office, the FTA Regional Office, and at the public meeting (if one is held), and may be available at other public institutions, such as public libraries or other local government offices in the project area. The project sponsor should publish a notice of availability in local newspapers and on the project sponsor's website, noting (1) where the public can access the document; (2) the 30-day review period; (3) where comments should be sent; and (4) public meeting details, if one will be held. A formal notice of availability (i.e., a notice published in the *Federal Register*) is not required and not normally used for EAs.

**4.7.2. Public meetings/hearings.** A public meeting or hearing is not required for an EA under NEPA, but one may be held to satisfy other environmental laws (such as Section 106 and Section 4(f)). Any such meeting/hearing should be announced in the notice of availability.

**4.8. Distribution of EAs to Federal and State Agencies.** A hard copy or electronic copy of the EA or notice of its website location should be sent to any Federal, State, or local agency determined during preparation of the EA that have an interest in the project or jurisdiction over its impacts. This includes redistribution to NEPA cooperating agencies who may have reviewed and provided comments on the administrative draft. Unlike an EIS, there is no formal filing of an EA with the U.S. Environmental Protection Agency.

**4.9. Actions covered by an EA that typically require an EIS.** Consistent with the CEQ regulations implementing NEPA, when FTA expects to issue a finding of no significant impact (FONSI) for an action described in 23 CFR 771.115(a) (describing actions normally requiring preparation an EIS), a 30-day public review period of the proposed FONSI shall be provided before the final determination whether to prepare an EIS is made and before the action may begin (40 CFR 1501.4(e)(2)).

**4.10. Atypical EA procedures.**

**4.10.1. Substantial comments on an EA.** Generally, FTA addresses any comments on an EA within the text of the FONSI or attached to a FONSI. On occasion, the comments on the EA are so substantive that the project or its impacts, as presented in the EA, must be revised. When this happens, the revised EA is included in the project file as the basis for the FONSI. Redistribution of the revised EA is not required, but may be done as a means of responding to the extensive comments received. Further comments are not sought on the revised EA if there are no changes that alter environmental impact information and determinations made in the original EA, and there is no waiting period after distribution of the revised EA before issuing a FONSI. However, if the revised EA presents new information or analysis that result in changes to impacts presented in the original EA, then the revised EA may be recirculated with a 30-day comment period.

**4.10.2. Change class of action from EA to CE.** If, at any point in the EA process, FTA determines: (1) there is no potential for significant environmental impacts, and (2) there is no reason to provide additional opportunity for public involvement in the environmental process, the project may be more appropriately advanced as a categorical exclusion (CE) under 23 CFR 771.118. The EA should be terminated and a CE applied to the project, per the Regional Office's

CE process (e.g., checklist, project description, template, etc.). If the EA was publicly announced, then the Regional Office and the project sponsor should discuss whether (depending on the level of public interest) and how to inform the public of the change (e.g., notice on the project sponsor's website).

**4.10.3. Change of class of action from EA to EIS.** If, at any point in the EA process, FTA determines that the project is likely to be a Federal action that significantly impacts the environment, the EA should be terminated and a Notice of Intent for an EIS should be issued (see 23 CFR 771.119(i)). Any environmental study or consultation performed in support of the EA would apply in the EIS process.

**4.10.4. Supplemental EA.** After FTA has issued a FONSI, combined final EIS (FEIS)/record of decision (ROD), or ROD for a project, changes to the project resulting from unanticipated engineering or design issues or legal challenges may necessitate a "supplemental EA." This FTA practice is supported by 23 CFR 771.130(c), which discusses the use of an EA to evaluate whether there is a need for a supplemental EIS. The scope of the supplemental EA should be strictly limited to the area of the change, consistent with 23 CFR 771.130 (see SOP No. 17, Re-Evaluations and Supplemental Documents).

## **5. References**

- CEQ regulations implementing NEPA, [40 CFR parts 1500-1508](#)
- FTA's Environmental Impact and Related Procedures, 23 CFR [771.119](#) and [771.130](#)
- Section 4(f) regulations, [23 CFR part 774](#)
- [Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations](#) (CEQ, 1981) (see answer to Question 36a)
- Section 404(b)(1) guidelines, [40 CFR part 230](#)
- USDOT Federal Permitting Dashboard Reporting Standard (2018), internal—FTA only

APPROVAL:



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DATE:

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