

Title: Receiving and Responding to Public and Agency Comments
Date: March 2019
SOP No.: 11
Issued by the Office of Planning and Environment (TPE)

1. Purpose

This document provides guidance on the public and agency comment and response process for environmental assessment (EA) and environmental impact statement (EIS) documents.

2. Applicability/Scope

This document focuses on the process for responding to public and agency comments received on EAs and EISs, as required by the National Environmental Policy Act (NEPA) (42 U.S.C. § 4332), 23 U.S.C. § 139, the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR part 1503), and the joint Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) regulations implementing NEPA (23 CFR part 771).

Given that categorical exclusion (CE) determinations are not required to be circulated for public or agency comment, this document does not address CEs. In addition, guidance on responding to public and agency comments received during an EIS scoping period is not included as it is addressed in the Scoping Standard Operating Procedure (SOP No. 7). Finally, this guidance does not focus on the public involvement requirements of other environmental laws, regulations, or executive orders.

3. Responsibilities

FTA Regional staff is responsible for reviewing all public and agency comments received during public comment periods, responses to those comments prepared on FTA’s behalf, and any associated text changes to the environmental document. Regional staff should confirm that the project sponsor has: (1) provided adequate opportunity for the review of the EA or EIS by interested and affected parties, as well as Federal, State, and local agencies with jurisdiction; (2) properly documented the receipt of comments during this time for the project file; (3) considered all substantive comments received during the comment period; and (4) responded in accordance with statutory and regulatory requirements. FTA Regional staff are encouraged to attend public meetings/hearings on environmental documents if travel funds are available, especially for more complex projects.

FTA Regional Counsel, through the Office of Chief Counsel, is responsible for reviewing the response to comments, any related changes to the environmental document, and consistency with the environmental decision document.

The FTA Regional Administrator, as signatory to the decision document, is responsible for Regional staff fulfilling its responsibilities and complying with governing requirements.

4. Standard Procedures

4.1. Document availability.

4.1.1. Administrative/internal drafts. Depending on the project, participating and cooperating agencies may participate in the development and/or the review of the internal draft/administrative draft EIS (DEIS), final EIS (FEIS), or combined FEIS/record of decision (ROD). They must provide comments within their areas of special expertise or jurisdiction (23 U.S.C. § 139(d)(9)(A)) or use the process to address any environmental issues of concern to their agency (23 U.S.C. § 139(d)(9)(B)), and should follow the review timing included in the coordination plan.

4.1.2. Public availability. Project sponsors must make EA and EIS documents available for review by interested and affected parties, including Federal, State, and local agencies, and the document must be available at the project sponsor's office and the FTA Regional office (23 CFR 771.119(d) and 771.123(g)). FTA recommends posting the electronic version to the project sponsor's website (23 CFR 771.111(i)(3)), and making a hard copy available in a transit-accessible location, such as a public library or a community center for those without Internet access.

4.2. Comment periods. FTA requests comments on its EAs and EISs through formal public and agency comment periods. The length of comment periods vary by the class of action (EA or EIS). FTA's standard practice is that comment periods are measured in calendar days from the date the document is made available (the notice of availability (NOA) publication date for EISs) to the last day of the comment period. If the comment period ends on a holiday or a weekend, then the next business day is the close of the comment period.

4.2.1. Limited English proficiency. In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 "Improving Access to Services with Persons with Limited English Proficiency (LEP)," project sponsors must be certain that LEP populations have meaningful access to the review of agency plans. Guidance on LEP populations specifying the requirements document translation are contained in the USDOT *Policy Guidance Concerning Recipients Responsibilities to LEP Persons* (2005). The guidance explains the four-factor analysis to be used in determining when translation for LEP populations is needed for written materials and public hearings.

4.2.2. Protecting privacy. Project sponsors should provide a notice or disclaimer¹ to commenters that their personal information, if provided, may be published in environmental documents that are publicly circulated. A member of the public may choose to exclude their personal information from comment forms and environmental documents, if desired.

4.2.3. Environmental Assessment (EA). Project sponsors must make an EA available for public inspection for a 30-day period. Circulating an EA and holding a public hearing or

¹ Any solicitation for comments (e.g., NOA) or provided comment materials (e.g., comment cards at public meetings) should include the disclaimer.

meeting² is optional (23 CFR 771.119(d)-(f)). A NOA, briefly describing the action and its impacts, must be provided to affected units of Federal, State, and local government (23 CFR 771.119(d)). Project sponsors should provide a website link to the electronic version and give notice of the location where interested persons can view a hard copy. They should also identify a contact person who can provide a copy of the document upon request.

When a project sponsor chooses to hold a public hearing for the project, a 30-day comment period must be held (23 CFR 771.119(e)-(f)) and the EA must be available for at least 15 days prior to the hearing. FTA Regional staff must make certain that the project sponsor gives proper notice of the EA's availability, provides information on where it may be obtained and/or reviewed, and that public hearing advertisement occurs 15 days in advance of a hearing if one is held (40 CFR 1506.6(b)).

Notification methods for an EA include: advertisement in the local newspapers announcing the availability of the EA, posting on the project sponsor's website, and hard copy viewing locations for those without Internet access. A Federal Register notice is not required for an EA and is only made upon approval of the Director of the Office of Environmental Programs on projects of national importance.

4.2.4. Draft EIS (DEIS). FTA and the project sponsor must circulate a DEIS for public and agency comment. The comment period must be at least 45 days, but no more than 60 days (23 CFR 771.123(k)). Extended comment periods are discussed in more detail in Section 4.3. The DEIS must be available for at least 15 days prior to the public hearing (23 CFR 771.123(j)). Regional staff should instruct the project sponsor to publish the public hearing information in local newspapers, on the project website, and any other appropriate means.

The comment period on a DEIS begins when the U.S. Environmental Protection Agency (EPA) publishes a NOA in the *Federal Register*. FTA Regional staff are directed to follow EPA's EIS Filing Guidance to file the NOA with EPA. EPA will publish the NOA once FTA files the DEIS and affirms that it has been made available to all other interested agencies and the public. FTA Regional staff should ensure the NOA includes the following:

- Comment period deadline is noted;
- Required 15-day EIS availability prior to the public hearing is met;
- The time, date, and location information for the public hearing is included; and
- Instructions on how to comment are provided.

FTA should also ensure the project sponsor announces the details of the comment period, public hearing, and where comments are to be sent in cover/transmittal letters of the DEIS, on the project sponsor's website, and in public hearing brochures, handouts, or other notices.

4.2.5. Combined FEIS and ROD (FEIS/ROD). A combined FEIS/ROD document (23 U.S.C. § 139(n), 23 CFR 771.124) does not have a comment period or a 30-day waiting period

² A public hearing is a formal meeting that is recorded and results in a transcript. A court reporter or independent third party typically prepares the transcript). A public meeting does not require having a court reporter in attendance or a transcript, and can be in the form of townhall meetings, open houses, or charrettes.

because these documents are published as a single document. EPA publishes a NOA in the *Federal Register* for combined FEIS/ROD documents.

4.2.6. Final EIS (FEIS). No comment period is required following the publication of an FEIS; however, a 30-day waiting period is required between the date of the *Federal Register* FEIS NOA and signature date of the ROD (40 CFR 1506.10(b)(2), 23 CFR 771.125 and 771.127). FTA may receive comments during this period and may consider any substantive comments received when developing the basis of decision for the ROD. If FTA chooses to establish a comment period on an FEIS, information on the comment period must be included in the introduction of the FEIS, in the NOA, on the project website, and in the newspaper NOA, depending on the purpose for the request for comments.

4.2.7. Supplemental documents. Supplemental documents are subject to the same public comment and review period requirements as an original EA or EIS, except that scoping is not required and the public involvement may be tailored to the scope of the supplemental document, as appropriate.

4.3. Comment period extensions. A comment period of an EA or an EIS may be extended for good reason, such as a request from another Federal agency, and its duration should be determined during scoping activities. The comment period for an EIS can be extended only if: (1) the lead agency, project sponsor, and cooperating and participating agencies all agree to set a longer period; or (2) the lead agency (FTA) finds “good cause” for the longer period (23 U.S.C. § 139(g)(2)).

If comment periods are extended after an EA is made available or an EIS NOA is published, the project sponsor should use the same methods used to advertise the original comment period. FTA Regional staff must amend the NOA filed with EPA to extend the comment period. Local notifications, such as updating the comment period on a project website, should also be amended.

4.4. Receiving comments. FTA Regional staff should ensure that the project sponsor has appropriately invited comments on the environmental document, either through hardcopy or electronic means. Comments may be received in various ways, such as:

- Letters or emails sent to the project sponsor or FTA Regional staff;
- Hand-written comments submitted on comment cards at public hearings or meetings;
- Oral testimony recorded in public hearing transcripts; or,
- Comments submitted through the project sponsor’s website.

4.5. Consideration of comments. All substantive comments must be considered, either individually or collectively (40 CFR 1503.4(a)), to help decisionmakers make informed decisions. FTA Regional staff should work with the project sponsor to identify common concerns or major concerns expressed in the comments, and FTA Regional staff should resolve any conflicting comments between Federal agencies. Careful consideration of public and agency comments should be made by the project sponsor to determine how to respond to comments and how best to advance the project to complete the EA or EIS process.

Comments received often vary and can range from statements of support for, or opposition to, a project sponsor’s action to detailed critiques of the analysis and suggestions for a new

alternative. Comments may identify errors of fact, highlight areas of controversy, identify omissions, raise environmental concerns, or provide new information.

4.6. Responding to comments. Responses to comments are required for both EA and EIS documents (23 CFR 771.119(g) and 23 CFR 771.125(a)(1), respectively). It is not required by Federal regulation to send a direct response to commenters. State and/or local regulations may, however, have a requirement to do so.

The type of response will vary based on whether the comment is substantive or non-substantive.

4.6.1. Substantive comments. Comments that raise specific issues or concerns regarding the project or the study process, suggest new alternatives, or question or raise concern over new impacts not previously addressed in the DEIS or EA are considered substantive comments.

Responses. CEQ directs that an agency must respond to substantive comments by one or more of the means listed below (40 CFR 1503.4(b)):

- Modify alternatives including the proposed action;
- Develop and evaluate alternatives not previously given serious consideration;
- Supplement, improve, or modify its analyses;
- Make factual corrections; or
- Explain why the comments do not warrant further FTA response, citing the sources, authorities, or reasons which support FTA's position and, if appropriate, indicate those circumstances that would trigger FTA reappraisal or further response.

In the *Forty Most-Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, question 29 recommends how DEIS comments questioning the adequacy of the EIS methodology or comments that raise new alternatives should be addressed. Comments should be responded to in the combined FEIS/ROD or the FEIS.

4.6.2. Non-substantive comments. These include comments that are not relevant to the topics discussed in the environmental document, such as general statements of support or opposition to the project, or comments concerning information that was already included in the document but the reader overlooked.

Responses. Responses may refer the reader to the location in the document to point out information related to the comment. If only minor edits or corrections are needed as a result of comments, they can also be addressed in an errata sheet. Responses to general support or opposition could be that the agency will consider the comment prior to making a final decision on the project.

4.7. Response format. FTA has no prescribed format for responding to comments. The response format will depend on a number of factors including the number and type of comments received. Regional staff should encourage the project sponsor to use a user-friendly format where commenters can easily find their comments and the FTA/project sponsor's responses. Voluminous comments may be summarized.

Potential formats include:

- Matrices that organize the comments into a table with individual answers for each comment. This approach provides a comprehensive record of all comments received;
- Summaries of either individual comments or single responses for comment themes. A comment response can reference the comment theme response minimizing the repetition of responses. This reduces the need to change responses in multiple locations as they are being drafted, reducing the likelihood of typos and errors, and also allows for faster and easier review. Where summaries are used, the actual comments must be made available for inspection at the project sponsor's office, on the project website, or attached to the final environmental document; or
- An in-line comment-response format that assigns a number to each individual comment and then presents the responses by number. This approach is often best for smaller documents or documents with few comments or issues.

4.8. Preparing responses. FTA must ensure the project sponsor responds to all EA and EIS comments consistently, thoughtfully, and respectfully. Prepared responses should also:

- Be in proportion to the scope and scale of the environmental issue raised;
- Be consistent with other responses and with the final decision document;
- Provide an explanation as to why FTA and the project sponsor do not feel that a revision is warranted if one isn't;
- Be objective regarding the environmental issues raised; and
- Cross-reference relevant sections in the NEPA document, and, if more information can be found elsewhere (e.g., project web site), direct the commenter to it.

If the comment includes an inaccurate statement, the response should provide the correct information. If the comment claims an issue was not analyzed, the response should either reference where in the document the issue is addressed or explain why the analysis was not done and why it was not required. If a comment results in changes to the document or additional analysis, clearly state that in the response and include the relevant document references.

4.9. Responding to late comments. FTA should consider and respond to substantive comments received after the close of the comment period, but prior to publication of the decision document, to the extent practicable.

4.10. Documenting comments and responses. FTA should ensure the project sponsor collects, organizes, and makes all comments and responses available for FTA review (23 CFR 771.119(g) and 23 CFR 771.125(a)(1)). All comments (hardcopy and electronic) must be maintained in the project file.

4.10.1. EA. The project sponsor must provide the comments received and the responses to the EA for review by FTA (23 CFR 771.119(g)). FTA uses the responses to comments on an EA in making the FONSI decision and incorporates this information into the FONSI documentation.

4.10.2. EIS. Responses to comments on DEISs are required to be assessed both individually and collectively (40 CFR 1503.4) and provided in the combined FEIS/ROD or FEIS. CEQ regulations (40 CFR 1503.4(b)) and FTA regulations (23 CFR 771.125) state that an FEIS must provide a discussion of all substantive comments received on a DEIS within the FEIS and a response must be provided even if the comment does not warrant further agency response. Copies of comment letters are usually contained in an appendix.

Comments received on an FEIS are routinely provided a response in the ROD, and in some instances, such as with a Section 4(f) de minimis impact determination identified between the DEIS and FEIS, the ROD is used as a mechanism for responding to comments where non-NEPA public involvement is specifically required. The FTA Regional Office should consider comments received on a combined FEIS/ROD to determine whether they involve issues that would lead to a re-evaluation or supplemental NEPA analysis under 23 CFR 771.129 or 771.130, respectively.

4.11. Changes as a result of public and agency comments. Occasionally, comments received on an EA or EIS results in changes in a class of action determination or requires a revised approach to completing the NEPA process, such as a supplemental document. Regional staff will review the public comment and responses to determine whether changes are necessary.

- For an EA, FTA will determine whether to: issue a FONSI, require a supplemental EA request additional public and agency review, or request an EIS based on the presence of significant impacts.
- For a DEIS, FTA will determine whether to: issue a combined FEIS/ROD document,³ issue an FEIS, or require a supplemental EA or EIS.


4.12. Documenting the comment-response process. FTA should ensure the project sponsor documents the comment-response process in the decision document (i.e., FONSI, combined FEIS/ROD, or ROD). This will help the public and agencies understand how FTA processed and responded to their comments. Documentation should include information on the length of the comment period and whether there were any extensions; the public hearings or meetings held, if any; the number of comments; and sources of comments. The same information is also required of any supplemental environmental documents. The documentation may note issues of controversy raised by commenters and summarize changes made in response to comments.

5. References

- CEQ regulations implementing NEPA, [40 CFR 1500-1508](#)
- Efficient environmental reviews for project decisionmaking, [23 U.S.C. § 139](#)
- [Environmental Impact Statement Filing Guidance](#), (EPA)
- [Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act](#), (CEQ, 2012)
- [Forty Most-Asked Questions Concerning CEQ's National Environmental Policy Act Regulations](#), (CEQ, 1981)
- FTA's Environmental Impact and Related Procedures, [23 CFR 771](#)

³ FTA would not use a combined FEIS/ROD where there are substantial changes to the preferred alternative or where FTA has identified significant new circumstances or information relevant to environmental concerns.

- [Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews.](#) (FHWA/FTA, 2013)
- National Environmental Policy Act, [42 U.S.C. § 4332](#)

APPROVAL: 
Megan W. Blum
Director, Office of Environmental Programs

DATE: 3/29/2019