



Implementation of 40 CFR § 1500-1508 Changes in PD&E Process

Effective on Projects after September 14, 2020

January 2021



NEPA Regulations

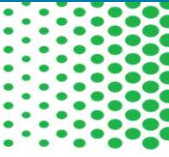
- **40 CFR § 1500-1508**
 - NEPA regulations for all federal agencies
 - Updated 7/16/20 by the Council on Environmental Quality (CEQ)
 - Requires federal agencies revise their procedures for implementing NEPA, for consistency with the CEQ changes by 9/14/2021
- **49 CFR Part 13**
 - Proposed rule to update USDOT NEPA procedures and incorporate provisions of SAFETEA-LU, MAP-21, and the FAST Act
 - Codifying USDOT Order 5610.1C with updates
 - Comment period ended 12/23/2020
- **23 CFR Part 771**
 - Policies and procedures of the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing NEPA
 - Supplements 40 CFR parts 1500 through 1508 (CEQ regulations)
 - Anticipate updates to match changes to CEQ regulations



Definitions

- **Environmental Document-** an EA, EIS, FONSI or NOI
 - FDOT's definition differs in that it includes CEs
- **Mitigation-** measures that avoid, minimize or compensate for effects caused by a proposed action or alternatives as described in an EA or ROD that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation.
- **Page-** 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information
 - This applies to all new page limits
- **Reasonable Alternatives-** a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant





Senior Agency Official

- Official of assistant secretary rank or higher
- For FDOT, this official is the Department Assistant Secretary for Engineering and Operations
 - Courtney Drummond
- Approves longer period of time for EAs and EISs
 - Sets a new time period
- Approves longer document (beyond page limits) for EAs and EISs
 - Sets a new page limit
- Addresses issues relating to purpose and need, alternatives, or other issues that may affect FDOTs ability to meet the schedule
- Responsible for overall review of NEPA compliance, including resolving implementation issues
 - OEM Director- Jason Watts



Significance

- Definition removed from 40 CFR 1508
- Guidance instead states:
- In considering whether the effects are significant agencies should analyze the **potentially affected environment** and **degree of the effects** of the action
 - **Potentially affected environment-** consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act
 - Significance varies with the setting of the proposed action
 - ◆ In the case of a specific action, significance would usually depend only upon the effects in the local area.
 - **Degree of the effects-** Agencies should consider the following, as appropriate to the specific action:
 - ◆ Both short and long-term effects
 - ◆ Both beneficial and adverse effects
 - ◆ Effects on public health and safety,
 - ◆ Effects that would violate federal, state, Tribal, or local law protecting the environment.



Impacts

- **Cumulative Impacts**- Definition/terminology removed. Concept moved to Effects or Impacts definition
- **Effects or Impacts**- changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.
 - Includes impacts that were previously identified as direct, indirect, or cumulative effects



Class of Action

- Class of Action process to remain the same
- For anticipated EAs and EISs COA Determination
 - Director of OEM will formally approve COA Determination within the EST
 - COA Determination form not completed until
 - ◆ After ETDM Programming Screen
 - ◆ After some of the technical studies have been completed
 - ◆ Prior coordination with OEM regarding timing of COA submission and determination
- More coordination and analysis will need to take place on EAs and EISs before the COA determination is made to ensure new timeframes can be met



Categorical Exclusion

- **New Definition:** a category of actions that the agency has determined, in its agency NEPA procedures, normally do not have a significant effect on the human environment
 - Removed “individually or cumulatively” language
- FDOT can use CEs from other agencies regulations
 - FTA (23 CFR § 771.118)
 - FRA (23 CFR § 771.116)
 - Consultation with the agency must be documented
 - OEM will be responsible for agency coordination
 - ◆ District to contact OEM ahead of intended use of CEs from another agency



Environmental Assessment

- **Completed within 1 year** unless the senior agency official approves a longer period in writing and establishes a new time limit
 - Measured from the date of agency decision (COA determination) to prepare an EA to the publication of an EA or a FONSI
 - The District to coordinate with OEM if a longer time limit is necessary
 - ◆ OEM to then coordinate with the Department Assistant Secretary for Engineering and Operations
- **Text of an EA** should generally be **no more than 75 pages**
 - Does not include the pages of the appendices or materials incorporated by reference
 - Before the page limit is exceeded, District to coordinate with OEM
 - ◆ OEM to request the Department Assistant Secretary for Engineering and Operations approve the exceedance and establish a new page limit
- Project websites or other publicly accessible electronic means are used to make the EA and supporting information available





Finding of No Significant Impact

- When updating the EA to address any changes that have occurred since the document became publicly available ensure that it remains within the 75-page limit
 - FONSI itself not included in page limit requirement
- Project websites or other publicly accessible electronic means are used to make the EA with FONSI and supporting information available



Environmental Impact Statement

- **Completed within 2 years** unless the senior agency official approves a longer period in writing and establishes a new time limit
 - Measured from date of issuance of the Notice of Intent (NOI) to the date the Record of Decision (ROD) is signed
 - ◆ District to coordinate with OEM to determine the timing of the NOI
 - District to coordinate with OEM if a longer time limit is necessary
 - ◆ OEM to coordinate with the Department Assistant Secretary for Engineering and Operations



Environmental Impact Statement

- **Text should be 150 pages or fewer**

- Limits include only the Project Description and Purpose and Need, Alternatives, and Environmental Analysis sections
 - ◆ Does not include the pages of the executive summary, appendices or materials incorporated by reference
- For projects of unusual scope or complexity the text should be limited to no more than 300 pages
- EISs that comply with the One Federal Decision policy may need to exceed these page limits
- Before the page limit is exceeded, District to coordinate with OEM
 - ◆ OEM to request the Department Assistant Secretary for Engineering and Operations approve the exceedance and establish a new page limit

Environmental Impact Statement

- EIS Activities List abbreviated to help develop a project schedule
- <https://www.fdot.gov/environment/psmcodes.shtm>

Environmental PSM Codes and Document Schedule Template Webinar

PSM Codes and Schedule Templates Webinar (Recording) 11-4-2016

PSM Codes and Schedule Templates Webinar (PPT) 11-4-2016

Environmental PSM Codes

Approved Environmental PSM Codes - 8/14/2019 (.xls)

Environmental Document Schedule Templates

Planning and PD&E (CE2) **Updated September 2020 (Primavera v6 and Higher) (PDF) (MS Project)**

Planning and PD&E (CE2) and Design (Primavera) (Primavera v6 and Higher) (PDF) (MS Project)

Planning and PD&E (EA) **Updated September 2020 (Primavera v6 and Higher) (PDF) (MS Project)**

Planning and PD&E (EIS) **Updated September 2020 (Primavera v6 and Higher) (PDF) (MS Project)**

Planning and PD&E (EIS-ROD) **Updated January 4, 2020 (Primavera v6 and Higher) (PDF) (MS Project)**

Planning and PD&E (SEIR) **Updated September 2020 (Primavera v6 and Higher) (PDF) (MS Project)**

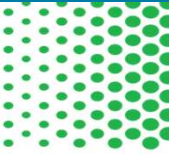


Notice of Intent

- To include a request for comments on potential alternatives and impacts, identification of any relevant information, studies or analyses of any kind concerning impacts affecting the quality of the human environment
- Provide new information
 - ◆ Purpose and need
 - ◆ Expected impacts
 - ◆ Anticipated permits for the project
 - ◆ Anticipated schedule
- District to coordinate with OEM for guidance on how to incorporate this information



Draft Environmental Impact Statement



- **Changes to Document Format**

- Cumulative Impacts section of the DEIS to remain
- Adding a new Summary of Submitted Alternatives, Information and Analyses to the Comments and Coordination section
- Removing the Distribution List
- Removing the Index



Draft Environmental Impact Statement

- Publication should invite comment specifically on the submitted alternatives, information, and analyses and the summary included in the Comments and Coordination section
 - Notice in the local newspaper(s)
 - Notice of Availability
 - EST distribution email
- Project websites or other publicly accessible electronic means are used to make the DEIS and supporting information available and **provide for electronic submission of comments**
 - District to contact OEM for guidance on how to do this if there is no project website



Final Environmental Impact Statement

- Cover page should include the estimated total cost to prepare both the DEIS and FEIS, including:
 - cost of agency full-time equivalent personnel hours
 - contractor costs, and other direct costs
 - If practicable and noted where not practicable, it should also include costs incurred by cooperating and participating agencies, applicants, and contractors.
 - District to coordinate with OEM before preparing the cost estimate
- Same changes to document format as DEIS
- Document comments on the Summary of Submitted Alternatives, Information and Analyses in the DEIS
 - Updated Comments and Coordination section



Final Environmental Impact Statement

- Project websites or other publicly accessible electronic means are used to make the FEIS/ROD and supporting information available
- Project websites or other publicly accessible electronic means are used to make the FEIS and supporting information available and provide for electronic submission of comments
 - District to contact OEM for guidance on how to do this if there is no project website



Record of Decision

- Record of Decision to state that:
- The FDOT has considered all of the alternatives, information, analyses, and objections submitted by state, Tribal, and local governments and public commenters for consideration in developing the EIS



Awaiting FHWA Guidance

- **Major Federal Action-** New and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies, new or revised agency rules, regulations, plans, policies, or procedures and legislative proposals
 - ◆ Does not include Non-Federal projects with minimal federal funding or minimal federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project
 - Clarification on what is the threshold of “minimal”
- Agency NEPA procedures shall identify when documentation of a CE determination is required
 - ◆ List of actions that are not subject to NEPA
 - ◆ List of actions that normally require preparation of an EIS or EA
 - ◆ List of CE actions and extraordinary circumstances noting which CEs require documentation
- How to determine the estimated total cost to prepare the DEIS and FEIS
- How to invite comment specifically on the submitted alternatives, information, and analyses and the summary included in Notice of Availability
- Indirect, Direct, and Cumulative Effects or Impacts terminology



Questions?

