The National Environmental Policy Act

NEPA and the Transportation Decision Making Process

NHI Course 142005

Requirements and Guidance

- 23 CFR 771
- T6640.8a
- Purpose and Need
- Secondary Impacts
- Logical Termini
- Community Impact Assessment
- Public Involvement

- 40 CFR 1500 –1508
- 40 Questions and Answers
- Cumulative Impacts
- Environmental Justice
- EPA 309 Review related guidance
- Environmental Justice

Where Do We Start?

- The National Environmental Policy Act of 1969
- CEQ Regulations for Implementation of the Procedural Provisions of NEPA
  - 40 CFR 1500-1508
- FHWA/FTA NEPA Regulations
  - 23 CFR 771

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Websites

- FHWA HQ Environmental
  www.fhwa.dot.gov/environment
- FHWA Environmental Streamlining
  www.fhwa.dot.gov/environment/strmlng.htm
- CEQ NEPANet
  ceq.eh.doe.gov/nepa/nepanet.htm
- EPA Office of Federal Activities
  es.epa.gov/oeca/ofa/index.html
- Re:NEPA Community of Practice
  nepa.fhwa.dot.gov

CEQ Regulations

Purpose, Policy, and Mandate

- Implement “action forcing” provisions of NEPA
- Comply with procedures and achieve goals
- Promote better decisions not better documents
- Integrate NEPA with other planning / processes
- Encourage and facilitate public involvement in decisions
- Reasonable alternatives to avoid and minimize adverse effects
- Reduce paperwork and delay

NEPA Decisionmaking Framework

- Use a systematic and interdisciplinary approach
- Environment given appropriate consideration with economic and technical considerations
- Include in proposals, a detailed statement on
  - environmental impacts of the action
  - adverse impacts which cannot be avoided
  - alternatives to proposed action
  - consequences of taking proposed action
- Consult with Federal agencies

40 CFR 1500
FHWA NEPA Implementation Policy

- Environmental investigations, reviews, and consultations be coordinated as a single process
- Compliance with all applicable requirements be reflected in the environmental document
- Alternatives be evaluated and decisions be made in the best overall public interest considering safety, environment, …
- Public involvement is essential
- Systematic and interdisciplinary approach
- Incorporate measures to mitigate adverse effects action

FHWA NEPA Project Development

- Early and continuous interagency coordination and cooperation
- Meaningful evaluation of alternatives and avoidance of commitments before full evaluation (logical termini)
- Public involvement and hearing procedures
- Timing: final design, property acquisition, construction … shall not proceed prior to CE, FONSI, ROD
- Approval … constitutes acceptance of the general project location and concepts

Federal Environmental Legislation and Executive Orders Affecting Transportation

Project Development Process Summary

- Transportation Decisionmaking
  - purpose and need is reflected in alternatives
  - alternative not “selected” until NEPA is completed
- Environmental protection and enhancement
  - analysis of impacts and alternatives
  - mitigation commitments
- Integrated compliance with applicable laws, regulations …
- Public participation and interagency consultation and coordination is essential

Project Decisionmaking

Environmental analysis, protection, compliance; Public involvement and interagency coordination; Location and engineering; Air quality; Noise; Endangered species; Wetlands (404); Floodplains; Section 4(f) – parks, etc; Environmental justice; Tribal consultation; Historic and archeological preservation; Community and cultural resources etc., etc., etc…
Streamlining

Address delay in the NEPA process
• Improve NEPA process performance
• Coordinated review
• Established time frames
• Fund resource agencies positions
• Conflict resolution – ADR
• Management of the NEPA process

Principles Of NEPA Decisionmaking Process

• Systematic, interdisciplinary approach
• Integrated processing and decisionmaking
• Objective consideration of alternatives
• Appropriate analysis of environmental impacts
• Avoidance, minimization, compensation
• Agency consultation, involvement, and input
• Public involvement and participation
• Informed and balanced decisionmaking
• Documentation and disclosure of proposals

Public Involvement and Interagency Coordination

Coordinating NEPA Decisions

Essential Elements

• Public involvement process
• Interagency coordination
• Project scoping
• Shared decisionmaking

FHWA Policy

Actively involve the public and agencies in a process that is:
• Open
• Cooperative
• Collaborative

Public, Stakeholders, Partners, and Customers,

• Non-governmental organizations (NGOs)
  – Environmental, health, citizen organizations, …
• Traditionally underserved communities
  – Low-income, minorities, people with disabilities
• Residents of affected geographic areas
• Transportation & environmental professionals
• Government agencies - Federal, state, local

Environmental Policy Statement; 23 CFR 771.
FHWA/FTA Policy and Guidance 12/94

40 CFR 1506.6, Environmental Policy Statement, and FHWA/FTA Policy and Guidance December, 1994
Jurisdiction By Law

- COE [Section 10/404 Permits]
- FWS [Endangered Species]
- EPA [Section 404 Veto Authority]
- EPA [Sole Source Aquifers]
- NPS [6(f) of LWCF]
- Coast Guard [Section 9 Permits]
- Other [Land Transfers]

Special Expertise

- FWS (fish & wildlife habitat, stream relocations, wetlands)
- ACHP (historic and archeological sites)
- EPA (reservoirs, air quality, sole source aquifers)
- Others …?

Scoping

- Continuation of early involvement with affected agencies and interested public
- Formally associated with EIS process
  - Invite participation
  - Determine the scope of the study
  - Determine important vs minor issues
  - Allocate assignments if appropriate
  - Identify other studies in area
  - Agree on timing of activities

Shared Decisionmaking

The public, agencies, and stakeholders have a role in NEPA and transportation decisionmaking
- Continuous contribution at key stages
- Identification and resolution of important issues
- Establish project goals at local level
- Alternatives development
- Identify solutions to avoid, and minimize
- Consensus and agreement

Shared Decisionmaking

- Open, cooperative, and collaborative public involvement and interagency coordination
- Customers, partners and stakeholders
  - Interested public and residents of affected areas
  - Federal, State, local government agencies
  - Traditionally underserved communities -
    - low-income, minorities, and people with disabilities
  - Non-governmental organizations (NGOs)

Benefits of shared decisionmaking

- Effective transportation decisions
- Reduced process time and costs
- Build trust and better working relationships
- Broad-based on-going support
- Best overall public interest decisionmaking
Documentation and Processing

DEIS, FEIS, ROD

Indiana’s Streamlined EIS Procedures – Basic elements

• Basic Elements
  – Project Coordination Team
  – One decision-making process
  – Agency review deadlines (TEA-21 § 1309)
  – Seek agency and public input at key points (NOI/Early Coordination, P&N, Alternatives Screening, DEIS, Preferred Alternative/Mitigation)
  – Interagency meetings (30-days into 60-day review)
  – EA/Corridor Study vs. EIS

Indiana EIS Procedures

Option 1 - EIS
1. NOI/Early Coordination
2. P&N Agency Meeting
3. Preliminary Alternatives Analysis and Screening Agency Meeting
4. DEIS
5. Preferred Alternative and Mitigation Agency Meeting
6. FEIS/ROD
7. Final Design

Option 2 – EA/Planning Study
1. Early Coordination Letter
2. P&N Agency Meeting
3. Preliminary Alternatives Analysis and Screening Agency Meeting
4. EA/Corridor Study
5. NOI
6. DEIS
7. Preferred Alternative and Mitigation Agency Meeting
8. FEIS/ROD
9. Final Design

[NOI and] Early Coordination

• EIS
  – Publish NOI in Federal Register early
  – Send draft to FHWA through INDOT
  – Include:
    • Proposed action
    • Alternatives
    • Next opportunity for involvement (P&N and Preliminary Alternatives?)
  – Early Coordination Letter and Section 106 Consulting Party Invitations
• EA/Corridor Study – Early Coordination Letter only

Purpose And Need

• Importance
• Range of alternatives
• Basic elements
• Use in decisionmaking

40 CFR 1502.13
TA 6640.8A page 13
Purpose And Need

• Transportation demand
• Safety
• Legislative
• Economic development or planned growth
• Modal interrelationships
• System linkage
• Condition of existing facility
• Inclusion in transportation

Purpose And Need

• The need for action identifies and describes:
  – The underlying problem or deficiency (not the proposed action)
  – Facts and analyses supporting the problem or deficiency in the particular location at the particular time
  – The context or perspective of INDOT’s mission in relation to the need for the action

Purpose And Need

• To determine the need for action, ask three questions
  – Why?
  – Why here?
  – Why now?

Purpose And Need

• Each need for action should have an associated measurable objective or specification (“purpose”).
• Measurable objectives must specify and outcome or result to be accomplished.
• To determine objectives (purpose) ask 3 questions-
  – What are your requirements?
  – How will you know when you are successful?
  – How do you best measure success in fulfilling the need for action?

Purpose And Need

• Key points to remember
  – Justification of why the improvement must be implemented.
  – As comprehensive and specific as possible
  – Reexamined and updated as appropriate throughout the project development process.

Purpose and Need and Preliminary Alternatives

• Seeking agency feedback on:
  – Statement of core project objectives
  – Evaluation criteria for alternatives
  – Additional alternatives
  – Modification of existing alternatives
  – Specific resource issues
  – Response to FHWA invitation to be Cooperating Agency
Alternative Screening

- Importance/Purpose
- Screening Prerequisites
- Screening Analysis
- Agency Review Package
- Project Example

Alternatives development

What the regulations require

- Describe how preliminary alternatives were developed and basis for elimination
- Describe how reasonable alternatives were selected
- Clearly describe all reasonable alternatives
  - Comparable level of detail
  - Include discussion of "NO BUILD"
  - Discuss TSM alternative(s) where applicable

Range of Alternatives

- No-action or no-build
- TSM alternatives
- Transit (urban areas)
- Build Alternatives
  - representative number
  - improvement of existing
  - new location

Importance of Screening

- Evaluation of Alternatives
- Effective Screening is Critical to a Successful Project
- Stated Methodology is Essential
- Interagency Review and Public Input are Valuable

Screening Prerequisites

- Defined Project Study Area
- Defined Project Termini
- Purpose and Need Statement
  - Established Performance Measures
- Preliminary Alternatives

Initial Analysis

Reasonable for NEPA Consideration?

2-5 Alternatives

- Engineering
- Safety
- Fatal Flaw
- Purpose and Need
Level 1 Screening

Agency Review Package
- Purpose and Need Statement
- Alternative Screening Table
- Initial Environmental Screening Results
- Alternative Narrative
- Explanation of Significant Impacts

Anticipated Agency Feedback
- Clarity of Screening Results
- Rationale of Screening Methodology
- Comments on Remaining Alternatives
- DEIS Preparation

EIS Format
- Cover Sheet *
- Summary *
- Table of Contents *
- Purpose and Need
- Alternatives
- Affected Environment
- Environmental Consequences
- List of Preparers *
- EIS Distribution *
- Comments and Coordination
- Index *

Recommendations

Principles Of Good Writing
- Write to express; Not to impress
- Keep it simple; Use conversational tone
- Be analytical, not encyclopedic
- CEQ suggested page limits
- Reference technical report and appendices
- Only briefly discuss non-important issues

Recommendations

Tables
- Summarize data
- Compare information
- Minimize text
- Use defined terms

Graphics
- Applicability
- Content
- Use of color/shading
- Detail
- Accuracy
- Use of base maps
Summary

- Description of proposed action
- Other actions and proposals in the area
- Reasonable alternatives
- Major environmental impacts
- Areas of controversy
- Unresolved issues if any
- Other federal actions
  (404 permit, 106 agreement, etc.)

Affected Environment

- Existing setting:
  - Social, economic, natural and manmade environment
- Environmentally sensitive features
- Use graphics and photographs
- Include area planning process with maps

Environmental Consequences

Impacts and mitigation* of alternatives

- Relocation
- Noise, air, water
- Land use
- Wildlife
- Economic
- Social

* May be discussed as a separate section

List of Preparers

- FHWA, state, consultant, or other person who made a substantial contribution to preparation of EIS
- Qualifications, including education background and/or experience
- Areas of EIS responsibility
- FHWA officials responsible for review

Comments And Coordination

- FHWA policy - not a CEQ requirement
- Document agency and community coordination process
- Meetings with groups, individuals and agencies
- Include key issues and pertinent information received from public & agencies
**DEIS Process**

- Consultant prepares DEIS with INDOT and FHWA assistance
- Consultant circulates document
- Make available for public review and comment (15 days before hearing)
- EPA for notice in the F.R. with FHWA letter
- FHWA HQ & MRC with FHWA memo
- Other Agencies for comment
- Accept Comments
- Prepare FEIS

45 day minimum comment period from F.R. notice

**EPA'S §309 Review**

- Rating environmental impacts
  - LO--lack of objections
  - EC--environmental concerns
  - EO--environmental objections
  - EU--environmental unsatisfactory

- Rating adequacy of the impact statement
  - 1--adequate
  - 2--insufficient information
  - 3--inadequate

**Preferred Alternative and Mitigation**

- Package:
  - 2-page summary with map
  - Summary of major public and agency issues and responses
  - Recommended Preferred Alternative with rationale
  - Preliminary proposed mitigation

**Preferred Alternative and Mitigation (cont.)**

- Seek Agency Feedback on:
  - Response to agency issues
  - Rationale for selecting Preferred Alternative and not others

**Final EIS Options**

- Traditional
- Condensed
- Abbreviated

**Traditional Final EIS Format**

- Cover sheet
- Summary
- Table of contents
- Purpose and need
- Alternatives
- Affected environment
- Environmental consequences
- List of Preparers
- EIS distribution
- Comments and Coordination
- Index
- Appendices
Final EIS "Additions"

- Preferred alternative and basis for decision
- Alternatives not preferred and reason why not preferred
- Mitigation and enhancement measures, and commitments in a separate section
- Major unresolved issues
- Coordination, comments, and responses
- Final 4(f) and other findings
- Section 106 MOA
- Updated Impacts

23 CFR 771.125(a)(1)

FHWA review of pre-FEIS

- Division review
- HQ prior concurrence – environment
- Legal sufficiency review – 30 days
  - All FEISs
  - All Section 4(f) evaluations

Final EIS Distribution

- File with EPA (published in FR)
- Commenters on DEIS
- Requesters of FEIS
- Publish availability (local newspapers)

40 CFR 1506.9
23 CFR 771.125(g)

Record of Decision

**Format and Content**

- Incorporate by reference and cross reference FEIS
- Decision - identify selected alternative
- Alternatives considered
  - Discuss values considered and basis of decision
  - Identify "environmentally preferred" alternative(s)
- Section 4(f) - summarize basis of approval
- Measures to minimize harm - describe mitigation
- Monitoring or enforcement program included
- Comments on FEIS - substantive comments and responses

40 CFR 1506.9
23 CFR 771.125(g)

Approval of ROD

- No sooner than -
  - 30 days after Federal Register notice (FEIS)
  - 90 days after Federal Register notice (DEIS)
- No further project approvals may be given until ROD is approved
ROD Availability

- Make available through public notice
- Consistent with state procedures

Revised Rod

- Different alternative selected, but fully evaluated in FEIS
- Substantial changes to mitigation measures or findings
- Distribute revised ROD to all FEIS recipients

40 CFR 1506.6(b)
CEQ 40 Q&A 43AA