

2 Class of Action Determination

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2.1. Introduction

This chapter provides a description of the classes of action as defined by the Federal Highway Administration's (FHWA) National Environmental Policy Act (NEPA) regulations. It also provides a summary of the process for determining a project's Class of Action (COA) and documentation requirements for these determinations.

2.2. Class of Action

For every project using FHWA funding or requiring FHWA approval, the environmental documentation process begins with a COA determination. The COA determines the level of environmental document required, which influences the project budget and schedule. The COA is submitted to the Statewide Environmental Office (SEO) prior to requesting federal funds through the Project Development Authorization (PDA) process.

FHWA's NEPA regulations identify three environmental classes of action ([23 Code of Federal Regulations \[CFR\] 771.115](#)), each having different documentation and compliance requirements. The classes of action are:

- *Environmental Impact Statements* (Class I) ([23 CFR 771.115\(a\)](#)) (40 CFR 1508.1(j)) ([23 CFR 771.123](#)) – Actions that significantly affect the environment require an Environmental Impact Statement (EIS) ([40 CFR 1502](#)). The EIS process includes a Notice of Intent, Draft EIS (DEIS), Final EIS (FEIS), and Record of Decision (ROD). See 23 CFR 771.115(a) for examples of actions that normally require an EIS. See also Environmental Procedures Manual (EPM) Chapter 5.
- *Categorical Exclusions* (Class II) ([23 CFR 771.115\(b\)](#)) ([40 CFR 1508.1\(d\)](#)) ([23 CFR 771.117](#)) – Categories of actions that do not individually or cumulatively have a significant environmental effect may be excluded from the requirement to prepare an EIS or Environmental Assessment (EA) through the Categorical Exclusion (CE) determination.

The majority of Alaska Department of Transportation and Public Facilities (DOT&PF) projects are processed as CEs. Actions that typically meet the definition of a CE are identified on two specific lists, commonly referred to as the "c" list ([23 CFR 771.117\(c\)](#)) and the "d" list ([23 CFR 771.117\(d\)](#)). However, certain projects may not fall under a specific "c" or "d" list activity and may still be processed as a non-listed CE that satisfies the criteria in "a" ([23 CFR 771.117\(a\)](#)). Documentation requirements vary depending on the specific project activities. See EPM Chapter 3.

- *Environmental Assessments* (Class III) ([23 CFR 771.115\(c\)](#)) ([40 CFR 1508.1\(h\)](#)) ([23 CFR 771.119](#)) – Actions in which the significance of the environmental impact is not clearly established require an EA. An EA is used to determine whether or not the environmental impacts are significant and if there will be a need for further analysis and documentation. An EA is a concise document that should briefly provide sufficient evidence and analysis for determining a Finding of No Significant Impact ([40 CFR 1501.6](#)) or whether an EIS is warranted ([40 CFR 1502](#)). See EPM Chapter 4.

2.2.1. Logical Termini

FHWA's Environmental Review Toolkit defines logical termini for project development as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. The environmental impact review frequently covers a broader geographic area than the strict limits of the transportation improvements. FHWA's NEPA project development regulations ([23 CFR 771.111\(f\)](#)) require the project to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

[FHWA's Environmental Review Toolkit](#) also provides discussion on segmentation.

Logical termini may need to be considered during the COA determination(s) for abutting projects. When aware of abutting projects, consult with the NEPA Program Manager for assistance in assessing whether to evaluate the projects together under NEPA and determining the appropriate COA.

2.2.2. Significant Impacts

A project that results in significant impacts to the human environment is a Class I project and requires an EIS ([23 CFR 771.115\(a\)](#)). The Council on Environmental Quality (CEQ) NEPA regulations provide guidance on the concept of significance in the evaluation of impacts at [40 CFR 1501.3\(b\)](#):

- (b) *In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).*
 - (1) *In considering the potentially affected environment, agencies should 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. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.*
 - (2) *In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:*
 - (i) *Both short- and long-term effects.*
 - (ii) *Both beneficial and adverse effects.*
 - (iii) *Effects on public health and safety.*
 - (iv) *Effects that would violate Federal, State, Tribal, or local law protecting the environment.*

These factors should be kept in mind when assessing whether an action may have significant impacts during the COA determination process.

2.2.3. Unusual Circumstances

Any action that would normally be classified as a CE but could involve unusual circumstances will require appropriate environmental studies to determine if the CE classification is proper.

Unusual circumstances, as defined in [23 CFR 771.117\(b\)](#), include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impacts on properties protected by [Section 4\(f\) of the DOT Act of 1966 \(23 CFR 774.3\)](#) or [Section 106 of the National Historic Preservation Act \(36 CFR 800\)](#); or
- Inconsistencies with any Federal, State or local law, requirement or administrative determination relating to the environmental aspects of the action.

The presence of unusual circumstances is considered during the COA determination for all projects. If a project

involves unusual circumstances, consult with the NEPA Program Manager for assistance in determining the appropriate COA.

2.3. Class of Action Determination

The COA determination is based upon the types of activities proposed with a project and an assessment of the probable impacts of those activities. Review the project scope as stated in the Statewide Transportation Improvement Program (STIP) and federal-aid funding agreement when making an initial COA determination. This is necessary since the environmental document must address the impacts resulting from implementation of the scope identified in these documents in order to maintain federal-aid funding eligibility for the project. An understanding of the activities involved in developing the proposed project is necessary to assess the potential for significant impacts and whether unusual circumstances may exist.

The COA determination requires some level of research depending on the complexity of the proposal and the setting. This information will also assist in establishing accurate environmental process schedules and refined expectations for project funding and permitting.

In some cases, it will be obvious that no significant impacts to environmental resources would occur within the project area and a CE may be the appropriate COA. In other cases, there may be multiple sensitive resources in the project area necessitating consultation with the NEPA Program Manager and appropriate resource agencies to determine the appropriate COA. A public meeting may also be necessary to assess the potential level of public controversy in support of the COA determination.

If there is not sufficient information available to determine the probable impacts of the action, the Regional Environmental Manager (REM) consults with the NEPA Program Manager to discuss the work necessary to develop sufficient information. This is most common when the COA is not clearly a CE or EA.

A project action will remain in a status of undetermined COA until sufficient information is available. As soon as sufficient information is available to identify and determine the probable impact of the action, the REM recommends the probable COA to the NEPA Program Manager by submitting a Class of Action Consultation Form via the Business Process Management (BPM) system.

A COA Consultation Form is completed for every federal-aid highway project. The COA Consultation Form provides both the REM's recommendation and sufficient information for the NEPA Program Manager's approval.

For CE actions, the COA Consultation Form documents:

1. CE action category ("c" or "d" list actions, or satisfying "a" criteria)
2. Project funding documentation for projects classified under "c" list 23 (c(23))
3. Any unusual circumstances or public controversy
4. For actions classified under c(26), c(27), and c(28), verification that the following conditions listed in [23 CFR 771.117\(e\)](#) are not present:
 - a. An acquisition of more than a minor amount of right-of-way (ROW) or that would result in any residential or non-residential displacements;
 - b. An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
 - c. A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered

species or critical habitat under the Endangered Species Act;

- d. Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;
- e. Changes in access control;
- f. A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

The NEPA Program Manager reviews the COA Consultation Form to verify their concurrence. Upon concurrence with the COA, the NEPA Program Manager will electronically sign the COA Consultation Form in the BPM and return a copy to the REM via email. A copy of the COA and transmittal email must be placed in the region project file.

If the NEPA Program Manager does not concur with the REM's COA recommendation, they will return the COA Consultation Form to the REM unsigned with a written explanation for the non-concurrence. The NEPA Program Manager will work with the REM to resolve concerns regarding the COA before the REM submits a new COA Consultation Form.

If there are changes to the project design or new project information is provided during project development that will affect the project's COA, the region should prepare a new COA Consultation Form documenting the updated information. The REM will submit the new form to the NEPA Program Manager for review and approval.

Technical Appendix

FHWA's NEPA regulations at [23 CFR 771](#) include class of action definitions.

[Class of Action Consultation Form](#)