



# Guidance

## EIS Process Roadmap for an FHWA Project

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### **Introduction**

This guidance presents a roadmap for complying with requirements governing the EIS process for an FHWA project under NEPA assignment. It also includes touchpoints for ENV review of drafts and reminders to upload key documentation to ECOS for the EIS scoping process. Steps that require ECOS uploads or reviews are highlighted in italics and underlined.

This roadmap has been updated to reflect changes made by the Council on Environmental Quality to its NEPA-implementing rules in 2020, and changes made by Infrastructure Investment and Jobs Act of 2021.

This EIS roadmap includes only one public scoping meeting and one agency scoping meeting. However, if all of the materials required to be presented at those scoping meetings are not ready in time, it will be necessary to have one or more additional rounds of scoping meetings in order to present all of the draft materials to agencies and the public.

NOTE: Step 9 below must be completed no later than 90 days after publication of the notice of intent in the Federal Register (see 23 USC 139(g)(1)).

Also, if at any time it becomes clear that the e-NEPA notice of availability of the FEIS will not be published in the Federal Register<sup>1</sup> within two years from publication of the notice of intent in the Federal Register, then the ENV Director must approve a longer period in an email, in which case the ENV core team member shall add a note to the “Comments” field of the “Perform EIS Scoping” Activity and upload the ENV Director’s email under the “Perform EIS Scoping” Activity.

### **Pre-Notice of Intent**

1. Core team completes work plan development process in ECOS
  - See Environmental Guide Volume 1, Chapters 3-6.
2. Contractor that will prepare the EIS submits a disclosure statement email to ENV
  - Use ENV’s Template – Contractor Disclosure Statement Email for an FHWA Project Requiring an Environmental Assessment or Environmental Impact Statement.
  - Email should be addressed to ENV Director, with copy to district and ENV core team members.
  - ENV uploads the email to ECOS under “Perform Draft EIS Preparation.”
3. Preparation of scoping materials and preparation for agency scoping meeting
  - Project sponsor drafts purpose and need and emails to ENV for review.
  - Project sponsor drafts range of alternatives, and methodologies and level of detail for analyzing alternatives, and emails to ENV for review.
  - Project sponsor drafts coordination plan and schedule and emails to ENV for review. The schedule must include the following milestones:<sup>2</sup>

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<sup>1</sup> 40 CFR 1501.10(b)(4)(ii).

<sup>2</sup> 40 CFR 1501.10(c) and (e).



- Publication of the NOI
- Issuance of DEIS
- Public comment period on the DEIS
- Issuance of the FEIS/ROD
- Any other environmental permits that must be obtained for the project (i.e., Section 404 permit, Section 9 permit, etc.)

Additionally, the schedule must:

- provide for the e-NEPA notice of availability of the FEIS to be published in the Federal Register<sup>3</sup> within two years of the issuance of the notice of intent, unless the ENV Division Director approves a longer timeline – see introduction above; and
- include anticipated timeframes for the issuance of any Federal environmental permit or authorization that is known to be needed for the project (e.g., issuance of a USACE permit under Section 404, if known).

In the unusual case that the project is identified as a “major project” under 23 USC (a)(7), the schedule must also account for issuance of all Federal authorization decisions needed for construction (e.g., USACE permit) within 90 days after issuance of the ROD, unless the ENV Division Director extends this deadline in accordance with 23 USC (d)(10)(C). Note that TxDOT’s EIS projects generally do not meet the definition of a “major project” at the outset of the EIS project because the project is typically not listed in both the fiscally constrained portion of the MPO’s 20-year Metropolitan Transportation Plan and the 4-year Statewide Transportation Improvement Program (STIP) with full funding needed to complete the project, and therefore does not meet the part of the “major project” definition that reads, “the project sponsor has identified the reasonable availability of funds sufficient to complete the project.” 23 USC 139(a)(7)).

- Project sponsor drafts letters (1) inviting entities to be participating or cooperating agencies; (2) inviting the potential participating and cooperating agencies to an agency scoping meeting that will take place prior to the notice of intent; and (3) transmitting the draft purpose and need, range of alternatives, methodologies and level of detail for analyzing alternatives, and coordination plan and schedule, and requesting review and comment on these materials (15-day comment deadline from date of agency scoping meeting).
  - Cooperating agency means any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency (i.e., TxDOT).<sup>4</sup>
  - Participating agencies are Federal, State, Tribal, or local agencies that will participate in the EIS process.<sup>5</sup>
- Project sponsor emails draft letters to ENV for review.

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<sup>3</sup> 40 CFR 1501.10(b)(4)(ii).

<sup>4</sup> 40 CFR 1508.1(g).

<sup>5</sup> 40 CFR 1508.1(cc).

4. Project sponsor sends letters to potential participating or cooperating agencies
  - Project sponsor uploads copies of letters inviting entities to be participating or cooperating agencies, with all attachments, to ECOS under “Perform EIS Scoping.”
  - If an invited cooperating agency or participating agency does not respond to the letter, they should continue to be treated as a cooperating or participating agency throughout the EIS process, until such time that they indicate in writing that they do not want to be a cooperating or participating agency.
5. Agency scoping meeting
  - Project sponsor presents draft purpose and need, range of alternatives, methodologies and level of detail for analyzing alternatives, and coordination plan and schedule.
  - Project sponsor requests comments on these materials, as well as any expected environmental impacts, anticipated permits or other authorizations, and any significant issues that should be analyzed in depth in the EIS. Project sponsor also requests identification of potential alternatives, information, and analyses relevant to the proposed action (15-day comment deadline from date of agency scoping meeting).
  - Project sponsor determines whether any of the cooperating agencies will need to do an EIS for their respective authorizations, and if so, discusses and determines whether TxDOT will prepare a single EIS and issue a joint ROD with any cooperating agency.
  - Project sponsor prepares meeting documentation and uploads under “Perform EIS Scoping,” and assigns an ECOS Review to ENV.
    - Include all comments submitted by the agencies in response to the letter inviting them and received by 15 days after the agency scoping meeting.
    - There is **no need** to prepare a comment/response matrix in connection with the agency scoping meeting.
  - ENV reviews meeting documentation in ECOS.
  - Project sponsor uploads meeting documentation with “approved” in the file name to ECOS under “Perform EIS Scoping.”

### **Notice of Intent**

6. Notice of intent (see the “Perform Notice of Intent (NOI)” Activity Instructions in Environmental Guide Volume 2 for additional details)
  - Project sponsor drafts NOI and emails to ENV for review.
  - General Counsel Division conducts legal sufficiency review of draft NOI.
  - ENV uploads legal sufficiency determination to ECOS under “Perform Notice of Intent (NOI).”
  - ENV publishes NOI in Federal Register.
  - ENV uploads Federal Register publication of NOI to ECOS under “Perform Notice of Intent (NOI).”
  - Project sponsor publishes NOI in newspaper.
  - Project sponsor uploads newspaper publication of NOI to ECOS under “Perform Notice of Intent (NOI).”

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## Post-Notice of Intent

### 7. Preparation for public scoping meeting

- Project sponsor prepares public outreach materials for public scoping meeting and emails to ENV for review.
- Project sponsor conducts public outreach for public scoping meeting.

### 8. Public scoping meeting (see the “Perform Public Meeting” Activity Instructions for additional details)

- Project sponsor presents draft purpose and need, range of alternatives, methodologies and level of detail for analyzing alternatives, and coordination plan and schedule.
- Project sponsor requests comments on these materials, as well as any expected environmental impacts, anticipated permits or other authorizations, and any significant issues that should be analyzed in depth in the EIS. Project sponsor also requests identification of potential alternatives, information, and analyses relevant to the proposed action (15-day comment deadline from date of public scoping meeting).
- Project sponsor prepares public meeting documentation and uploads under “Perform Public Meeting,” and assigns an ECOS Review to ENV.
  - Include all comments submitted by the public in response to the notice of intent and received by 15 days after the public scoping meeting.
  - There is **no need** to prepare a comment/response matrix in connection with the public scoping meeting.
- ENV reviews public meeting documentation in ECOS.
- Project sponsor uploads public meeting documentation with “approved” in the file name to ECOS under “Perform Public Meeting.”

### 9. Finalize coordination plan and schedule

- Project sponsor prepares final version of coordination plan and schedule and submits to ENV for review.
- Project sponsor uploads final version of coordination plan and schedule with “approved” in the file name to ECOS under “Perform EIS Scoping.”
- Project sponsor drafts letters or emails transmitting final version of coordination plan and schedule to participating/cooperating agencies and submits to ENV for review.
- Project sponsor mails letters or sends emails transmitting final version of coordination plan and schedule to participating/cooperating agencies (this must be done no later than 90 days after publication of the NOI in the Federal Register – see 23 USC 139(g)(1)(A) and (g)(1)(E)).
- Project sponsor posts the final version of the coordination plan and schedule on the project website<sup>6</sup> (this must be done no later than 90 days after publication of the NOI in the Federal Register – see 23 USC 139(g)(1)(A) and (g)(1)(E)).
- Project sponsor uploads letters or emails transmitting final version of coordination plan and schedule to participating/cooperating agencies to ECOS under “Perform EIS Scoping.”

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<sup>6</sup> 40 CFR 1501.10(h).



10. Preparation of the DEIS

- Project sponsor prepares DEIS.
  - If the (1) “Purpose and Need for Action” section, (2) “Alternatives Including the Proposed Action” section, and (3) “Affected Environment and Environmental Consequences” section have a combined length of more than 200 pages, then the ENV Director must approve a longer page length in an email, in which case the ENV core team member shall add a note to the “Comments” field of the “Perform Draft EIS Preparation” Activity and upload the ENV Director’s email under the “Perform Draft EIS Preparation” Activity.<sup>7</sup> Regardless of whether the ENV Director approves a longer page length for the three sections identified in the previous sentence, the overall length of the EIS must not exceed 300 pages (not including any citations or appendices).<sup>8</sup>
- Project sponsor and ENV follow process in the “Perform Draft EIS Preparation” Activity Instructions (see Environmental Guide Volume 2).

11. Federal Register notice of DEIS and public hearing

- Project sponsor and ENV follow process in “Perform Opportunity for Public Hearing (OPH)/Public Hearing (PH)” Activity Instructions (see Environmental Guide Volume 2).

12. Preparation of combined FEIS/ROD (or separate FEIS and ROD if a separate FEIS and ROD will be needed – see 23 CFR 771.124(a))

- Project sponsor prepares FEIS/ROD (or separate FEIS and ROD if a separate FEIS and ROD will be needed).
  - If the (1) “Purpose and Need for Action” section, (2) “Alternatives Including the Proposed Action” section, and (3) “Affected Environment and Environmental Consequences” section have a combined length of more than 200 pages, then the ENV Director must approve a longer page length in an email, in which case the ENV core team member shall add a note to the “Comments” field of the “Perform Final EIS/Record of Decision (ROD) Preparation” Activity and upload the ENV Director’s email under the “Perform Final EIS/Record of Decision (ROD) Preparation” Activity.<sup>9</sup> Regardless of whether the ENV Director approves a longer page length for the three sections identified in the previous sentence, the overall length of the EIS must not exceed 300 pages (not including any citations or appendices).<sup>10</sup>
- Project sponsor and ENV follow process in the “Perform Final EIS/Record of Decision (ROD) Preparation” Activity Instructions (see Environmental Guide Volume 2).

13. Notice of Availability of Combined FEIS/ROD (or separate notices of the FEIS and ROD if a separate FEIS and ROW will be needed – see 23 CFR 771.124(a))

- Project sponsor and ENV follow process in the “Perform Final EIS/ROD Notice of Availability (NOA)” Activity Instructions (see Environmental Guide Volume 2).

14. Section 139(l) Notice

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<sup>7</sup> 23 USC 139(n).

<sup>8</sup> 42 USC 4336a(e).

<sup>9</sup> 23 USC 139(n).

<sup>10</sup> 42 USC 4336a(e).



## **Guidance: EIS Process Roadmap for an FHWA Project**

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- ENV follows the process in the “Perform 139(l) Notice of Limitation on Claims for Judicial Review” Activity Instructions (see Environmental Guide Volume 2).
  - For an EIS, the Section 139(l) should be published as soon as possible, instead of waiting for the quarterly batch publication of Section 139(l) notices for EAs and CEs.

## Appendix A: Revision History

The following table shows the revision history for this guidance document.

Revision History	
Effective Date Month, Year	Reason for and Description of Change
September 2024	<p>Version 5 was released.</p> <ul style="list-style-type: none"> <li>• In accordance with CEQ Phase 2 rulemaking, the following changes were made: <ul style="list-style-type: none"> <li>○ Slightly adjusted the end date for the 2-year timeline.</li> <li>○ Added details about the required milestones in the project schedule.</li> <li>○ Revised definition of cooperating agencies.</li> </ul> </li> </ul>
July 2023	<p>Version 4 was released.</p> <ul style="list-style-type: none"> <li>• Added hard 300-page limit for EIS (not including citations or appendices) to align with Federal debt ceiling bill (Pub. L. 118-5).</li> </ul>
January 2022	<p>Version 3 was released.</p> <ul style="list-style-type: none"> <li>• Revised to indicate the EIS schedule must include timeframes for anticipated Federal authorizations in addition to the ROD, as required by Section 11301 of the Infrastructure Investment and Jobs Act of 2021.</li> <li>• Revised to indicate that in the unusual case of a “major project,” the EIS schedule must account for issuance of all Federal authorizations within 90 days of the ROD, unless an exception is granted, as required by Section 11301 of the Infrastructure Investment and Jobs Act of 2021.</li> <li>• Revised to indicate that the page limit for the main parts of the EIS is 200 pages, unless another page limit is determined by ENV, as required by Section 11301 of the Infrastructure Investment and Jobs Act of 2021.</li> </ul>
November 2020	<p>Version 2 was released.</p> <ul style="list-style-type: none"> <li>• Revised comment deadline after an agency or public scoping meeting to 15 days after the meeting instead of 30.</li> </ul>
September 2020	Version 1 was released.