NEPA Regulatory Framework and Process

NEPA Compliance and Class of Actions

The National Environmental Policy Act, also known as NEPA, is an environmental law that established the decision-making process that agencies must follow prior to the design and construction of transportation projects using Federal funding or requiring Federal approval.

Three classes of action are used for evaluation of impacts a project is likely to have on the human and natural environment.

Following the right process or class of action is important and is determined by the significance of the impacts your project is likely to have on the human and natural environment. The significance of its impact, not its size or cost will direct you to the appropriate class of action and will help you to identify the requirements for other essential elements such as documentation, public involvement, and coordination.

Context, or the environmental setting, and intensity of the impact on a particular resource are two considerations when determining the significance of impact.

To explain, assume your project is not the type generally associated with a significant impact such as adding a turn lane to an existing intersection. But what if the project is within a historic district?

In this context, the environmental impact of your project may be greater than you initially assumed.

As another example, let's assume you're displacing a private home to widen a lane on a city street. Again, this may not appear to be significant. But what if a day care facility is operated out of the home and it's the only one within a twenty mile radius? The potential effects on a number of local families are felt more intensely, and the significance of the impact may need to be examined in more detail.

Depending on the significance of the impact, there are three classes of action that may be initiated to comply with NEPA. They include, in order of significance: categorical exclusions, environmental assessments, and environmental impact statements.

The categorical exclusion determination is for types of projects identified in regulations that are not expected to have significant impacts. Even so, there are requirements for documenting that...
expectation. Federal-aid projects qualify for a
categorical exclusion more than 90 percent of
the time.

The environmental
assessment is for
projects that have
uncertainty about
whether the proposed action will have a
significant impact on the environment. The
purpose of this process is to clarify any
uncertainty and document your finding. If no
significant impacts are found, the process is
concluded alternatively. If significant impacts are
found, an environmental impact statement is
prepared.

The environmental
impact statement
is prepared for
projects that are
expected to
significantly affect
the quality of our human or natural environment.
Typically, these are major transportation
improvements costing millions of dollars – but
not always. Significant impacts can result from
minor projects in sensitive environmental or
cultural areas and highly developed urban areas
as well.

All Federal Highway Administration (FHWA)
funded or approved projects are subject to the
NEPA process – each requires environmental
analysis, review, and public involvement. It’s the
amount of analysis and review and the level of
involvement that differs, depending on the class
of action and nature of the project.

For example, a project being processed as a
categorical exclusion may be as simple as
completing a checklist, form, or memo to
document the environmental impacts of the
project.

On the other end of the spectrum, a project in
the environmental impact statement class will
include the examination of alternatives and
perhaps additional mitigation strategies. It will
also include formalized processes to collect
public comments circulate information and
document findings.

Your State department of transportation (State
DOT) has considerable knowledge and
expertise in all areas of NEPA compliance. The
people there can help you ask the right
questions early on to determine the significance
of the impacts on your project and,
consequently, the appropriate class of action.

The FHWA can also partner with your State
DOT on behalf of your agency’s project by
providing technical assistance and coordination
with other Federal agencies. The FHWA is the
final authority when determining the appropriate
class of action and all other aspects related to
NEPA compliance. Therefore, it’s essential that
you engage the State DOT and, when
appropriate, FHWA early and
throughout your
project’s entire
process
The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.

**Additional Resources**

- FHWA guidance on essential elements of the NEPA process

- Federal regulations on the three classes of action: categorical exclusions, environmental assessments, and environmental impact statements
  [http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=91f7725b7571367f499a277c826ae65&rgn=div8&view=text&node=23:1.0.1.8.43.0.1.8&idno=23](http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=91f7725b7571367f499a277c826ae65&rgn=div8&view=text&node=23:1.0.1.8.43.0.1.8&idno=23)

- Federal regulations on environmental impact and related procedures
  [http://www.ecfr.gov/cgi-bin/text-text-idx?c=ecfr&sid=b2fe4c14ca9484c58a6c19cc830575bf&rgn=div5&view=text&node=23:1.0.1.8.43&idno=23](http://www.ecfr.gov/cgi-bin/text-text-idx?c=ecfr&sid=b2fe4c14ca9484c58a6c19cc830575bf&rgn=div5&view=text&node=23:1.0.1.8.43&idno=23)

- Text of National Environmental Policy Act of 1969
  [http://ceq.hss.doe.gov/nepa/regs/nepa/nepaeqia.htm](http://ceq.hss.doe.gov/nepa/regs/nepa/nepaeqia.htm)

- Council on Environmental Quality's regulations for implementing NEPA