

Planning Process

Environmental Review Process/NEPA

PEL?

General Considerations for PEL

- Follow transportation planning process
- Participation by Federal and state resource agencies and Indian Tribes
- Opportunity for public review and comments
- Use reliable and reasonably current data and reasonable, scientifically acceptable methodologies
- FHWA and FTA review as appropriate
- Documentation

Outcome/Benefits?

Define purpose and need

Preliminary screening of alternatives and elimination of unreasonable alternatives

Other Planning Decisions and analysis

Adopt Planning Decisions under 23 U.S.C. 168

Integration of planning and environmental review statute 23 U.S.C. 168

Adopt and/or Incorporate Planning Products by Reference into NEPA

- Developed through transportation planning process
- Consultation with Federal and state resource agencies and Indian Tribes
- Included multidisciplinary consideration of systems level or corridor-wide needs and potential effects
- Public notice planning product may be adopted during environmental review process

REQUIREMENT

Were requirements met?

Efficient environmental reviews statute 23 U.S.C. 139(f)(4)(E)(ii)

Reduction of duplication by elimination of alternatives from detailed consideration

- Metropolitan planning organization (MPO), State or local transportation agency considered the alternative as part of the transportation planning process or State environmental review
- The lead agency provided guidance to the MPO or State or local transportation agency on the alternatives analysis process and NEPA, Federal laws and requirements
- Opportunity for public comments during metropolitan process or State environmental review process
- Metropolitan planning organization, State, or local transportation agency rejected the alternatives from detailed consideration in transportation planning process or a State environmental review after considering public comment

REQUIREMENT

Were requirements met?

Planning Regulations 23 CFR 450.212 (a)-(c) & 450.318 (a)-(d)

Transportation Planning Studies and Project Development

- Developed as part of the transportation planning process
- FHWA/FTA review
- Agency, Public, Tribal review and comments
- Involvement of interested State, local, Tribal, and Federal agencies in the study
- Documentation of relevant information

REQUIREMENT

Were requirements met?

CEQ NEPA Regulations 40 CFR 1500.4(l) and 1501.12

Appropriate Planning Information

Programmatic Mitigation Planning (PMP) Statute 23 U.S.C. 169

Programmatic Mitigation Plan (PMP)

- Consultation with FHWA/FTA and agencies with jurisdiction
- Resource agencies and public review and comments on draft plan; State/MPO consider comments received and address comments in final PMP
- PMP developed or adopted as part of transportation planning process

REQUIREMENT

Were requirements met?

Planning Regulations 23 CFR 450.214 and 320

Planning Information or data

Programmatic mitigation plan

NEPA Scoping

- 5A) Planning document available for public, governmental, and stakeholder review and comments
- 5B) Public notice of intention to adopt or incorporate by reference
- 5C) Consider comments
- 6) No significant new information or circumstances that affect validity

REQUIREMENT

- 7) Rational basis, reliable and reasonably current data and reasonable scientifically acceptable methodologies
- 8) Documented in sufficient detail to support decision or analysis for environment review process
- 9) Appropriate for adoption or incorporation by reference into NEPA
- 10) Planning product approved within 5 years of adoptions or incorporation

Were requirements met?

Yes:
Adopt part or entire planning products (such as P&N and elimination of unreasonable alternatives) and/or incorporate into NEPA documents.

No: Introduce the planning product into NEPA process as information for additional work, or further action.

- 5) The Federal lead agency independently reviewed the alternative evaluation
- 6) The Federal lead agency in consultation with participating or cooperating agency determined the alternative eliminated is not necessary for NEPA compliance. The Federal lead agency, with concurrence of agencies of jurisdiction determined the alternative is not necessary for a permit or approval.

REQUIREMENT

Were requirements met?

Yes:
Eliminate unreasonable alternatives from detailed consideration in NEPA.

No: Introduce the planning product into NEPA process as information for additional work, or further action.

Practice tip—NEPA procedures apply to lead agency decision whether to incorporate or use during NEPA. Probability of use in NEPA without additional work is enhanced when the planning products are developed with:

- Involvement of States, local or Tribal and Federal Agencies
- Public Review
- Reasonable opportunity to comment
- Review by FHWA and FTA as appropriate

Were requirements met?

Yes: Incorporate by reference and use.

No: Introduce the planning product into NEPA process as information for additional work, or further action.

- 1) Sufficient detail to support decision or analysis for environment review process.
- 2) Verify the material meets NEPA requirements, including that the material is reasonably available for inspection by potentially interested persons within the time allowed for comment during NEPA.

REQUIREMENT

Were requirements met?

Yes: Use or incorporate by reference.

No: Introduce the planning product into NEPA process as information for additional work, or further action.

No additional requirements
Federal agencies must give the plan substantial weight

Yes:
Environmental review agencies give substantial weight to recommendations in programmatic mitigation plan.

No:
The document could be incorporated under 40 CFR 1502.21 or prepared using 23 CFR 450.212/250.318 or 23 U.S.C. 168.

Reasonable and necessary for NEPA

*The Council on Environmental Quality (CEQ) has proposed to modify certain aspects of its 2020 NEPA regulations found at 40 CFR parts 1500-1508 using a phased approach. See 86 FR 55757, 55759 (Oct 7, 2021). If CEQ issues a final rule that amends any provisions of the CEQ regulations cited in this document, FHWA will update the citations in this document and make any other necessary changes

*Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. The document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. General considerations are not necessarily required by the statute or regulations; however, FHWA encourages these for PEL approaches.

