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## TITLE 290 - DEPARTMENT OF TRANSPORTATION

### CHAPTER 30 - BUSINESS, PROPERTY OWNERS, AND THE PUBLIC

#### SUBCHAPTER 00 - N/A

#### PART 8 - Public Participation for Federal Highway Projects

### 8.1 Purpose

- A. The purpose of these rules is to carry out the intent of Federal Highway Administration (FHWA) regulation 23 C.F.R. § 771.111(h)(1) requires each state receiving federal highway aid to enact procedures approved by the FHWA to carry out a public involvement, public hearing program to satisfy the requirements of the National Environmental Policy Act (NEPA) and regulations promulgated under NEPA by the Council on Environmental Quality.
- B. These regulations establish minimum standards for public participation during project development for federal aid highway projects governed by NEPA.

### 8.2 Authority

These rules are promulgated pursuant to the National Environmental Policy Act 23 C.F.R. § 771.111(h)(1), *et. seq.* These regulations are applicable to all federal aid highway projects which are being funded in whole or in part by the Federal Highway Administration. These regulations should be read in harmony with that federal regulation.

### 8.3 Definitions

- A. "Annual program of projects" means a list of federal aid highway projects which is submitted by the Department annually to the Federal Highway Administration (FHWA) for approval. Every project included on the list must also be included on the Transportation Improvement Program (TIP) approved by the State Planning Council. No federal aid highway project can be authorized by FHWA for funding unless it is included on the approved Annual Program of Projects.
- B. "Categorical exclusion" or "CE" means a federal aid highway project which does not individually or cumulatively have a significant effect on the environment. Such projects are considered Class II actions by 23 C.F.R. § 771.
- C. "Department" means the Rhode Island Department of Transportation.
- D. "Environmental assessment" or "EA" means the analysis and documentation required of a federal aid highway project to determine whether a project has a

significant environmental impact where the degree of impact is initially unclear. Projects for which an EA is being prepared are considered Class I action by 23 C.F.R. § 771.

- E. "Environmental impact statement" or "EIS" means the analysis and documentation required for a federal aid highway project where the project has been determined to have a significant environmental impact. Projects for which an EIS is being prepared are considered Class III actions by 23 C.F.R. § 771.
- F. "FHWA" means the Federal Highway Administration.
- G. "Jurisdiction by law" means approval authority over any aspect of project implementation (such as permit authority) granted to an agency by state or federal law or regulation.
- H. "NEPA" means the National Environmental Policy Act.
- I. "PAC" means the Project Area Committee established by the Department to review project plans and to advise the Department on the plans.

## **8.4 Incorporated Materials**

These regulations hereby adopt and incorporate 23 C.F.R. § 771.115 by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

## **8.5 Project Classification**

- A. Classes Defined -- Public participation during the NEPA process varies depending upon the classification of a project for NEPA purposes. The classification of projects is established by 23 C.F.R. § 771.115.
- B. Designation of Classification - Upon selection of a project from the Annual Program of Projects, the Department, in consultation with FHWA, will designate a project as either Class I, II or III. (23 C.F.R. § 771.111(b)). This classification may be changed at any time during the NEPA process as appropriate by the Department with the concurrence of FHWA.

## **8.6 Class I Project - Environmental Impact Statement**

### **8.6.1 Early Coordination and Scoping**

- A. Notice of Intent to Prepare EIS -- Where an EIS is required to be prepared for a project, FHWA will publish in the Federal Register a Notice of Intent to Prepare an EIS. The Department shall then publish a Notice of Intent in a newspaper of general circulation within the general project area and in a local newspaper where appropriate.

- B. Scoping Meeting - After the publication of the Notice of Intent, the Department shall hold at least one early coordination and scoping meeting with appropriate local, State and Federal agencies and interested members of the public to identify the social, economic, and environmental effects of the proposed project and to identify all reasonable measures to mitigate adverse project impacts. At the meeting (or meetings), the Department shall make a presentation on the project and solicit the views of officials and individuals in attendance.
- C. Cooperating Agencies. - the Department shall ask all State and Federal agencies with jurisdiction by law, and other agencies with special expertise to be cooperating agencies and to attend a scoping meeting. Throughout the EIS preparation process, cooperating agencies shall be asked to attend meetings and/or to provide comments regarding various aspects of the EIS.

### **8.6.2 Project Advisory Committees**

- A. Formation - After the scoping meeting(s), the Department shall determine whether the formation of a Project Area Committee (PAC) will be helpful in obtaining public participation on a local level. Generally, a PAC will be formed at an early stage before substantial progress is made toward preparation of the draft EIS. The Department may seek the advice of local officials as to appropriate PAC membership and often will include representatives of local government and the public on the PAC.
- B. Function of PAC - During the course of the preparation of the EIS, the Department shall meet with the PAC at appropriate stages. At PAC meetings, the Department will keep the PAC informed of its progress and give the PAC the opportunity to review, advise and comment on all aspects of the project. the Department may replace inactive or disruptive PAC members at its discretion.

### **8.6.3 Informational Workshops/Meetings**

- A. Workshops for the General Public - Informational workshops may be conducted by the Department to inform the public and provide an opportunity for an exchange of views. Informational workshops are generally held during early stages of project development. One or more workshops may be held depending upon the size of the project and the duration of the study. An informational workshop is often held immediately prior to, or concurrently with a public hearing.
- B. Workshops are held at locations convenient to citizens affected by the project. The location and time of workshops are publicized through the most appropriate news outlets, and the announcements are sent to local officials and members of the PAC committee. Normally, workshops continue from early afternoon to early evening to provide maximum opportunity for citizens to attend. The Department personnel and its experts are present to explain the project, and to answer questions from the public. Comments offered by citizens during the workshops are given due consideration in the decision-making process. Where a public

workshop is held concurrently with a public hearing, a stenographer is present to allow citizens to make statements for stenographic recordation "on the record".

- C. Meetings with Specific Groups - Throughout project development, the Department also will often have informational meetings with parties having a particular interest in a project. These meetings are similar to informational workshops, but are structured to provide specific information and receive comments from specific groups such as Town or City Councils or other governmental agencies with a special interest in a project.

#### **8.6.4 Completion and Circulation of Draft EIS**

- A. Preparation of Draft EIS - During the preparation of the Draft EIS, the Department shall consider input received from the public, cooperating agencies, local governments and the PAC (if one has been formed).
- B. Content of Draft EIS - The Draft EIS shall:
  - 1. Evaluate all reasonable alternatives;
  - 2. Discuss reasons why other alternatives were eliminated from detailed study;
  - 3. Summarize studies, reviews, consultations, and coordination required by law.
  - 4. Submission of Draft EIS - the Department shall submit the Draft EIS to FHWA for review and approval. FHWA will approve the Draft EIS for circulation by signing and dating the cover sheet.
  - 5. Circulation of Draft EIS - the Department shall print the Draft EIS in sufficient quantities to meet the demand reasonably expected from agencies, organizations and individuals. Copies shall be furnished free of charge except where the Department and FHWA agree that a charge, not to exceed the cost of reproduction, shall be charged or where parties requesting copies should be directed to locations where Draft EISs can be reviewed. 23 C.F.R. § 771.123(f). A copy shall be sent for public review to the local library in communities affected by the proposed project. the Department shall provide a copy of the Draft EIS to:
    - a. Public officials, interest groups, and members of the public known to have an interest in the proposed action or the Draft EIS;
    - b. Coordinating agencies and any other Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action;

- c. Appropriate State and local agencies, including the Department of Administration/Division of Planning as the intergovernmental review contact established under Federal Executive Order 12372; and
  - d. State and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives.
- C. Notice of Availability of Draft EIS - Concurrently, or following the transmittal of copies of the EIS pursuant to § 8.6.4 of this Part, the Department shall file the Draft EIS with the Environmental Protection Agency (EPA) for publication of a Notice of Availability in the Federal Register which shall establish a forty-five (45) day period for return of comments to the Department and FHWA.
- D. Public Hearing Requirement - the Department shall schedule a public hearing and provide public notice of the hearing as described in § 8.6.5 of this Part. The hearing date shall be no earlier than fifteen (15) days after the Draft EIS has been made available for public review.

#### **8.6.5 Public Hearing Notice**

- A. Newspaper Publication - the Department shall publish a notice of a scheduled public hearing twice in a newspaper of general circulation within the general project area and in a local newspaper where appropriate. The first such notice shall be published fifteen (15) to thirty (30) days before the hearing date and the last such notice shall be at least five (5) days before the hearing date.
- B. Mailing of Notice - The notice of a scheduled public hearing shall be mailed to appropriate news media, local public officials, and Federal and State agencies.
- C. Content of Notice - Each notice of public hearing shall:
  - 1. State the date;
  - 2. State the time and place of the hearing;
  - 3. Contain a brief description of the project; and
  - 4. Specify the availability to the public of the Draft EIS and other pertinent information for review and copying.

#### **8.6.6 Public Hearing Procedures**

- A. Presentation - At the public hearing, the Department shall either make a formal oral presentation or make available written material to all members of the public describing:
  - 1. The project purpose and need;

2. The proposed project alternatives;
  3. Potential environmental, social and economic impacts; and
  4. Right-of-Way procedures and programs including relocation assistance to be provided; and other necessary information.
- B. Availability of Reports - the Department shall also announce or advise the public during its presentation or in the written material that at any time after the hearing, the Draft EIS and all information developed in reference to the proposed project will be available upon request for public inspection and copying.
- C. Opportunity for Public Comment - At the hearing, the public shall be given the opportunity to provide comments written or oral, "on the record" on the project.
- D. The Department shall arrange for a public stenographer to be present at the hearing to officially record oral comments by the public. Written statements submitted to the Department at the hearing or within thirty (30) days of the hearing shall be treated as part of the official hearing record. The hearing transcript shall contain copies of each written statement and refer to the exhibits used or filed in connection with the public hearing.
- E. Relationship to Public Workshops - Generally, the Department will hold a workshop immediately prior to, or concurrently with, the public hearing to permit the Department representatives to respond informally to questions from the public and to provide a meaningful exchange of information and opinions.

#### **8.6.7 Certification to FHWA**

- A. After the Department has conducted a public hearing on a Draft EIS and the thirty (30) day public comment period has expired, it shall submit to FHWA:
1. A transcript of the public hearing;
  2. certification that a hearing was held; and
  3. Copies of all written statements from the public, both submitted at the public hearing or during the thirty (30) day comment period on the Draft EIS.
- B. Consideration of Public Comments - the Department shall consider the public comments received and those included in the hearing transcript and prepare a Final EIS.

#### **8.6.8 Preparation of Final EIS**

- A. The Final EIS shall:

1. Identify a specific preferred alternative;
  2. Discuss substantive comments received on the DEIS;
  3. Evaluate all reasonable alternatives considered;
  4. Summarize citizen involvement;
  5. Include a description of the procedures to be followed to assure that all environmental mitigation measures are to be implemented; and
  6. Document compliance with applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.
- B. Submittal of Final EIS to FHWA - The Final EIS shall be submitted to FHWA for approval. FHWA will indicate approval that all NEPA requirements have been met by signing and dating the cover page.

#### **8.6.9 Distribution of Final EIS**

- A. Publication - the Department shall print the Final EIS in sufficient quantities to meet the demand reasonably expected from agencies, organizations and individuals. Copies normally shall be furnished free of charge except where the Department and FHWA agree that a charge, not to exceed the cost of reproduction, shall be charged, or where parties requesting copies should be directed to locations where Draft EISs can be reviewed.
- B. Notice of Availability and Distribution - The FHWA, upon its review and approval of the Final EIS, will have a Notice of Availability published in the Federal Register. At the time the Final EIS is distributed and filed with EPA, the Department shall:
- C. Make the Final EIS available to appropriate State and local agencies;
- D. Publish a Notice of Availability in a newspaper of general circulation within the general project area; and
- E. Furnish the document to any person(s), organizations, or agencies that made substantive comments on the Draft EIS or requested a copy.
- F. Availability to the Public - The Final EIS shall be made available for public review at the Department offices and at FHWA's Rhode Island office. A copy also shall be provided to appropriate public institutions such as local government offices and a copy placed on file at the local library in communities affected by the project.

- G. Record of Decision - The FHWA will complete and sign a "Record of Decision" (ROD) no sooner than thirty (30) days after publication of the Notice of Availability in the Federal Register.
- H. Supplemental EIS - Pursuant to 23 C.F.R. § 771.130, preparation of a supplement to a Draft EIS shall follow the same process as an original Draft EIS, except that scoping is not required. Similarly, preparation of a supplement to a Final EIS shall follow the same process of an original Draft EIS.
- I. Re-Evaluation of EIS - Where the Department undertakes a re-evaluation of a Draft or Final EIS as required by 23 C.F.R. § 771.129, the Department, in consultation with FHWA, shall determine whether changes in the project or new information developed during the re-evaluation warrant additional public involvement.

## **8.7 Class II Project - Categorical Exclusion (CE)**

### **8.7.1 Public Participation**

- A. Documentation and Public Participation Required - When the Department initially classifies an action as a Class II action, the Department shall provide any necessary documentation supporting its position to FHWA to gain concurrence. Public participation for a project classified as a Class II action, is generally limited to public informational workshops and meetings at appropriate stages in project development although earlier and more formal public participation, including formation of a PAC, may occur where the specific project is identified through a planning feasibility study.
- B. Public Hearing Requirement - A public hearing is required for Class II projects when the project:
  - 1. Requires significant amounts of right-of-way;
  - 2. Substantially changes the layout or function of connecting roadways or of the facility being improved;
  - 3. Has a substantial adverse impact on abutting property;
  - 4. Otherwise has a significant social, economic, environmental or other effect; or
  - 5. FHWA or the Department determines that a public hearing is in the public interest.

### **8.7.2 Public Hearing Notice**

- A. Newspaper Publication - Where a public hearing is required, the Department shall publish a notice of a scheduled public hearing twice in two newspapers of

general project area and in a local newspaper where appropriate. The first such notice shall be published fifteen (15) to thirty (30) days before the hearing date and the last such notice shall be at least five (5) days before the hearing date.

- B. Mailing of Notice - The notice of a scheduled public hearing shall also be mailed to appropriate news media, local governments and Federal and State agencies.
- C. Content of Notice - Each notice shall specify the date, time and place of the hearing, and contain a brief description of the project. The notice shall announce the availability of any project documents for public review.

### **8.7.3 Public Hearing Procedures**

- A. Presentation - At the public hearing, the Department shall either make a formal presentation or make available written material to all members of the public describing:
  - 1. The project purpose and need;
  - 2. The proposed project alternatives;
  - 3. Potential environmental, social and economic impacts; and
  - 4. Right-of-Way procedures and programs including relocation assistance to be provided; and other necessary information.
- B. Opportunity for Public Comment - At the hearing, the public shall be given the opportunity to provide comments, written or oral, on the project. The Department shall arrange for a public stenographer to be present at the hearing to officially record oral comments by the public. Written statements submitted to the Department at the hearing or within thirty (30) days of the hearing shall be treated as part of the official hearing record. The hearing transcript shall contain copies of each written statement and shall refer to the exhibits used or filed in connection with the public hearing.
- C. Relationship to Public Workshop - Generally, the Department will hold a workshop immediately prior to, or concurrently with, a public hearing to permit the Department to respond informally to questions from the public and to provide a forum where the public and the Department can engage in a meaningful exchange of information and opinions.
- D. Certification to FHWA - Where the Department has conducted a public hearing and the thirty (30) day public comment period has expired, shall submit to FHWA:
  - 1. A transcript of the public hearing;
  - 2. A certification that a hearing was held; and

3. Copies of all written statements from the public, both submitted at the public hearing or during the thirty (30) day comment period.

## **8.8 Class III Project - Environmental Assessment (EA)**

### **8.8.1 Early Coordination Process/Continued Public Participation**

- A. At the earliest appropriate time, the Department shall consult with interested Federal, State and Local agencies and appropriate members of the public to advise them to the project's scope and to:
  1. Determine the potential of the project for social, economic, environmental impacts;
  2. Identify alternative measures to mitigate adverse impacts; and
  3. Identify other environmental review and consultation requirements.
  4. Throughout the early coordination process, the Department shall provide public participation opportunities commensurate with the complexity of the project. Public participation opportunities include as appropriate: letters to appropriate governmental agencies, public Notice of Intent to prepare an EA, scoping meetings, informational workshops and meetings and the formation of a PAC.

### **8.8.2 Preparation and Circulation of EA**

- A. The Department shall prepare an EA which includes a project description and a discussion of:
  1. The need for the project;
  2. The project alternatives;
  3. Environmental impacts of the project and alternatives;
  4. Mitigation; and
  5. Public involvement and Agency coordination.
- B. The completed EA is circulated to public agencies for comment as appropriate and submitted to FHWA for approval.

### **8.8.3 Public Hearing Requirement**

- A. A public hearing is required for a Class III project which:
  1. Requires significant amounts of right-of-way;

2. Substantially changes the layout or function of connecting roadways or of the facility being improved;
3. Has a substantial adverse impact on abutting property;
4. Otherwise has a significant social, economic, environmental or other effect; or
5. FHWA or the Department determines that a public hearing is in the public interest.

#### **8.8.4 Public Hearing Notice**

- A. Newspaper Publication -Where a public hearing is required, the Department shall publish a notice of a scheduled public hearing twice in a newspaper of general circulation within the general project area and in a local newspaper where appropriate. The first such notice shall be published fifteen (15) to thirty (30) days before the hearing date and the last such notice shall be at least five (5) days before the hearing date.
- B. Mailing of Notice - The notice of a scheduled public hearing shall also be mailed to appropriate news media, local governments and Federal and State agencies. Notices shall also be sent to the Department of Administration/Division of Planning as the intergovernmental review contact established under Federal Executive Order 12372.
- C. Content of Notice - Each notice shall specify the date, time and place of the hearing, and contain a brief description of the project. The notice shall announce the availability of the EA and where it may be obtained or reviewed. It shall also state that comments shall be submitted to the Department or FHWA within thirty (30) days of the date the EA is available.

#### **8.8.5 Public Hearing Procedures**

- A. Presentation - At the public hearing, the Department shall either make a formal oral presentation or make available written material to all members of the public describing:
  1. The project purpose and need;
  2. The proposed project alternatives;
  3. Potential environmental, social and economic impacts; and
  4. Right-of-Way procedures and programs including relocation assistance to be provided; and other necessary information.

- B. Availability of Reference Material - the Department shall also announce or advise the public in written material that the EA and all information developed in reference to the proposed project will be available upon request for public inspection and copying.
- C. Opportunity for Public Comment - At the hearing, the public shall be given the opportunity to provide comments, written or oral, on the project. The Department shall arrange for a public stenographer to be present at the hearing to officially record oral comments by the public. Written statements submitted to the Department at the hearing or within thirty (30) days of the availability of the EA shall be treated as part of the official hearing record. The hearing transcript shall contain copies of each written statement and refer to the exhibits used or filed in connection with the public hearing.
- D. Relationship to Public Workshop - Generally, the Department will hold a workshop immediately prior to, or concurrently with, a public hearing to permit the Department to respond informally to questions from the public and to provide a meaningful exchange of information and opinions.

#### **8.8.6 Notice of Availability**

Newspaper Publication - When the Department does not hold a public hearing, it shall place a notice in a newspaper of general circulation within the general project area and in a local newspaper when appropriate advising the public of the availability of the EA.

#### **8.8.7 Content of Notice**

- A. The notice shall:
  - 1. Briefly describe the project;
  - 2. Announce the availability of the EA;
  - 3. State where it may be obtained and reviewed; and
  - 4. Invite public comments to be submitted to the Department or FHWA within thirty (30) days of publication of EA Availability.
- B. Mailing of Notice - The Notice of Availability shall be mailed to appropriate news media, local governments and Federal and State agencies. Notices shall also be sent to the Department of Administration/Division of Planning as the intergovernmental review contact established under Federal Executive Order 12372.

#### **8.8.8 Submittal of EA to FHWA**

- A. If no significant impacts have been identified, the Department shall forward to FHWA:
  - 1. The EA, revised as appropriate;
  - 2. Certification that a hearing was held and the public hearing transcript, where applicable;
  - 3. Copies of comments received and responses; and
  - 4. Recommendation of a Finding of No Significant Impact. .
- B. The EA shall document compliance with all applicable environmental laws and Executive Orders, or provide reasonable assurances that their requirements can be met.
- C. Finding of No Significant Impact (FONSI) - FHWA will review the EA and other material provided by the Department and issue either a FONSI or a decision that an EIS is necessary. If a FONSI is made, the Department shall send a Notice of Availability of a FONSI to the appropriate Federal, State and local government agencies and shall make the FONSI available to the public upon request. Notice shall also be sent to the Department of Administration/Division of Planning as the inter-governmental review contact established under Executive Order 12372.
- D. Finding of Significant Impact - If FHWA determines that the project would result in a significant environmental impact, then the Department may either:
  - 1. Proceed with preparing an EIS using the procedures described in § 8.6 of this Part for a Class I action; or
  - 2. Modify the project to reduce the impacts and resubmit to FHWA revised documentation requesting it to issue a FONSI.