

**U.S. Department of Transportation
Office of Transportation Policy**

**Guidance on the Use of Combined Final Environmental Impact
Statements/Records of Decision and Errata Sheets in
National Environmental Policy Act Reviews**

April 25, 2019

The U.S. Department of Transportation (DOT or Department) is issuing this guidance to assist in implementation of the combined final environmental impact statement/record of decision (FEIS/ROD) and errata sheet provisions set forth in 49 U.S.C. 304a and 23 U.S.C. 139(n)¹, Accelerated Decisionmaking in Environmental Reviews. Under these provisions, DOT must develop, to the maximum extent practicable, a single document that combines the FEIS and ROD, unless certain conditions exist. The provisions also allow for the preparation of a FEIS by attaching errata sheets to the draft environmental impact statement (DEIS) if certain conditions are satisfied.

This guidance applies to all DOT Operating Administrations (OA)²when acting as a lead agency (or joint lead agency) for National Environmental Policy Act (NEPA) reviews of proposed actions that require an EIS, including tiered and programmatic EISs. This guidance updates and revokes the previously issued *Final Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews*.³ This guidance is effective upon issuance.

Final EIS Errata Sheet Approach

The Council on Environmental Quality (CEQ) regulations implementing NEPA allow the use of errata sheets attached to the DEIS in lieu of a traditional FEIS (40 CFR 1503.4(c)). The language in 23 U.S.C. 139(n)(1) and 49 U.S.C. 304a(a) parallels the CEQ regulations and addresses circulation and filing of a FEIS using errata sheets. Under these provisions, the use of errata sheets in lieu of rewriting the DEIS is appropriate when comments received on a DEIS are minor, and the OA's responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response. When applying this provision, the OA must make the errata sheets publicly available to the same extent as the DEIS and ensure continued availability of the DEIS. This documentation should undergo a legal

¹ The Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration have incorporated this provision into their NEPA implementing procedures at 23 CFR 771.124.

² For the purposes of this guidance and consistent with its use in DOT Order 5610.1C, *Procedures for Considering Environmental Impacts*, the term Operating Administration also includes the Office of the Secretary.

³ Available at https://cms.dot.gov/sites/dot.gov/files/docs/MAP-21_1319_Final_Guidance.pdf. Note that section 1304(j)(2) of the Fixing America's Surface Transportation Act repealed section 1319 of the Moving Ahead for Progress in the 21st Century Act in which these provisions were previously set forth. The FAST Act codified identical language in 23 U.S.C. 139(n) and 49 U.S.C. 304a.

sufficiency review by the appropriate OA counsel (or the Office of the General Counsel for actions by the Office of the Secretary).

The errata sheets must include, at a minimum, the following information:

1. A list and explanation of:
 - a. The factual corrections made to the DEIS with references to the relevant page numbers in the DEIS, citing the sources, authorities, or reasons that support the position of the agency; and
 - b. The DEIS comments and the reasoning why the DEIS comments do not warrant additional response by the OA, citing the sources, authorities, or reasons that support the OA's position;
2. If appropriate, an indication of the specific circumstances that would trigger a re-evaluation or a supplemental environmental impact statement; and
3. A web address or other indication of where a copy of the DEIS may be obtained.

In addition, the errata sheets should contain a separate section that includes the following information:

1. Identification of the preferred alternative and a discussion of the reasons why it was selected;
2. Final Section 4(f) evaluation pursuant to 23 U.S.C. 138 and 49 U.S.C. 303, if applicable;
3. Findings, including any on wetlands, floodplains, and historic property effects, as applicable;
4. List of commitments for mitigation measures for the preferred alternative;
5. Copy or summary of comments received on the DEIS and public hearing and responses (and identification of any coordination activities that have taken place since issuance of the DEIS); and
6. Identification of any other findings to be made in compliance with all applicable environmental laws, regulations, Executive Orders, and other related requirements (with associated agency consultation documentation) where there is reasonable assurance that full compliance will occur after issuance of the FEIS.

Combined Final EIS and ROD Document

Section 304a(b) of Title 49 U.S.C. and 23 U.S.C. 139(n)(2) (combined FEIS/ROD provisions) direct the Department, to the maximum extent practicable, to expeditiously develop a single document that consists of an FEIS and ROD, unless certain conditions exist. Traditionally, and in accordance with the CEQ Regulations (40 CFR 1506.10(b)(2)), FEIS and ROD documents are

issued as separate documents with a minimum 30-day waiting period between the FEIS and ROD. The combined FEIS/ROD provisions direct the lead agency, to the maximum extent practicable, to combine the FEIS and ROD unless:

1. The FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
2. There is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.

This requirement is applicable to all DOT proposed actions, and includes combination of a supplemental EIS and ROD. The combined FEIS/ROD must meet applicable requirements for both an FEIS and ROD.

Whether combining the FEIS and ROD is practicable is a determination specific to the EIS process for each particular proposed action. In deciding whether the use of a combined FEIS/ROD for a particular action is practicable, the OA should consider the facts and circumstances relevant to the EIS process. This could include consideration of the following:

1. *Are there any coordination activities that are more effectively completed after the FEIS is available?*
For example, if there is a need to develop a more detailed mitigation plan, or if a joint lead or cooperating agency requests separate FEIS and ROD documents in order to accommodate its decisionmaking requirements, the OA may determine that a separate FEIS and ROD provides a more effective and efficient decisionmaking process.
2. *Are there any unresolved interagency disagreements over issues that need identification in the FEIS?*
In these situations, it may be necessary to keep the FEIS and ROD as separate documents, so that the agencies can continue to work towards issue resolution prior to issuance of a ROD. For example, if the publication of a separate FEIS will lay out more precisely the issues and rationale for a proposed resolution, then separate FEIS and ROD documents will provide the OA a better opportunity to resolve such disagreements.
3. *Is there a substantial degree of controversy?*
The OA may decide not to combine an FEIS and ROD in these situations if the OA determines that issuing the FEIS as a separate document could help to resolve the controversy. For example, the opportunity to review additional comments submitted after the FEIS may assist the OA to develop additional mitigation commitments that could be included in the ROD to address the controversy.
4. *Does the DEIS identify a preferred alternative from among the comparatively evaluated reasonable alternatives?*⁴

⁴ Pursuant to 40 CFR 1502.14(e), agencies must “identify [their] preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.”

If the DEIS does not identify a preferred alternative, then the OA should consider providing agencies and the public with an opportunity after issuance of the FEIS for an informed assessment related to impacted resources and environmental concerns of the indicated preferred alternative. Whenever possible, the OA should work with appropriate cooperating or participating agencies, and where applicable, the project sponsor, to identify the preferred alternative prior to issuing the DEIS.

5. *Are there compliance issues with substantive requirements that must be resolved before issuance of the ROD, or that the OA wants to resolve before signing the ROD, but that do not merit deferring issuance of the FEIS?*

The combined FEIS/ROD provisions do not alter the compliance timing requirements under substantive environmental laws. If the OA determines there are reasonable assurances of compliance so that the OA can issue the FEIS, and the OA determines there are important benefits to the overall decisionmaking process if the FEIS is issued before such compliance matters are fully resolved, then the OA may decide that it should not combine the FEIS and ROD. In such cases, the OA can publish the FEIS and update compliance status in the ROD.

6. *Is the environmental review for the proposal being completed under One Federal Decision?*

Executive Order (E.O.) 13807 establishes the One Federal Decision (OFD) policy and directs Federal agencies to prepare a single EIS and sign a single ROD for major infrastructure projects, subject to limited exceptions. However, the Department's statutory directive requires an OA to issue a combined FEIS/ROD when serving as lead agency, unless the OA determines it is not practicable to do so, consistent with this guidance. Consistent with the OFD Memorandum of Understanding, the OA would grant an exception to the single ROD requirement, and the cooperating agencies will issue a joint ROD or other appropriate decision document as soon as practicable.⁵

The combined FEIS/ROD provisions do not alter requirements under other environmental laws. In using a combined FEIS/ROD, the OA should consider possible effects on the timing of required coordination under other laws and the need for any additional documentation. For example, having a separate FEIS may facilitate meeting requirements under other laws.

Through the interagency coordination process, the OA should notify cooperating agencies as early as possible that they are considering combining the FEIS and ROD, thereby providing agencies the opportunity to express their views about the use of a combined FEIS/ROD for the specific proposed action. This will assist the OA in making a determination whether combining the FEIS/ROD is practicable or whether it is appropriate to issue the documents separately.

A DEIS should include a notice on the cover sheet, in accordance with 40 CFR 1502.11, stating that the OA will prepare a combined FEIS/ROD under 49 U.S.C. 304a(b) or 23 U.S.C. 139(n)(2)

⁵ See sec. XIII.B, Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807 (Apr. 4, 2018) available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>.

unless conditions are present (such as practicability issues) that preclude the use of the combined FEIS/ROD. The notice may use language such as:

[The OA] will issue a single document that consists of the Final Environmental Impact Statement and Record of Decision pursuant to 49 U.S.C. 304a(b) [and 23 U.S.C. 139(n)(2)] unless [the OA] determines that statutory criteria or practicability considerations preclude issuance of such a combined document.

In situations where an OA is already aware of considerations that will make a combined FEIS/ROD impracticable, it may include a notice on the cover sheet of the DEIS stating that the agency does not intend to prepare a combined FEIS/ROD.

For a DEIS issued prior to the July 6, 2012, the effective date of MAP-21, an OA must determine whether issuance of a combined FEIS/ROD is still practicable, and must notify applicants, project sponsors, and cooperating agencies as early as possible—and, at a minimum, prior to publication of the combined FEIS/ROD—that a combined document will be issued unless conditions exist that either make such issuance impracticable or meet the criteria set forth in Section 1311(b)(1) or (2) (listed above).

In the case of an environmental review for a rulemaking where the final rule is the Record of Decision, the OA should make the completed FEIS available to the decision maker simultaneously with the final rule, unless it is determined that statutory criteria or practicability considerations preclude issuance of the combined document. However, the OA need not publish the entire content of the FEIS in the Federal Register. The OA should cross-reference the FEIS portion of the document in the final rule and explain where it is available for public access (including online).

The Administrator of each OA (or the Assistant Secretary for Transportation Policy, for OST actions), or his or her designee, is delegated the responsibility for determining whether it is impracticable to use the combined FEIS/ROD process for any particular action. Subsequent OA-specific guidance, procedures, or regulations may delegate this determination to offices within the OA. An OA must issue a combined FEIS/ROD unless the conditions described in the statutory exceptions exist or the Administrator or his/her designee determines that combining the documents is not practicable. Such a determination should be retained in the administrative record. Additionally, each OA should review any procedural agreements that it has with resource agencies to identify any changes that will be needed to accommodate the use of combined FEIS/ROD documents.

For actions where a combined FEIS/ROD is anticipated, OAs should engage in early coordination with the appropriate HQ Offices (where applicable) and with the appropriate Office of Chief Counsel (or Office of the General Counsel for actions initiated by the Office of the Secretary), to ensure NEPA consistency within the OA and legal sufficiency. A legal sufficiency review is required for all FEISs, including a combined FEIS/ROD.

At a minimum, a combined FEIS/ROD must meet the requirements for both an FEIS and a ROD established in the OA's NEPA implementing procedures and all other relevant laws, regulations, procedures, or guidance, except to the extent those requirements conflict with Section 1311. If a

combined FEIS/ROD is issued, an OA need only submit the FEIS portion to EPA in accordance with CEQ regulations (40 CFR § 1506.9). The format of the FEIS/ROD is flexible depending on the complexity of the action and other considerations such as accommodating the needs of cooperating and joint lead agencies. For example, a combined FEIS/ROD document may be issued by attaching a ROD document to an FEIS document or by including the ROD as part of the executive summary of the FEIS (if the ROD is identified in the table of contents for the combined FEIS/ROD). Each OA may designate, in OA-specific guidance, a preferred method of issuing a combined FEIS/ROD.

When a combined FEIS/ROD has been issued, other agencies, including joint lead or cooperating agencies, may adopt the FEIS and issue a separate decision document in accordance with their NEPA procedures, if the other agency determines it is appropriate to do so.

Application of Errata Sheets and Combined FEIS/ROD to a Single Action

An OA can use the errata sheet and combined FEIS/ROD provisions together, as long as the conditions of both provisions are met. When both tools are used together, the combined final NEPA document would consist of a DEIS, errata sheets, responses to DEIS comments, information required in an FEIS, and ROD.