

REF 400-ab9: NEPA/SEPA Report Legal Issues Checklist

This check list is intended to provide assistance to reviewers of NEPA and SEPA documents during document creation and for key reviews (i.e. before Washington Attorney General and FWHA legal sufficiency review). The points on this check list were developed through the review of court cases that involved agencies in Washington State or regional transportation agencies. [Summaries of the legal cases](#) used to develop this checklist are available.

This check list should be used in conjunction with previous planning documents and project reviews. A full description of the NEPA/SEPA process is described on the NEPA/SEPA webpage. Guidance for legal review for [FHWA](#) and [FTA](#) are available.

1. Executive Summary

- Is the executive summary supported by the analysis of the environmental element? Are substantiate findings succinctly and clearly stated under the question, “What are the key points of this report?”

2. Purpose and Need statement

- Does the “purpose and need” statement support the determination of the preferred alternative?
- Does our “purpose and need” statement support the elimination of significant or controversial alternative?
- Are all planning studies or regional studies that were used to define the project’s “purpose and need” statement referenced?
- Does the “purpose and need” statement fall within the agencies discretion? Although an agency cannot define its objective in unreasonably narrow terms, an agency has considerable discretion to define the purpose and need for a project.

3. Alternatives and Technical Studies

- Does the document show that decisions are not arbitrary and capricious and are backed up by scientific facts and a clear decision making process?
- Have all reasonable and feasible alternatives been considered?
- Are alternatives defined, methods of analysis stated, and preferred alternative justified?
- Are the number of alternatives sufficient?
- Is the environmental document supported and enforced with technical studies?
- Do technical studies follow standard methods? If technical studies do not follow standard methods, is the chosen method described and justified?
- Have any studies with contrary results been address in the document?

4. Impacts and Mitigation

- Are direct, indirect, and cumulative impacts discussed for all disciplines? Courts reiterated that a cumulative impact analysis need not consider future actions that are too speculative.
- Has the environmental analysis presented a hard look at project impacts and mitigation?
- Does the document address indirect and cumulative effects for the no build alternative as well as the build alternatives?
- Where subjects have been identified as having incomplete or unavailable information, is best available information presented? Some level of assessment must be provided.
- When new information arises following the issuance of a DEIS, it may validly be included in the FEIS without recirculation. Has the new material been documented and referenced in the final document.

5. Public Involvement

- Have all public involvement requirements been addressed (meeting, hearing, availability of documents).
- Have comments type, comment concerns, and how comments were addressed been resolved and documented?
- Does the EA have sufficient impact details for public review (i.e. the EA scoping process may provide sufficient public involvement)?
- Have comments from legal counsel been addressed?
- Have I incorporated changes to a document into the next draft, supplement, or ROD?

6. NEPA Process

- Have relevant guidance in determining level of NEPA documentation been followed? Am I sure that an EA, EIS, or CE is reasonable and adequate for this project?
- Does the document address any deviation or modification to expected NEPA/SEPA process?
- Where a project is separated based upon purpose and need, logical termini, and independent utility, assure that all segments are covered in the cumulative effects discussion?
- Is segmentation valid? And where valid include all segments in cumulative discussion.
- Has the federal lead completed their NEPA steps? Check.
- Has the project team provided regular guidance to contractors for their preparation of NEPA/SEPA documents?