



November 2014

# HIGHWAY PROJECTS

Many Federal and  
State Environmental  
Review Requirements  
Are Similar, and Little  
Duplication of Effort  
Occurs

## Why GAO Did This Study

Under NEPA, federal agencies evaluate the potential environmental impacts of proposed projects. FHWA has developed a process for NEPA reviews for federal-aid highway projects, such as roads or bridges. According to the Council on Environmental Quality (CEQ) and GAO analysis, 18 states have SEPAs that also require the review of environmental impacts of a variety of actions for highway projects.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) required GAO to examine state environmental reviews for highway projects, including whether they duplicate federal environmental reviews for federal-aid highway projects. This report focuses solely on environmental reviews of highway projects in states with SEPAs and addresses 1) factors determining whether federal or state environmental reviews are required; 2) how state and federal review requirements compare; and 3) the extent of any duplication in federal and state reviews, including frequency and cost. GAO reviewed FHWA and CEQ documents and interviewed officials of these federal agencies; analyzed state laws and regulations; surveyed the 18 states with SEPAs required for highway projects; and interviewed selected state agencies within 9 of those states based on the number of FHWA NEPA reviews underway and other factors.

This report has no recommendations. The U.S. Department of Transportation and CEQ provided technical corrections about federal and state environmental review requirements, which GAO incorporated as appropriate.

View [GAO-15-71](#). For more information, contact David J. Wise at (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov) or Susan Sawtelle at (202) 512-6417 or [sawtelles@gao.gov](mailto:sawtelles@gao.gov).

## HIGHWAY PROJECTS

### Many Federal and State Environmental Review Requirements Are Similar, and Little Duplication of Effort Occurs

## What GAO Found

Three factors—project funding sources and project characteristics, and whether a state allows the adoption of federal review documents—generally determine whether a highway project needs a federal environmental review under the National Environmental Policy Act (NEPA) or a state environmental review under state law, or both. Projects without federal highway funding usually do not require a Federal Highway Administration (FHWA) NEPA review, but NEPA reviews of highway projects may still be required to obtain federal permits. Thresholds for environmental review vary under state environmental policy acts (SEPA) and may include project cost or length, whereas NEPA focuses on the potential for significant environmental impacts. Eighteen states have SEPAs required for highway projects, and 17 of these allow for the partial or full adoption of FHWA analyses or documentation to meet state environmental review requirements, according to GAO's survey of these states.

State environmental review requirements are generally similar to the FHWA NEPA process—including consideration of impacts, development and evaluation of project alternatives, mitigation of adverse project impacts, interagency coordination, and public involvement—although differences in specific requirements may affect key environmental decisions. For example, for the consideration of environmental impacts of a proposed highway project, a majority of states responding to GAO's survey indicated that their requirements are similar to FHWA's NEPA requirements overall. However, officials in 7 states GAO surveyed reported that their SEPA requirements related to social and environmental justice impacts are less stringent than FHWA's NEPA requirements. In addition, while state public involvement requirements are generally similar to FHWA's NEPA requirements overall, individual requirements vary, ranging from states that have no requirements to allow public involvement to others that may have more stringent requirements than FHWA's. Officials in 3 states told GAO that in practice they match FHWA's NEPA public involvement requirements for state-only reviews to meet public expectations, even if state law requires less. Further, in the absence of required federal NEPA reviews, certain federal laws related to protection of parklands and historic preservation may not apply to a project, potentially affecting whether a project is determined to have significant impacts and whether those impacts are mitigated.

Officials in 4 of the 18 states in GAO's survey identified instances of potential federal–state duplication in environmental review processes, stemming either from supplemental state requirements or from the lack of alignment between required federal and state review documents. By contrast, 10 of the states in GAO's survey reported that there was no duplication in environmental reviews. Generally, state officials explained that little duplication of effort occurs in state and federal review processes because these reviews are done concurrently by state officials able to address requirements with analyses used for different purposes without replicating effort. Further, 7 of the 10 states reporting no duplication allow for the adoption of a NEPA review to fulfill SEPA requirements. Finally, 4 states pointed to potential duplication or overlap that did not stem from the interaction of state and federal requirements, such as the rework necessary to keep environmental reviews up to date.

---

# Contents

---

Letter		1
	Background	6
	Three Factors Generally Affect the Types of Environmental Reviews Required for Highway Projects, and State Environmental Review Document Types Largely Mirror NEPA	15
	Many State and Federal Requirements Are Similar, but Differences Could Affect State Environmental Reviews or Outcomes	22
	Few Instances of Federal–State Duplication Were Reported; FHWA and States Have Improved Coordination	39
	Agency Comments	46
Appendix I	A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects	47
Appendix II	Objectives, Scope, and Methodology	67
Appendix III	GAO Contact and Staff Acknowledgments	75
Tables		
	Table 1: States with State Environmental Policy Acts (SEPA) Required for Highway Projects	68
	Table 2: States Agencies in Selected States with State Environmental Policy Laws (SEPA) Interviewed by GAO	73
Figures		
	Figure 1: The Federal Highway Administration’s Principles of the National Environmental Policy Act (NEPA) Process in Transportation Decision Making	8
	Figure 2: National Environmental Policy Act Decision Making Process—Types of Documentation Required for Federal Highway Administration (FHWA) Projects	12

---

Figure 3: Federal-Aid Highway Projects by National Environmental Policy Act Review Type	13
Figure 4: States with State Environmental Policy Acts Required for Highway Projects, as of 2014	14
Figure 5: The Number of Surveyed States with State Environmental Policy Acts (SEPA) Reporting Extent of Adoption of Federal National Environmental Policy Act (NEPA) Reviews to Meet SEPA Requirements, as Indicated by State Departments of Transportation Survey Responses	19
Figure 6: Number of States with Environmental Review Documents Used for Their Respective State Environmental Policy Acts (SEPA) That Are Similar to Those Used for the National Environmental Policy Act, as Indicated by State Department of Transportation Survey Responses	21
Figure 7: Comparison of State Environmental Review Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements, as Indicated by State Departments of Transportation (state DOT) Survey Responses	24
Figure 8: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Consideration of Project Impacts, as Indicated by State Departments of Transportation (state DOT) Survey Responses	26
Figure 9: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Development and Evaluation of Alternatives, as Indicated by State Departments of Transportation (state DOT) Survey Responses	28
Figure 10: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Mitigation of Adverse Project Impacts, as Indicated by State Departments of Transportation (state DOT) Survey Responses	30
Figure 11: Hypothetical Example of an Avoidance Alternative for Parklands	33

---

---

Figure 12: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for Interagency Coordination for Environmental Assessments (EA) and Environmental Impact Statements (EIS), as Indicated by State Departments of Transportation (state DOT) Survey Responses	34
Figure 13: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for Public Involvement for Environmental Assessments (EA) and Environmental Impact Statements (EIS), as Indicated by State Departments of Transportation (state DOT) Survey Responses	37

---

---

### Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
APA	Administrative Procedure Act
Caltrans	California's DOT
CE	categorical exclusion
CEQ	Council on Environmental Quality
Clean Water Act	Federal Water Pollution Control Act, Act of June 30, 1948
Coast Guard	U.S. Coast Guard
Corps	U.S. Army Corps of Engineers
CRS	Congressional Research Service
DOT	U.S. Department of Transportation
EA	environmental assessment
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
FHWA's NEPA Toolkit	FHWA's <i>Environmental Review Toolkit for NEPA and Transportation Decisionmaking</i>
FONSI	finding of no significant impact
MAP-21	Moving Ahead for Progress in the 21st Century Act
NEPA	National Environmental Policy Act
PAPAI	Project and Program Action Information
ROD	record of decision
SEPA	state environmental policy act
state DOT	state department of transportation

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



November 18, 2014

The Honorable Barbara Boxer  
Chairman  
The Honorable David Vitter  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Bill Shuster  
Chairman  
The Honorable Nick J. Rahall, II  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

When a state uses federal-aid highway funding for a highway project,<sup>1</sup> the project becomes subject to federal requirements, including a requirement for environmental review established under the National Environmental Policy Act (NEPA).<sup>2</sup> Roughly one-third of the states also have laws that require the review of environmental impacts under a variety of circumstances. Enacted in 1970, NEPA, and the subsequent Council on Environmental Quality (CEQ) implementing regulations, set out an environmental review process that has two principal purposes: (1) to ensure that an agency carefully considers information concerning the potential environmental effects of proposed projects; and (2) to ensure that this information is made available to the public.<sup>3</sup> NEPA and CEQ

---

<sup>1</sup>Although most of the nation's roads are owned by state and local governments, the federal government supports state investment in highway construction via a grant-based cost reimbursement system. In 2012, the most recent year for which data are available, \$38 billion was obligated to states. For purposes of this report, we are focusing on federal-aid highway projects (projects authorized under title 23 of the United States Code) such as projects involving highways or bridges.

<sup>2</sup>Pub. L. No. 91-190 (1970), codified at 42 U.S.C. §§ 4321-4347.

<sup>3</sup>NEPA states that the purposes of the act are "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality." 42 U.S.C. § 4321.

---

regulations require federal agencies to analyze the nature and extent of a project's potential environmental effects and, in many cases, document their analyses.<sup>4</sup> NEPA environmental reviews have been identified by critics as a cause of delay for projects because of time-consuming environmental analysis requirements and praised by proponents for, among other things, bringing public participation into government decision making.<sup>5</sup> Congress has also expressed ongoing interest in the cost of and time required for reviews completed under NEPA for federal-aid highway projects, and we have published several reports assessing available information on the cost and time frames of required reviews.<sup>6</sup>

In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21)<sup>7</sup> added provisions intended to accelerate highway project completion and reduce costs, while protecting the environment, among other things. Several of these provisions were aimed at expediting project delivery, including the reviews required under NEPA. MAP-21 required GAO to examine state environmental reviews to determine whether they duplicate federal environmental reviews for federal-aid highway projects.<sup>8</sup> To

---

<sup>4</sup>NEPA requirements apply to both major and minor projects. The level of review required for a project depends on the potential for environmental effects and several other factors, as discussed below.

<sup>5</sup>NEPA applies to federal agency policies, programs, plans, and projects. Projects include actions approved by permit or other regulatory decisions as well as federal and federally assisted activities, including projects or actions funded by or undertaken by FHWA. 40 C.F.R. § 1508.18(b). For more information about how NEPA reviews are carried out, see GAO, *FAA Airspace Redesign: An Analysis of the New York/New Jersey/Philadelphia Project*, [GAO-08-786](#) (Washington, D.C.: July 31, 2008) and *Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects*, [GAO-03-534](#) (Washington, D.C.: May 23, 2003).

<sup>6</sup>See GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, [GAO-14-369](#) and [GAO-14-370](#) (Washington, D.C.: April 15, 2014); GAO, *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, [GAO-09-36](#) (Washington, D.C.: Dec 12, 2008); and GAO, *Highway Projects: Some Federal and State Practices to Expedite Completion Show Promise*, [GAO-12-593](#) (Washington, D.C.: June 6, 2012).

<sup>7</sup>MAP-21 authorized surface transportation programs, including federal-aid highway programs, through fiscal year 2014. Pub. L. No. 112-141, 126 Stat. 405 (2012). Legislation was enacted in August 2014, extending highway and other surface transportation programs and funding through May 31, 2015, for programs authorized under MAP-21. Highway and Transportation Funding Act, Pub. L. No. 113-159, 128 Stat. 1839 (2014).

<sup>8</sup>Pub. L. No. 112-141, § 1322, 126 Stat. at 553.



---

respond to the MAP-21 mandate, we provided key preliminary information to your staff on September 25, 2014. This report transmits our final results related to this review. This report addresses: (1) the factors that determine whether federal or state environmental reviews are required for highway projects, and how the types of federal and state environmental review documents compare; (2) how state environmental review requirements and practices compare with federal requirements for assessing the environmental impact of federal-aid highway projects; and (3) the extent of any duplication in federal and state reviews, including frequency and cost, in states with environmental review requirements for highway projects.

We have defined duplication as occurring when two or more agencies or programs are engaged in the same activities or provide the same services to the same beneficiaries.<sup>9</sup> This report focuses on duplication that might occur between state and federal processes for environmental review of highway projects.

To respond to all three objectives, we reviewed relevant publications, obtained documents from CEQ, the Congressional Research Service (CRS), and the Federal Highway Administration (FHWA), including the FHWA's Environmental Review Toolkit for NEPA and Transportation Decisionmaking, which provides guidance on FHWA's NEPA environmental review process for state department of transportation (state DOT) officials.<sup>10</sup> We also interviewed officials within these agencies and representatives from the American Association of State Highway and Transportation Officials (AASHTO), as well as two academics identified

---

<sup>9</sup>See GAO, *Government Efficiency and Effectiveness: Strategies for Reducing Fragmentation, Overlap, and Duplication and Achieving Cost Savings*, [GAO-13-631T](#) (Washington, D.C.: May 16, 2013). We have applied this definition in a body of work examining potentially duplicative activities in the federal government. See, for example, GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, [GAO-11-318SP](#) (Washington, D.C.: Mar. 1, 2011); *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, [GAO-12-342SP](#) (Washington, D.C.: Feb. 28, 2012); and *2013 Annual Report: Actions Needed to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, [GAO-13-279SP](#) (Washington, D.C.: Apr. 9, 2013).

<sup>10</sup>FHWA's *Environmental Review Toolkit for NEPA and Transportation Decisionmaking* (FHWA's NEPA Toolkit) was accessed in 2014 at: <http://environment.fhwa.dot.gov/projdev/pd3tdm.asp>.

---

by CEQ as having expertise in federal and state environmental review requirements.

To respond to the first two objectives, we conducted a legal analysis and a survey, which included all 18 states that we and CEQ identified as having state environmental policy acts (SEPA) requiring environmental review of highway projects.<sup>11</sup> Our legal analysis compared key elements of SEPAs and related state regulations to key elements of NEPA and FHWA regulations for NEPA reviews.<sup>12</sup> We identified these elements by reviewing the relevant federal statutes and regulations in consultation with CEQ and FHWA. Specifically, we started with the statutory language of NEPA, which requires agencies to prepare, for major federal actions significantly affecting the quality of the human environment, a detailed statement on, among other things (1) the environmental impact of the proposed action, (2) any adverse environmental effects which cannot be avoided should the proposal be implemented, and (3) alternatives to the proposed action.<sup>13</sup> NEPA, CEQ regulations, and—for federal-aid highway projects—FHWA regulations then specify detailed environmental review processes, which include requirements for interagency coordination, avoiding duplication, and participation by state and local governments as well as the general public, among other things. Based on these statutory and regulatory requirements, and in consultation with CEQ and FHWA, we distilled 12 key elements of NEPA environmental review. Examples of these 12 elements include the type and level of detail required for environmental reviews, requirements to improve coordination and promote efficiency, and public participation. Details on all 12 elements

---

<sup>11</sup>We included entities which are defined as “states” under Title 23 and which have SEPAs required to be applied to highway projects. Thus, we did not include the Nevada/California–Tahoe Region, which has SEPA requirements, because it is not defined as a state under Title 23. We included New Jersey, which has an executive order that serves as a SEPA, and was included on CEQ’s list of states with SEPAs. We also included Texas, which has recently enacted a SEPA for transportation projects and which CEQ officials believed should be included. We excluded South Dakota because although its SEPA provides the option of preparing an environmental impact statement, there is no requirement to do so, and South Dakota DOT officials told us that they do not conduct environmental reviews under the state law. Some other states also have specialized environmental review requirements even in the absence of a SEPA.

<sup>12</sup>We did not examine all details of federal and state laws and practices, nor did we examine all details of other sources such as case law that could affect how laws are implemented at the state and federal levels.

<sup>13</sup>42 U.S.C. § 4332(2)(C).

---

and findings from our legal comparison of the NEPA and SEPA processes based on these elements are contained in appendix I, and we refer to these findings throughout this report as our legal analysis. To compare state environmental review requirements and practices in more detail for highway projects subject to FHWA requirements, we surveyed state DOTs in each of the 18 states that have SEPAs required for highway projects on the degree of similarity between state requirements and federal requirements identified in FHWA's Toolkit.<sup>14</sup> For more information about how we conducted and used the survey, see appendix II. In addition to these analyses, we interviewed state DOT officials and officials with state resource agencies (e.g., state departments of natural resources) in 9 of the 18 SEPA states we surveyed, which we selected based on a range of factors, including the number of FHWA NEPA reviews underway. Our findings for these nine states are not generalizable to the other states with SEPAs but provide examples of varying state requirements and practices.

To respond to the third objective, we included in our survey of the 18 state DOTs with SEPAs questions related to duplication and included questions about duplication in our interviews of state officials and FHWA division officials in the nine states we selected for additional interviews. In the context of environmental review requirements, such duplication could occur if, for example, two separate—but similar—analyses were carried out to satisfy federal and state requirements, but would not occur if the same analysis could be used to satisfy both state and federal documentary (i.e., procedural) requirements. We inquired about duplication of review efforts within and among highway projects, as well as duplication that may occur across time within a project. We also asked FHWA and state officials for any data or analyses regarding the cost of any potential duplication (and how such cost might be measured) and the frequency of any potential duplication. Finally, in our survey we asked state officials about efforts to improve the efficiency and timeliness of the environmental review process, as well as any potential benefits from such efforts. See appendix II for additional details on our objectives, scope, and methodology.

---

<sup>14</sup>All 18 states we contacted responded to our survey, although one state did not complete one portion of the questionnaire.

---

We conducted this performance audit from May 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

## Background

Under NEPA, federal agencies generally are required to evaluate the potential environmental effects of proposed federal actions such as permitting, funding, approving, or carrying out of federal-aid highway projects. These evaluations allow decision makers to fully consider significant environmental impacts, develop and evaluate project alternatives, and consider mitigating adverse impacts before they decide whether to approve a proposed project. The NEPA process also provides a forum for ensuring that all applicable federal and state resource protection laws and requirements are addressed during the project development process, such as applicable provisions of the federal Clean Water Act<sup>15</sup> and Endangered Species Act.<sup>16</sup> NEPA's implementing regulations require coordination as a means to avoid duplication and increase efficiency. For example, they require all federal agencies to "cooperate with state and local agencies to the fullest extent possible to reduce duplication."<sup>17</sup> In addition, the environmental review of projects can include, among other things, seeking input, and in some cases approvals, from the public as well as federal and state agencies responsible for natural resources, environmental protection, and historic preservation, and obtaining approval of the environmental evaluation by the lead federal agency prior to making a decision, which in some cases results in the issuance of a record of decision (ROD).

FHWA has statutory and regulatory requirements for conducting NEPA reviews, which include additional highway-specific requirements and put

---

<sup>15</sup>See Federal Water Pollution Control Act, Act of June 30, 1948, ch. 758, § 404, 62 Stat. 1155, codified as amended at 33 U.S.C. § 1344 (Clean Water Act).

<sup>16</sup>See Endangered Species Act of 1973, Pub. L. No. 93-205, § 7, 87 Stat. 884 (1973), codified at 16 U.S.C. § 1536.

<sup>17</sup>40 C.F.R. § 1506.2(c).

---

additional emphasis on an interagency decision-making process.<sup>18</sup> For instance, FHWA regulations require that each project alternative considered in the review connect logical end points (e.g., involve the development of a highway that links with existing roads) and be of sufficient length to address environmental matters broadly.<sup>19</sup> FHWA regulations and policy also include provisions to coordinate with other federal agencies with jurisdiction, expertise, or interest in the project, as well as non-federal actors, including state agencies and project sponsors.<sup>20</sup> In addition, FHWA's statutory authority includes a mechanism to limit the time frames available to challenge decisions in federal court as part of the judicial review process,<sup>21</sup> as well as other provisions, such as permission to fund assistance to specific groups to improve interagency coordination.<sup>22</sup> Figure 1 illustrates six principles of FHWA NEPA review from its Toolkit.

---

<sup>18</sup>FHWA administers the Federal-Aid Highway Program and distributes most funds to the states through annual apportionments established by statutory formulas. Once FHWA apportions these funds, the funds are available for obligation to fund state-selected projects, but these cannot proceed to construction until the NEPA process is completed. States are primarily responsible for selecting projects and administering federal-aid projects through their state DOTs, as well as for providing matching funds. While state DOTs are the recipients of federal funds and administer and oversee many of the projects funded by the federal-aid highway program, states sometimes allow local public agencies, such as towns, cities, and counties, to administer federally funded projects. In these instances, states continue to be responsible for ensuring that federal funds are spent in accordance with federal law.

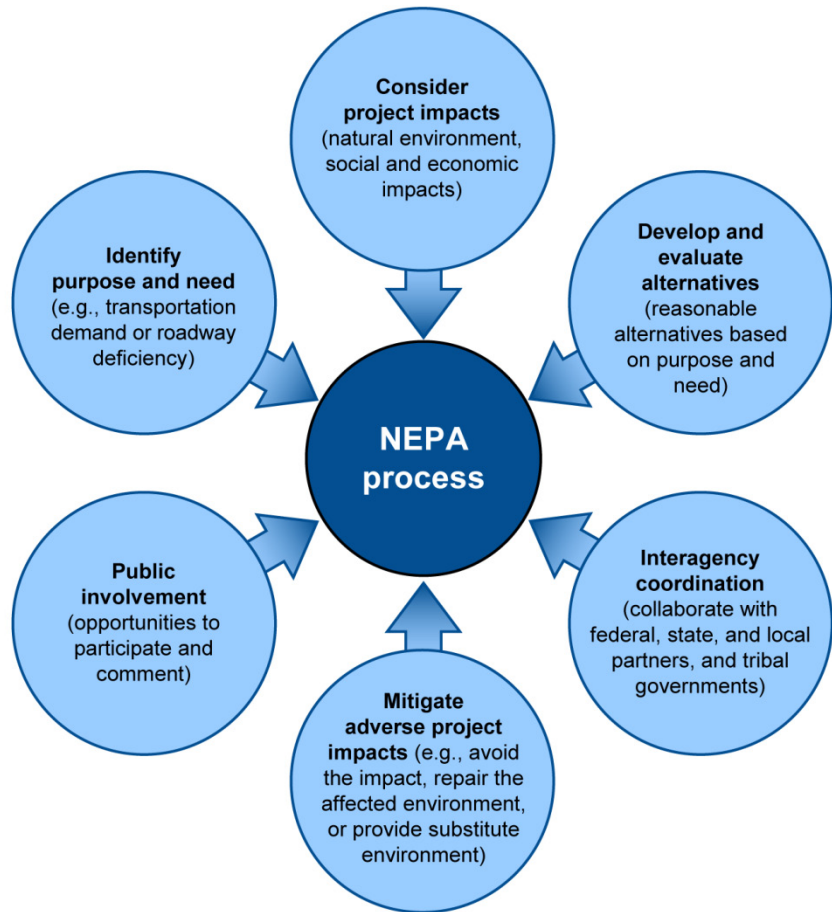
<sup>19</sup>23 C.F.R. § 771.111(f)(1).

<sup>20</sup>It is FHWA's policy that to the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document. 23 C.F.R. §§ 771.105, 771.111(d).

<sup>21</sup>23 U.S.C. § 139(l)(1). Critics of NEPA have stated that those who disapprove of a federal project will use NEPA as the basis for litigation to delay or halt that project. Others argue that litigation only results when agencies do not comply with NEPA's procedural requirements. See [GAO-14-369](#) and [GAO-14-370](#).

<sup>22</sup>The statute permits states to fund assistance to affected federal or state agencies and Native American tribes participating in the environmental review process to support activities expediting and improving transportation project delivery, among other things. 23 U.S.C. §139(j)(1).

**Figure 1: The Federal Highway Administration’s Principles of the National Environmental Policy Act (NEPA) Process in Transportation Decision Making**



Source: GAO. | GAO-15-71

According to CEQ and FHWA, establishing the purpose and need for the federal action takes into account the project sponsor’s purpose and need for a project and is essential in establishing a baseline for the development of the range of reasonable project alternatives required in environmental reviews. It also assists with the identification and eventual selection of a preferred alternative. For FHWA NEPA reviews for federal-aid highway projects, the purpose and need for a proposed project might take into account the status of the project (e.g., the project’s history, funding, and schedules, as well as information on agencies involved); a

---

discussion of highway or bridge capacity, the project's relationship to the larger transportation system, and traffic demand; as well as social demands or economic development.<sup>23</sup>

In addition to the procedural requirements of NEPA, the decision to fund a federal-aid highway project also must comply with substantive environmental and natural resource protection laws, including applicable state laws.

- Federal environmental laws commonly applied to a proposed highway project such as the Clean Water Act (Section 404); the Endangered Species Act of 1973 (principally Section 7); Section 106 of the National Historic Preservation Act;<sup>24</sup> and Section 4(f) of the Department of Transportation Act (protecting publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites).<sup>25</sup> Section 4(f) applies to DOT projects and Section 106 applies to projects with federal funding and some projects that require federal permits. Other federal natural resource protection laws—FHWA has identified over 40—can apply to federal and state or local projects, depending on characteristics of the project. For example, the

---

<sup>23</sup>Social demands influencing a project may include its impacts on employment, schools, or recreational facilities and land uses that alter highway capacity needs. The project's environmental justice analysis must identify and address all reasonably foreseeable adverse social, economic, and environmental effects on minority and low-income populations. See Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994); U.S. Department of Transportation (DOT) Order 5610.2, *Environmental Justice in Minority and Low-Income Populations*; and FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

<sup>24</sup>Section 106 of the National Historic Preservation Act, Pub. L. No. 89-665, § 106, 80 Stat. 915 (1966), codified as amended at 16 U.S.C. § 470f, requires federal agencies to take into account the effects of a government-assisted or licensed project on any historic site, building, structure, or other object that is listed on the National Register of Historic Places.

<sup>25</sup>Section 4(f) of the Department of Transportation Act of 1966, Pub. L. No. 89-670, § 4(f), 80 Stat. 931, the substance of which now appears at 23 U.S.C. § 138 and 49 U.S.C. § 303, protects parklands from adverse effects of federal-aid highway projects. In general, section 4(f) requires that the impact be avoided or rendered *de minimis*, or that the state must show that there is no feasible and prudent alternative. The requirement dates from enactment of section 4(f) of the Act establishing DOT and predates NEPA. Pursuant to 23 U.S.C. § 139, FHWA includes section 4(f) in its NEPA analysis as an environmental law with the same status as the Clean Air Act or Clean Water Act.

---

Wild and Scenic Rivers Act protects designated and potential wild, scenic, and recreational rivers.<sup>26</sup>

- State environmental laws, such as laws related to the growth-inducing effects of agency actions may also apply to a proposed highway project. States may also have laws that protect certain resources, such as those designating protected or endangered species or those protecting tribal or other cultural resources.

For federal-aid highway projects, reviews are typically conducted by state DOT officials—or other project sponsors—who carry out analyses and coordinate with FHWA. FHWA generally serves as the federal lead agency for the NEPA process and approves the environmental impact documentation.<sup>27</sup> Under NEPA, the level of review required depends on the potential significance of the environmental effects of the project.<sup>28</sup>

- *Projects that have the potential for a significant effect:* An Environmental Impact Statement (EIS) must be prepared for a project that has the potential for a significant effect on the environment. Both CEQ and FHWA regulations identify EIS requirements related to public involvement (such as public participation in scoping, response to substantive public comment on a draft EIS, and public hearings when appropriate); interagency participation; consideration of project impacts (such as impacts on water quality or wildlife habitat); development and evaluation of alternatives; and the mitigation of adverse project impacts. Projects requiring an EIS are likely to be complex and expensive, as we have noted in prior work.<sup>29</sup> The median time to complete a highway project EIS was over 7 years in

---

<sup>26</sup>16 U.S.C. §§ 1271-1287.

<sup>27</sup>As applicable here, the terms “federal lead agency” and “lead agency” come from 23 U.S.C. § 139, which governs these cases. The state DOT or other applicable state agency may serve with U.S. DOT as a “joint lead agency.”

<sup>28</sup>To determine “significance” as defined by NEPA, responsible officials must consider both the context and intensity of an action’s impact. 40 C.F.R. § 1508.27. This means responsible officials must consider beneficial as well as adverse impacts, long- and short-term, and cumulative impacts, as well as the impact of external requirements such as, for title 23-authorized projects, the impact on certain types of public lands and historic sites (see 23 U.S.C. § 138 and 49 U.S.C. § 303) and compliance with title 23-specific processes (see 23 U.S.C. § 139).

<sup>29</sup>See [GAO-12-593](#).



---

2013, according to FHWA data,<sup>30</sup> and the EIS itself may cost several million dollars, as reported by FHWA.<sup>31</sup>

- *Projects that may or may not have a significant effect:* When project effects are uncertain, project sponsors (such as state DOTs or local highway departments) must prepare an environmental assessment (EA) to determine whether the project may have a potentially significant impact on the human environment. An EA briefly provides evidence and analysis sufficient to determine whether to prepare an EIS or a finding of no significant impact (FONSI). A FONSI presents the reasons why the agency has concluded that no significant environmental impacts will occur if the project is implemented. FHWA regulations governing EAs require early scoping and coordination activities, as well as making the EA publicly available. EA review activities have been estimated to take from 14 to 41 months, according to reports from FHWA and AASHTO.
- *Projects that normally will not have a significant effect:* These projects, by their very nature (e.g., the project fits within a category of activities that the agency has determined normally do not have the potential for significant environmental impacts), require limited review under NEPA to ensure—by considering any extraordinary circumstances—that a proposed project does not raise the potential for significant effects. Agencies promulgate categorical exclusions (CE) for such projects in their NEPA implementing procedures.<sup>32</sup> The subsequent use of a categorical exclusion for a proposed project, as described in CEQ guidance, can reduce paperwork and delay by speeding the review process. CEs typically take much less time to prepare than EAs or EISs. Environmental review activities for categorically excluded projects have been estimated to take an average of 6 to 8 months to

---

<sup>30</sup>Some EISs are completed in less time. For example, in 2013, the median time to complete EISs started since the enactment of SAFETEA-LU, in 2005, was less than 4 years.

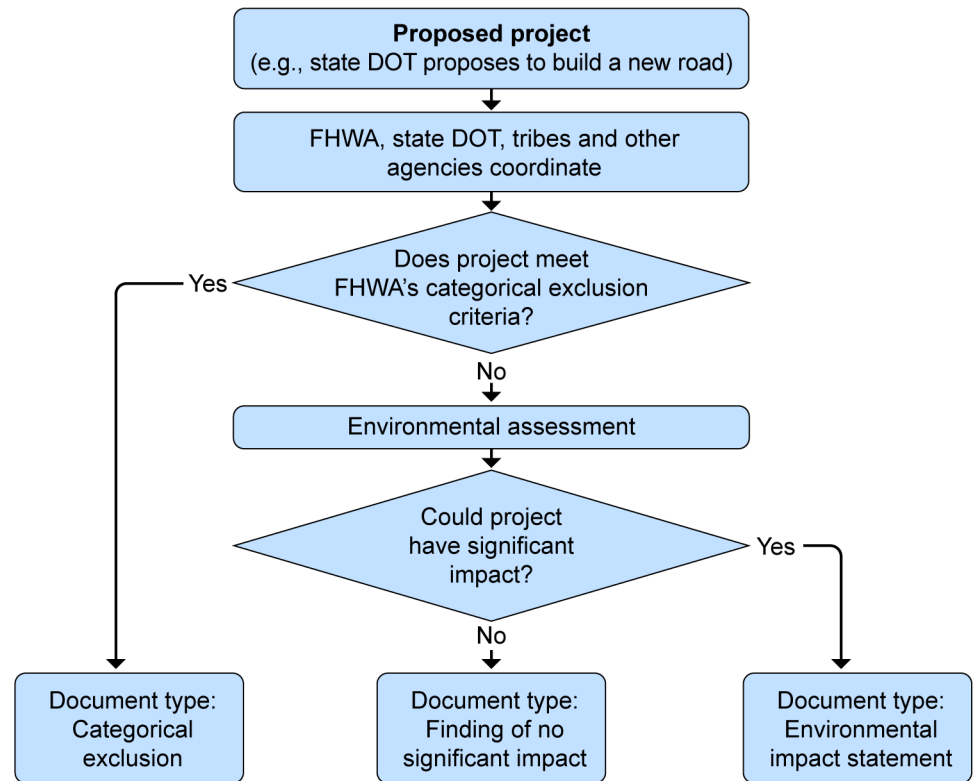
<sup>31</sup>FHWA, *Report to Congress on Costs Associated with the Environmental Process: Impacts of Federal Environmental Requirements on Federal-aid Highway Project Costs*. (Washington, D.C.: Oct. 25, 2006). FHWA does not include the time needed to approve project permits in its calculations of the median time needed to complete NEPA reviews.

<sup>32</sup>FHWA regulations identify two types of CEs: listed CEs, which meet CEQ and FHWA requirements by regulation, and documented CEs, which only may be designated as CEs after FHWA approval of project-specific documentation. In some cases, states may be able to document a CE with minimal additional paperwork, while other documented CEs—for more complex projects—may require formal submission of additional information from the state to allow the FHWA division office to conclude that the project will not cause a significant environmental impact.

complete, according to FHWA, and could take as long as an average of 22 months to complete, according to a report prepared for AASHTO. Federal-aid highway projects that are generally processed as CEs include resurfacing, constructing bicycle lanes, installing noise barriers, and landscaping projects.

Figure 2 illustrates FHWA’s NEPA decision-making process, including the three main types of highway project environmental review documentation.

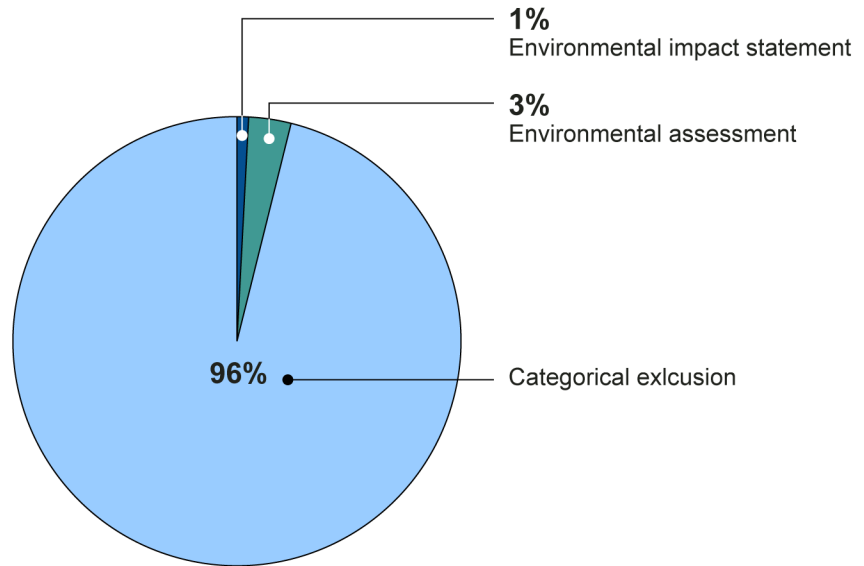
**Figure 2: National Environmental Policy Act Decision Making Process—Types of Documentation Required for Federal Highway Administration (FHWA) Projects**



Sources: GAO and FHWA. | GAO-15-71

For federal-aid highway projects, FHWA has found that the vast majority of projects (96 percent in 2009) qualify for environmental review as CEs, and only 1 percent require EIS reviews, as shown in figure 3 below. However, EIS projects, because of their high costs, account for a greater share of federal-aid funds than their numbers might suggest.

**Figure 3: Federal-Aid Highway Projects by National Environmental Policy Act Review Type**



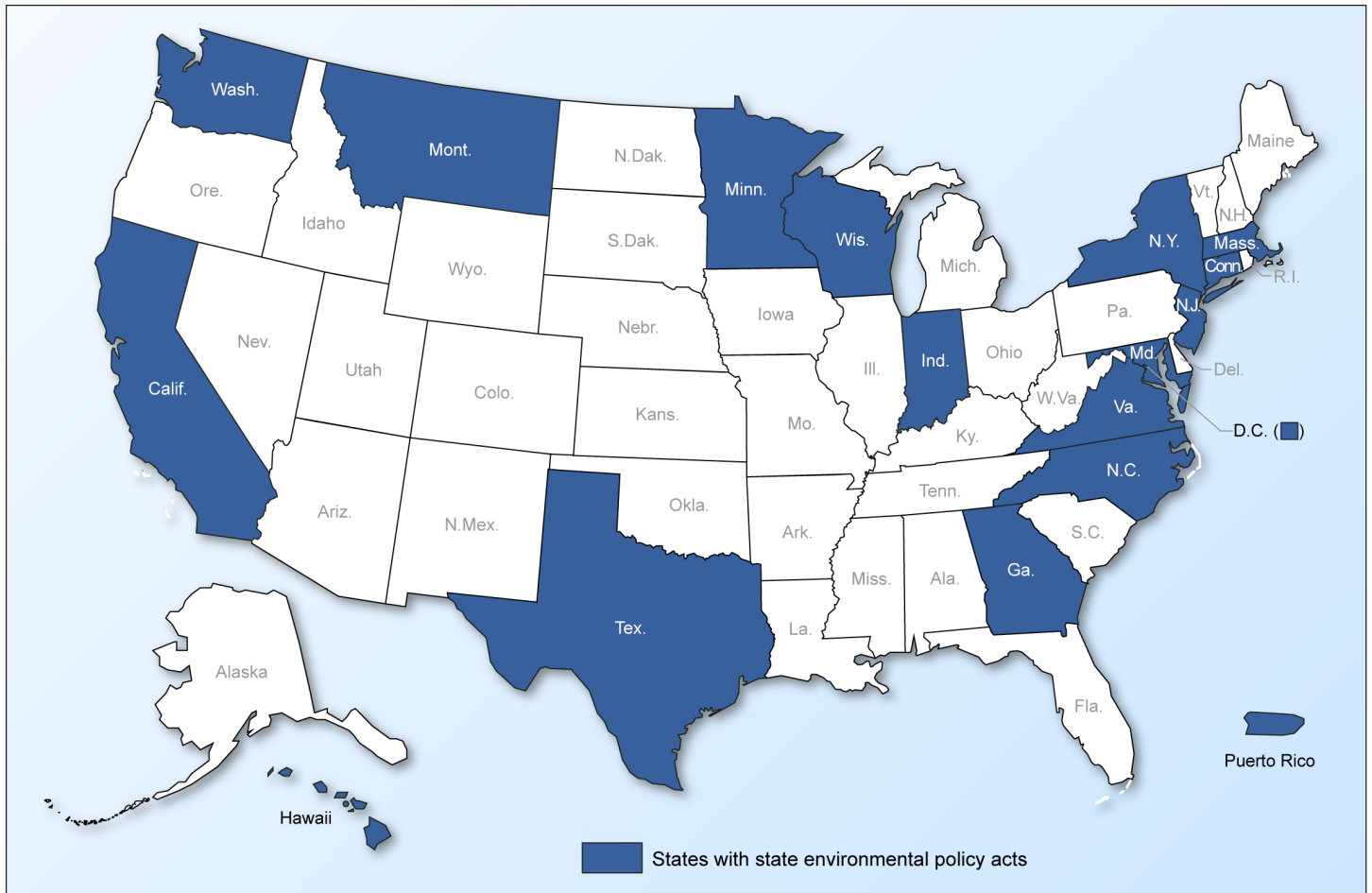
GAO analysis of 2009 FHWA data. | GAO-15-71

Note: According to the Federal Highway Administration, 2009 data are the most recent available, and the proportion of projects in each category has remained constant based on estimates made with fiscal data.

According to CEQ and our analysis, 18 states have adopted SEPAs that require environmental reviews for highway projects (see fig. 4). The majority of SEPAs were modeled on NEPA and require state and sometimes local public agencies to assess the impacts of projects (or other actions) affecting the quality of the environment within the state.<sup>33</sup> Among other things, SEPAs may expand requirements for environmental reviews to projects (e.g., state, local, or private projects) that are not required to have such reviews under federal law.

<sup>33</sup>For more information about SEPAs, see e.g., Daniel R. Mandelker, et al., *NEPA Law and Litigation*, Thomson Reuters/West, Rel. 10, August 2012.

**Figure 4: States with State Environmental Policy Acts Required for Highway Projects, as of 2014**



Sources: GAO analysis and Map Resources. | GAO-15-71

---

## Three Factors Generally Affect the Types of Environmental Reviews Required for Highway Projects, and State Environmental Review Document Types Largely Mirror NEPA

---

### Three Factors Generally Affect Whether Federal or State Environmental Reviews Are Required for Highway Projects

Three factors—project funding sources, project characteristics, and rules allowing state adoption of federal review documents—generally determine whether a highway project needs a federal environmental review or a state environmental review, or both.<sup>34</sup>

#### Funding Sources

Federal-aid highway projects are generally subject to environmental review under NEPA and the environmental provisions of title 23, with FHWA serving as the federal lead agency for the review. By contrast, when a project is funded solely through state or local funds, it rarely requires an FHWA NEPA review, although action by another federal agency may require an environmental review.<sup>35</sup>

---

<sup>34</sup>Some projects may be categorically excluded, or they may fall below a SEPA threshold for environmental review.

<sup>35</sup>Federal permitting requirements can also trigger a NEPA review requirement for state-funded highway projects. For example, a highway project without federal-aid highway funding may still trigger a NEPA review if a federal permit is required from the U.S. Army Corps of Engineers (Corps) or the U.S. Coast Guard (Coast Guard) if it will affect a navigable waterway or wetland, among other resources. In these cases, the Corps or the Coast Guard, as applicable, could serve as the federal lead agency.

---

To some extent, states can influence whether or not FHWA NEPA reviews are required by their selection of funding for a particular project. By using—or avoiding—federal-aid highway funds, states can determine whether their projects are subject to a FHWA NEPA review and even whether certain other federal environmental laws apply.<sup>36</sup> For example, officials in some states told us that federal-aid highway funding was sometimes requested for a project requiring permits from other federal agencies specifically so that FHWA would serve as the federal lead agency for the NEPA review, rather than have a federal permitting agency (e.g., the U.S. Army Corps of Engineers (Corps)) serve in that capacity. Officials in two states cited their positive working relationships with FHWA, or the lack of resources at other federal agencies, to explain such decisions. As another example, California officials explained that not having federal funding or not needing a federal permit—either of which would trigger NEPA—requires them to comply with more burdensome requirements of the Endangered Species Act. They therefore would have an incentive to include federal-aid highway funds to ensure NEPA would apply.<sup>37</sup>

Some state officials, however, identified reasons why they may seek not to use federal-aid highway funding for certain projects. For example, state officials in Massachusetts, Minnesota, and North Carolina told us that they chose not to use federal-aid highway funding on some projects mainly to avoid certain federal review requirements, notably Section 4(f) or Section 106, which can increase project costs or require additional time

---

<sup>36</sup>Projects must comply with applicable substantive resource protection laws regardless of whether NEPA or a SEPA (if any) applies to the project.

<sup>37</sup>Section 7 of the Endangered Species Act mandates that federally authorized or funded actions must not jeopardize a threatened or endangered species, and it requires that FHWA or a state DOT consult with and submit biological assessments to the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. Section 10 of the Act applies to a project without federal authorization or funding—including projects with only state funding—and it requires a project sponsor to apply for a permit and submit a habitat conservation plan, which may be more burdensome, according to state officials. For more information on Section 7, see GAO, *Endangered Species Act: The U.S. Fish and Wildlife Service Has Incomplete Information about Effects on Listed Species from Section 7 Consultations*, [GAO-09-550](#) (Washington, D.C.: May 21, 2009).

---

for reviews to meet federal requirements.<sup>38</sup> For similar reasons, officials in three other states (California, Maryland, and New York) focused their federal funding on certain—often large—projects, resulting in fewer FHWA NEPA reviews overall. Some state officials told us that as a practical matter, there may not always be a choice to not use federal funding, even if they might otherwise choose to do so, because limited state funding may not cover the full cost for some large projects. Although only using state funds may preclude the need to meet certain federal requirements, other federal environmental requirements, such as compliance with the Clean Water Act, largely remain for state-funded projects.

## Project Characteristics

SEPAAs vary with respect to which project characteristics trigger an environmental review as well as what type of review is required and the scope and extent of that review. These characteristics can include thresholds related to project costs, project length, and expected service impacts such as the volume of traffic affected, among other things. These requirements contrast with NEPA, which generally focuses on the potential for significant environmental impacts.<sup>39</sup> For example, in Virginia, reviews are required for state projects costing \$500,000 or more. Other dollar-value thresholds are built into the SEPA requirements of the District of Columbia, Georgia, and New Jersey. In Massachusetts, environmental reviews are required for the construction of new roadways 2 or more miles in length. Likewise, Minnesota requires an EIS-type review for new road projects four or more lanes in width and 2 or more miles in length.<sup>40</sup> Finally, in certain cases, states require particular environmental reviews for expected service impacts. For example, EA-type reviews are required for the construction of new roads over 1 mile in length that will function as collector roadways in Minnesota.

---

<sup>38</sup>We have previously found that states sometimes find it advantageous to use nonfederal funds for projects to avoid the costs or delays that may arise when complying with federal requirements such as Section 4(f). See [GAO-09-36](#) and GAO, *Federal-Aid Highways: Federal Highway Administration Could Further Mitigate Locally Administered Project Risks*, [GAO-14-113](#) (Washington, D.C.: January 16, 2014).

<sup>39</sup>In January 2014, however, pursuant to MAP-21, FHWA adopted a regulation allowing a project that receives less than \$5,000,000 of federal funds to be treated as a CE.

<sup>40</sup>FHWA regulations cite examples of projects that normally require an EIS—a new controlled access freeway, a highway project of four or more lanes on a new location, and new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility. 23 C.F.R. § 771.115(a).

---

## State Adoption of Federal Reviews

Almost all states with SEPA's responding to our survey (17 of 18) allow for the partial or full adoption of analyses or documentation produced in conducting federal reviews to meet state requirements for highway projects, while Massachusetts requires that a separate state review be completed. Figure 5 illustrates the number of states allowing for full adoption, in which the NEPA review fulfills the SEPA requirements; those allowing for the adoption of the federal review with additional state analyses or documentation (i.e., partial adoption); and those requiring that state requirements be met separately from the FHWA NEPA review.<sup>41</sup>

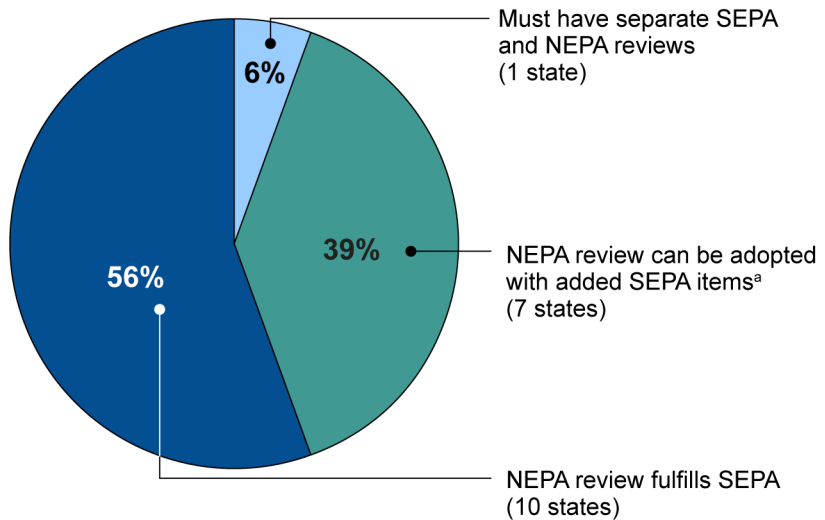
Several factors may affect whether a NEPA document can be accepted as a SEPA document in those states that allow for full or partial adoption. For example, state DOT officials reported that their ability to use a NEPA review to meet SEPA requirements varies based on the project sponsor, the type of review, and whether a similar type of environmental review document is required to satisfy federal and state environmental review requirements. Finally, several states carry out and adopt federal analyses or documentation for state projects even in the absence of federal funding or permitting. Maryland DOT officials told us that in practice they adopt federal FHWA NEPA reviews for almost all highway projects—even those with only state funding—given staff familiarity with the federal requirements and public expectations, as well as the potential for funding sources to change between the preliminary engineering and construction phases of a project. Washington DOT officials also mentioned that using and adopting NEPA could be advantageous because they felt more certain about how FHWA's NEPA requirements would be interpreted by courts should a legal challenge to the environmental review process be subsequently filed.

---

<sup>41</sup>Under FHWA's NEPA process, lead agencies are responsible for compliance with the requirements of all applicable environmental laws, including state laws. 23 C.F.R. § 771.133.



**Figure 5: The Number of Surveyed States with State Environmental Policy Acts (SEPA) Reporting Extent of Adoption of Federal National Environmental Policy Act (NEPA) Reviews to Meet SEPA Requirements, as Indicated by State Departments of Transportation Survey Responses**



Source: GAO analysis. | GAO-15-71

<sup>a</sup>California indicated both that a NEPA review can be adopted with added SEPA items and that “it varies.” Based on the state’s added narrative comments, we included California with the states where a NEPA review can be adopted with added SEPA items, although the adoption process can vary depending on the project sponsor.

While the majority of states with SEPAs allow for the full adoption of federal NEPA reviews, some do not (see fig. 5). When separate federal and state reviews are required, the processes are often carried out concurrently, with joint planning processes, research and studies, and public hearings, as well as the use of blended documents. Both Montana and New York reported having integrated processes for state and federal reviews, for example. Likewise, officials with California’s DOT (Caltrans) stated that Caltrans has a long-standing practice of combining NEPA and the state’s SEPA processes to make the delivery of transportation projects more efficient. For example, Caltrans’s guidance for a blended or joint NEPA/SEPA EIS/EIS-type review describes use of a special chapter in the joint document to address required California-specific mitigation information. Finally, Hawaii’s environmental review statute requires coordination of state and federal reviews when both apply. The extent to which state SEPAs, like NEPA, require coordination is discussed in the next section of this report.

---

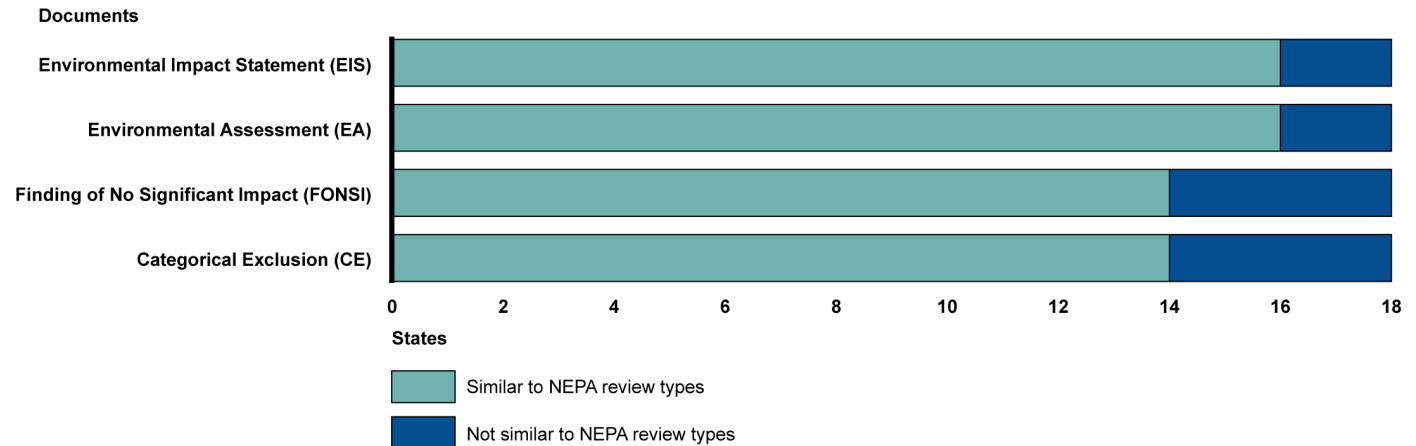
When a project sponsor requests that a state review be adopted to satisfy federal requirements, FHWA conducts a legal sufficiency review to ensure that the analysis and documentation satisfy FHWA's NEPA requirements, according to an official with FHWA's Office of Project Development and Environmental Review. This legal review may happen when, for example, federal funding is added to an ongoing state project or when project requirements change, and a federal permit that was not originally required must now be obtained. State officials in several states we spoke with pointed to the potential for duplicative effort when ongoing state projects are subsequently "federalized" in this manner. According to the FHWA official we spoke with, a case-by-case assessment is necessary because each situation is different when projects have been federalized. To avoid the risk of having to start the federal environmental impact assessment late in the project development process, FHWA encourages project sponsors to follow FHWA's NEPA process from the beginning of project development. For this reason, officials in five states—Hawaii, Maryland, North Carolina, Washington, and Wisconsin—told us they preferred to review projects under FHWA NEPA—even in the absence of federal funding.

---

### State Review Document Types Largely Mirror NEPA Review Document Types

A majority of states we surveyed reported having state review document types that are similar to those used for NEPA reviews (see fig. 6). Most states (16 of 18) reported requiring documents that are similar to a NEPA EIS or a NEPA EA, although fewer states had similar documents for FONSI/EAs or CEs, and the level of analysis required varies by state, as discussed in more detail below.

**Figure 6: Number of States with Environmental Review Documents Used for Their Respective State Environmental Policy Acts (SEPA) That Are Similar to Those Used for the National Environmental Policy Act, as Indicated by State Department of Transportation Survey Responses**



Source: GAO. | GAO-15-71

Note: States may use different names for their documentation or review type.

While most states reported having an EA-type document, some state officials told us that their documentation requirements for that process can differ from the documentation requirements for an FHWA EA. FHWA’s EAs are to include brief discussions of the need for the proposed project, project alternatives, the environmental impacts of the proposed project and alternatives, and a listing of the agencies and persons consulted. Officials in six of nine states where we conducted interviews told us they use a checklist for their EA-type reviews. For example, Washington DOT’s checklist asks for narrative responses to 12 pages of questions on topics like water, plants, and historic and cultural preservation. Instructions direct the project sponsor—often the state DOT—to answer the questions briefly with the best description possible and to say “does not apply” if that is the case. As a result, these reviews may look more like a documented federal CE than a federal EA. Further, in some instances, these checklist reviews can involve less analysis than a federal EA. A Washington DOT official told us that the checklist allows impacts to not be assessed if they are deemed “not applicable.” By comparison, a federal EA requires more detailed documentation of findings. In Massachusetts, the state DOT prepares a 22-page checklist called an environmental notification form for projects meeting set criteria. This document has attached plans and is publicly circulated. Depending on whether the project exceeds certain thresholds, the document may require responses to questions, according to Massachusetts DOT officials. By contrast, New York requires more specific analysis as its

---

regulations require the state DOT to prepare a negative declaration that can be supported by a NEPA FONSI.<sup>42</sup> This document, a determination of no significant effect, must identify all the relevant areas of environmental concern and show why the project impact, if any, is not significant.

---

## Many State and Federal Requirements Are Similar, but Differences Could Affect State Environmental Reviews or Outcomes

---

### State Requirements Are Generally Similar to FHWA's NEPA Requirements

To compare state environmental review requirements to FHWA's NEPA requirements for federal-aid highway projects, we reviewed relevant state statutes and regulations for each of the 18 states that we identified as having a SEPA required for highway projects and compared those statutes and regulations with NEPA and FHWA regulations.<sup>43</sup> In addition, we surveyed state DOTs in each of those 18 states about the degree of similarity between state requirements and federal requirements identified in FHWA's NEPA Toolkit for five of FHWA's six NEPA principles: assessment of project impacts, development and evaluation of project alternatives, mitigation of adverse project impacts, interagency coordination, and public involvement.<sup>44</sup> Seventeen of the 18 surveyed

---

<sup>42</sup>As mentioned above, a FONSI is a finding of no significant impact. A NEPA FONSI cannot be prepared without having completed an EA review, and the FONSI includes or provides a summary of the EA. 40 C.F.R. § 1508.13.

<sup>43</sup>See appendix I for further discussion of our legal analysis.

<sup>44</sup>The requirements identified in FHWA's NEPA Toolkit are not exhaustive of all of FHWA's NEPA requirements; rather, FHWA highlights key requirements under each of six NEPA principles, including purpose and need, which was discussed above. We did not include questions related to purpose and need in our survey of state DOTs.

---

states provided responses to this section of our survey.<sup>45</sup> We used our legal analysis and interviews with state officials to supplement and confirm survey responses, as well as to provide illustrative examples of how state requirements or practices compare with NEPA and FHWA requirements.<sup>46</sup> To identify which states have requirements that were “generally similar” to FHWA’s NEPA requirements overall, we determined which states in our survey reported having environmental review requirements that were similar or somewhat similar to 42 individual requirements for FHWA NEPA reviews under the five NEPA principles.<sup>47</sup>

Based on our legal analysis and survey responses, for each of the five NEPA principles the majority of states have requirements that are generally similar to FHWA’s NEPA requirements overall. More specifically, as shown in figure 7, for each of the five areas, survey results indicated that requirements in 10 or more of the 17 state SEPAs were generally similar to FHWA’s NEPA requirements overall. Some similarity between state and federal requirements is to be expected since a majority of SEPAs were modeled on NEPA, as we discussed above. Further,

---

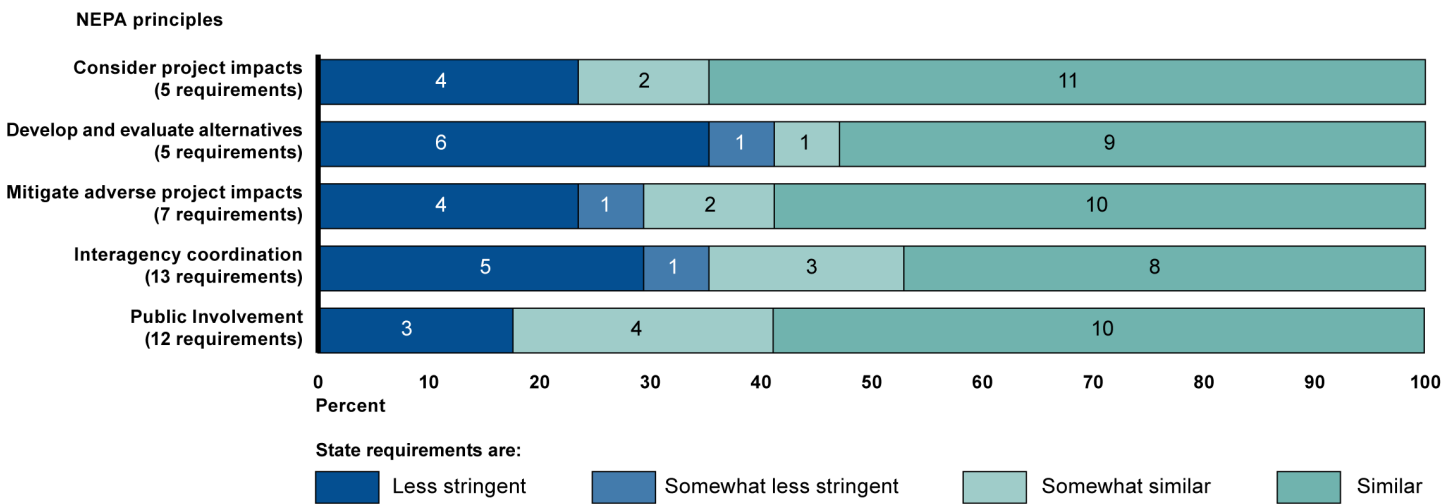
<sup>45</sup>The survey asked states to categorize their requirements as “less stringent,” “similar,” or “more stringent” than FHWA’s NEPA requirements. States could also select “not applicable.” By comparing our legal analysis to the responses of states who most frequently indicated that FHWA’s NEPA requirements were “not applicable” to their SEPA, we determined that a “not applicable” response indicated less stringent requirements than FHWA NEPA or no comparable requirements. Therefore, we combined responses from the “less stringent” and “not applicable” categories.

<sup>46</sup>Officials with the Virginia DOT did not respond to the portion of our survey comparing the state’s and FHWA’s NEPA requirements. In our legal analysis, we found that Virginia’s requirements were not similar to CEQ’s or FHWA’s NEPA requirements for the majority (at least 9 of 12) of the key requirements we assessed, including consideration of alternatives, mitigation, and public involvement. This analysis did not include specific requirements within each of the NEPA principles from FHWA’s NEPA Toolkit.

<sup>47</sup>Classification of requirements as “similar” or “generally similar” does not indicate that they are identical. Similar as the term is used in this report, conveys that two items share a general resemblance, not that they are alike in all respects. Thus, we characterized states’ survey responses as being similar if 75 percent or more of the questions about state requirements under a NEPA principle were marked as “similar” or “more stringent” than FHWA’s NEPA requirements. If 50 to 74 percent of the requirements were marked as “similar” or “more stringent,” we characterized states’ survey responses as somewhat similar. If 51 to 74 percent of the requirements were marked as “less stringent” or “not applicable,” we characterized states’ survey responses as somewhat less stringent. If 75 percent or more of the requirements were marked as “less stringent” or “not applicable,” we characterized states’ survey responses as less stringent. Additional information about our methodology can be found in appendix II.

some states may employ more stringent review processes in practice than state statutes and regulations require in order to satisfy public expectations or for other reasons. Based on our legal analysis and survey responses, we found that a number of states have SEPA requirements that are generally less stringent, however. In fact, survey results suggest that the divergence between state and FHWA's NEPA requirements may be greatest for the NEPA principle of alternatives analysis, where 7 (of 17) states had requirements they characterized as generally less stringent. Overall, no state reported having requirements more stringent than FHWA NEPA for more than 4 (of 42) individual requirements within the five NEPA principles included in our analysis. We discuss each of these NEPA principles—and the related requirements identified in the Toolkit—in more detail below.

**Figure 7: Comparison of State Environmental Review Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements, as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

Note: We surveyed state DOTs in states with state environmental policy acts (SEPA) required for highway projects comparing state requirements and federal requirements identified in FHWA's *Environmental Review Toolkit for NEPA and Transportation Decisionmaking*.

In some cases, the divergence between state and federal requirements is more pronounced depending on the type of review being conducted. According to survey responses, state requirements for documentation and analyses are more likely to mirror FHWA's NEPA requirements for higher level, more complex SEPA reviews (e.g., EIS-type reviews) than for less complex reviews. This difference reflects, in part, the differences

---

among various document types mentioned above, including the use of checklists for EA-type assessments in many states. Potential environmental impacts for the vast majority of projects at both the state and federal level are evaluated using CE or EA requirements, as only a small proportion of projects typically requires an EIS review, according to FHWA and state officials we interviewed. Where state and federal laws diverge, there is the potential for meaningful differences in how significant impacts are assessed or mitigated, which project alternative is selected, the level of interagency coordination, and opportunities for the public to affect or challenge decisions, among other things.

---

**Most States Require Some Evaluation of Impacts, Alternatives, and Mitigation, but Requirements Differ, and Comparable Parkland and Historic Preservation Protections Are Generally Absent**

Most state requirements include some consideration of impacts, development and evaluation of alternatives, and mitigation for the analyses that inform environmental review documents, but the degree of similarity to FHWA's NEPA requirements varies, and states generally lack protections comparable to federal parkland and historic preservation protections.

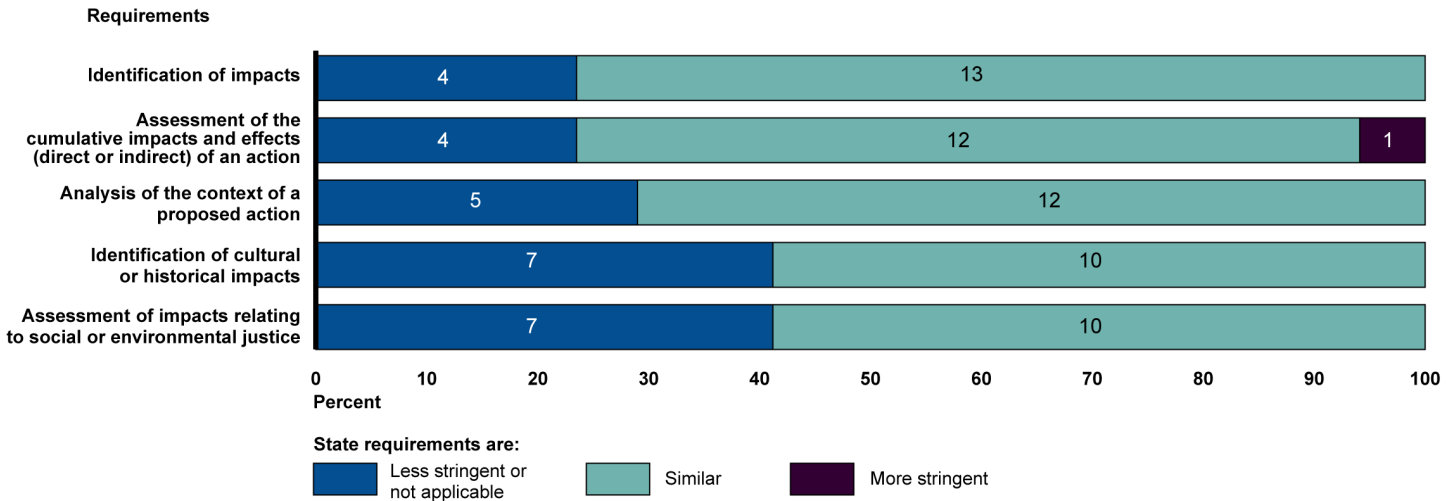
**Consideration of Project Impacts**

For each of the 5 individual requirements related to the consideration of project impacts, from 10 to 13 (of 17) states reported in our survey that their requirements for analyzing the environmental impacts of a proposed highway project are similar to FHWA's NEPA requirements, although other states reported having less stringent requirements.<sup>48</sup> Figure 8 illustrates this variation among states for each of the five requirements associated with the consideration of project impacts.

---

<sup>48</sup>In addition, legal requirements in Connecticut call for more limited consideration of cumulative impacts than NEPA (considering only those effects caused by the lead agency or the proposed projects), but state DOT officials told us that in practice the state DOT exceeds legal requirements when preparing an environmental analysis.

**Figure 8: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Consideration of Project Impacts, as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

Impacts analysis provides decision makers with the information necessary to determine whether a proposed action will produce significant adverse impacts in certain identified areas, including impacts that are short-term, long-term, and cumulative.<sup>49</sup> In our survey, 10 (of 17) states reported similarities with FHWA’s NEPA requirements to consider cultural or social impacts and to assess impacts relating to social and economic justice, but officials we interviewed in 3 states identified consideration of impacts related to social and environmental justice as a

<sup>49</sup>As mentioned above, significance is measured by both its depth and breadth. In measuring whether a state’s law is similar to NEPA and its implementing regulations in defining significance, we looked in part to whether state law requires consideration of direct, indirect, and cumulative effects. Direct effects are caused by and occur at the same time and place as the proposed action. Indirect effects are the secondary consequences on local or regional social, economic or natural conditions or resources that could result from additional activities (associated investments and changed patterns of social and economic activities) induced or stimulated by the proposed action, both in the short-term and in the long-term. Cumulative impacts are the impacts on the human and physical environment that result from the incremental impact of the proposed action when added to other past, present or reasonably foreseeable future action. We further discuss how the depth and breadth of an assessment of significant impacts varies among states in appendix I.



---

key difference between state requirements and FHWA's NEPA requirements. (See fig. 8.) These requirements assess potential effects on certain minority or low-income populations in FHWA NEPA reviews, among other things.<sup>50</sup> For example, Caltrans officials explained that usually they are not required to look at social or economic impacts unless these impacts are triggered by a physical impact, which differs somewhat from federal requirements to address these impacts separately.<sup>51</sup> Similarly, requirements in Wisconsin and Washington for assessing social justice impacts are less stringent than federal requirements, according to state DOT officials, although in practice DOT procedures for analysis in both states align with what is required by FHWA and NEPA.

Variations in state substantive environmental statutes and regulations (e.g., those managing growth or protecting certain species) can affect the determination of significant impacts. For example, North Carolina officials described substantive state environmental statutes and regulations that are more stringent than federal protections, such as higher permit standards to protect trout waters and stricter navigation requirements for public use of waterways. These statutes and regulations affect what must be considered during impacts analysis. Such requirements, while not part of SEPA's themselves, can affect the evaluation of project impacts when they are included in the SEPA or NEPA review processes. According to our legal analysis, Georgia regulations are less stringent because although they require consideration of the cumulative impacts of other proposed government actions, they do not address the actions of nongovernmental entities, for example.

## Development and Evaluation of Project Alternatives

For each of the five individual requirements related to the development and evaluation of project alternatives, from 9 to 11 (of 17) states reported in our survey that their respective requirements are similar or more

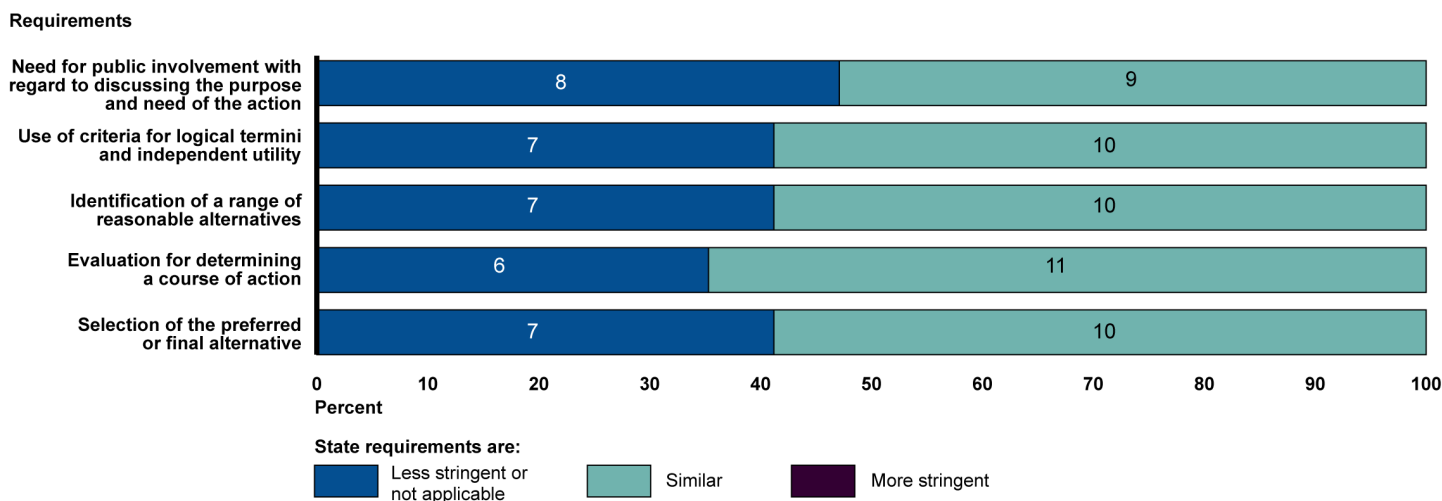
---

<sup>50</sup>According to U.S. DOT, the principles of environmental justice are: (1) avoiding, minimizing, or mitigating disproportionately high and adverse human-health and environmental effects, including social and economic effects, on minority populations and low-income populations; (2) ensuring the full and fair participation by all potentially affected communities in the transportation decision-making process; and (3) preventing the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

<sup>51</sup>Under CEQ regulations, economic or social effects do not by themselves require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, then the EIS will discuss all of these effects on the human environment. 40 C.F.R. § 1508.14.

stringent, although notable differences between state and FHWA’s NEPA requirements affect both the assessment of alternatives and the selection of the preferred alternative in some states. Figure 9 illustrates this variation among states for each of the five requirements associated with the development and evaluation of project alternatives.

**Figure 9: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Development and Evaluation of Alternatives, as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

Note: In the course of project development, project sponsors determine end points to be rational or “logical termini” in the context of the purpose of the transportation improvement and the environmental impacts of a proposed project. FHWA requires that project sponsors use criteria to make this determination.

FHWA regulations require consideration and objective evaluation of all reasonable project alternatives to avoid any indication of bias toward a particular alternative, including the “no action” alternative.<sup>52</sup> In our survey, 10 (of 17) states reported similarities with FHWA’s NEPA requirements for the identification of a range of reasonable alternatives.<sup>53</sup> (See fig. 9.)

<sup>52</sup>The “no action” alternative provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives.

<sup>53</sup>In general, while some states address alternatives directly, others address them through regulations governing documentation requirements. Further, state documentation requirements sometimes distinguish between accounting for alternatives that were considered and reporting alternatives that were not considered.

---

In our legal analysis, we found that the District of Columbia requires that EIS-type reviews include a discussion of reasonable alternatives to the proposed governmental action, including the option to take no action.<sup>54</sup> However, about a third of the SEPA states reported less stringent standards for identifying alternatives in our survey, and we found in our legal analysis that just over half of states with SEPAs (10 of 18) require assessment of the “no action” alternative. In Minnesota, for example, only the preferred alternative is assessed for EA-type reviews, which, as state DOT officials agreed, is less stringent than FHWA’s NEPA requirements as it may preclude the consideration of some alternatives, although the state does require analysis of the no-action alternative for EIS-type reviews.<sup>55</sup> In addition, we found that some states do not have detailed requirements for the consideration of alternatives, and two states—Virginia and Indiana—do not include requirements for the identification of alternatives in their laws or regulations.<sup>56</sup>

In addition to the identification of alternatives, we also surveyed states about their requirements for selecting the preferred alternative. Seven (of 17) states we surveyed reported that their requirements for alternatives selection are less stringent than FHWA’s NEPA regulations, which require that the alternative selection process lead to decisions that are in the best overall public interest.<sup>57</sup> Even when state requirements are similar to FHWA’s NEPA requirements for the selection of alternatives generally, there can be some variation in requirements.<sup>58</sup> For example, officials in North Carolina told us that state requirements for alternative selection are

---

<sup>54</sup>The District of Columbia’s EPA Guidelines note that as with the federal regulations for implementing NEPA, “reasonable” alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.

<sup>55</sup>Minnesota requires that the scoping document for an EIS-type assessment address one or more alternatives for a number of alternative types (i.e., modified designs and alternative technologies).

<sup>56</sup>More information about the consideration and selection of alternatives can be found in appendix I.

<sup>57</sup>FHWA policy provides that federal-aid highway decisions should be made “in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, state, and local environmental protection goals.” 23 C.F.R. § 771.105(b).

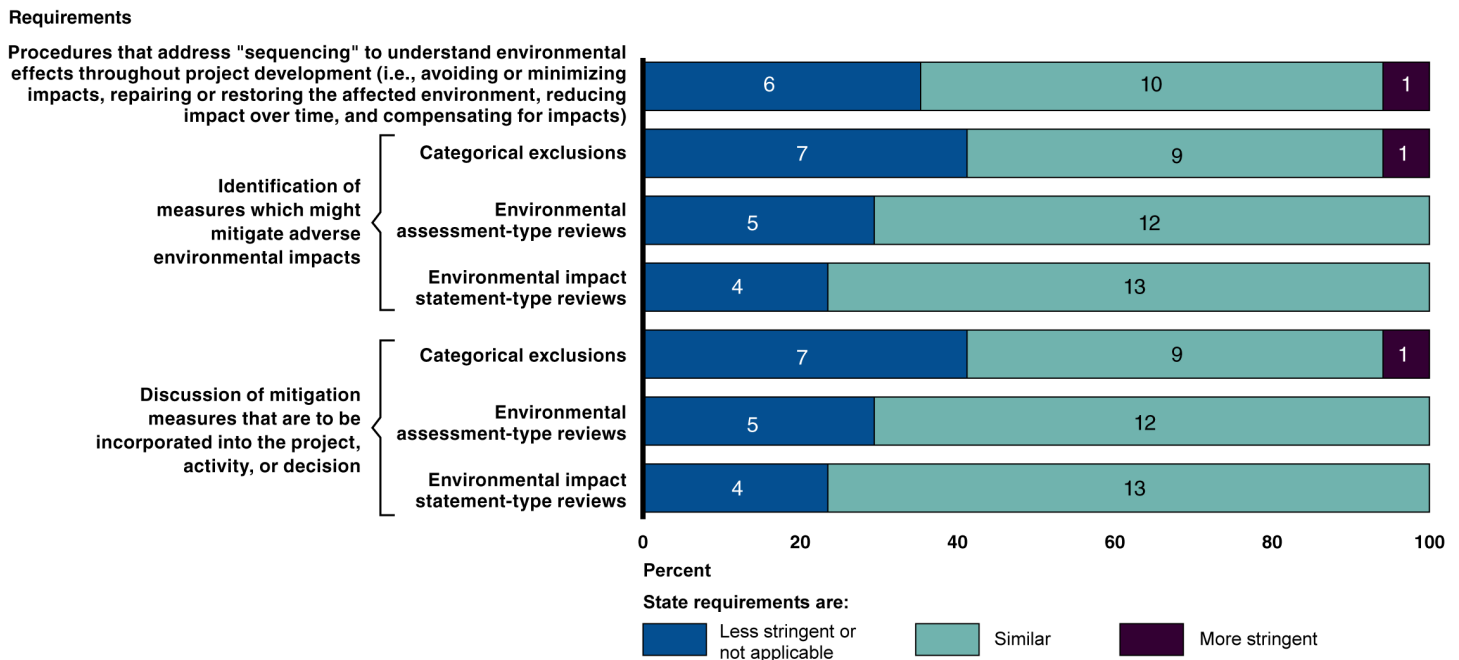
<sup>58</sup>CEQ regulations also require a brief discussion of reasons why some alternatives were eliminated from consideration.

similar to FHWA's NEPA requirements, and that in practice state officials select the least environmentally damaging practical alternative as the preferred alternative, although the selection process differs from the FHWA NEPA process.

### Mitigation of Adverse Project Impacts

The extent to which states have requirements to consider mitigation of environmental impacts as part of their environmental review process that are similar to FHWA's NEPA requirements often varies by the type of review, and 4 of the 17 states reported in our survey that they do not have mitigation requirements similar to FHWA's NEPA requirements for any level of review. Figure 10 illustrates this variation among states for each of the seven requirements associated with considering mitigation of environmental impacts.

**Figure 10: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for the Mitigation of Adverse Project Impacts, as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

Note: One state reported two instances of having more stringent mitigation requirements than FHWA NEPA and another state reported one instance of having more stringent mitigation requirements.

Mitigation is intended to avoid or minimize any possible adverse environmental effects of an action where practicable. FHWA's NEPA regulations require consideration of mitigation regardless of whether the

---

Parkland and Historic  
Preservation Protections

---

impacts of a proposed project are found to be significant, and the regulations require implementation of mitigation measures if doing so represents a reasonable public expenditure.<sup>59</sup> Based on our legal analysis of state requirements for mitigation, we found that some state requirements are similar to FHWA's NEPA requirements, but may include different terms (potentially altering the thresholds for the consideration of and implementation of mitigation) or use different processes for the evaluation or identification of mitigation.<sup>60</sup> For example, Hawaii's laws require mitigation to be considered as part of its alternatives analysis, but this consideration is only required when mitigation measures are proposed.<sup>61</sup> Moreover, an official in FHWA's Hawaii Division Office told us that environmental mitigation measures, once considered, are not binding under Hawaii's SEPA.

As previously discussed, two federal substantive resource protection laws generally do not apply in the absence of FHWA or other federal involvement: Section 4(f) protecting parklands and Section 106 for historic preservation. While other federal environmental laws, such as the Clean Water Act and the Endangered Species Act, apply to all federal, state, or local projects, Section 4(f) and Section 106 are generally not required for highway projects without federal involvement.<sup>62</sup> In 6 (of 9) states where we conducted in-depth interviews, officials reported that their state laws do not address or do not provide protection comparable to these federal laws. For example, in North Carolina, a state without comparable parkland protections, officials told us that for projects not subject to Section 4(f), the state does not require an analysis to provide alternatives that will specifically avoid affecting park or recreational land. (Figure 11 illustrates what such an avoidance alternative might involve under FHWA's NEPA requirements.) In addition, officials said that North Carolina has a much less stringent historic-preservation law than the federal Section 106. Officials in other states also indicated that state requirements were not as stringent as Section 106, particularly with

---

<sup>59</sup>NEPA requires consideration of mitigation, and FHWA requires implementation of mitigation measures if doing so represents a reasonable public expenditure.

<sup>60</sup>Appendix I provides examples of how states address mitigation.

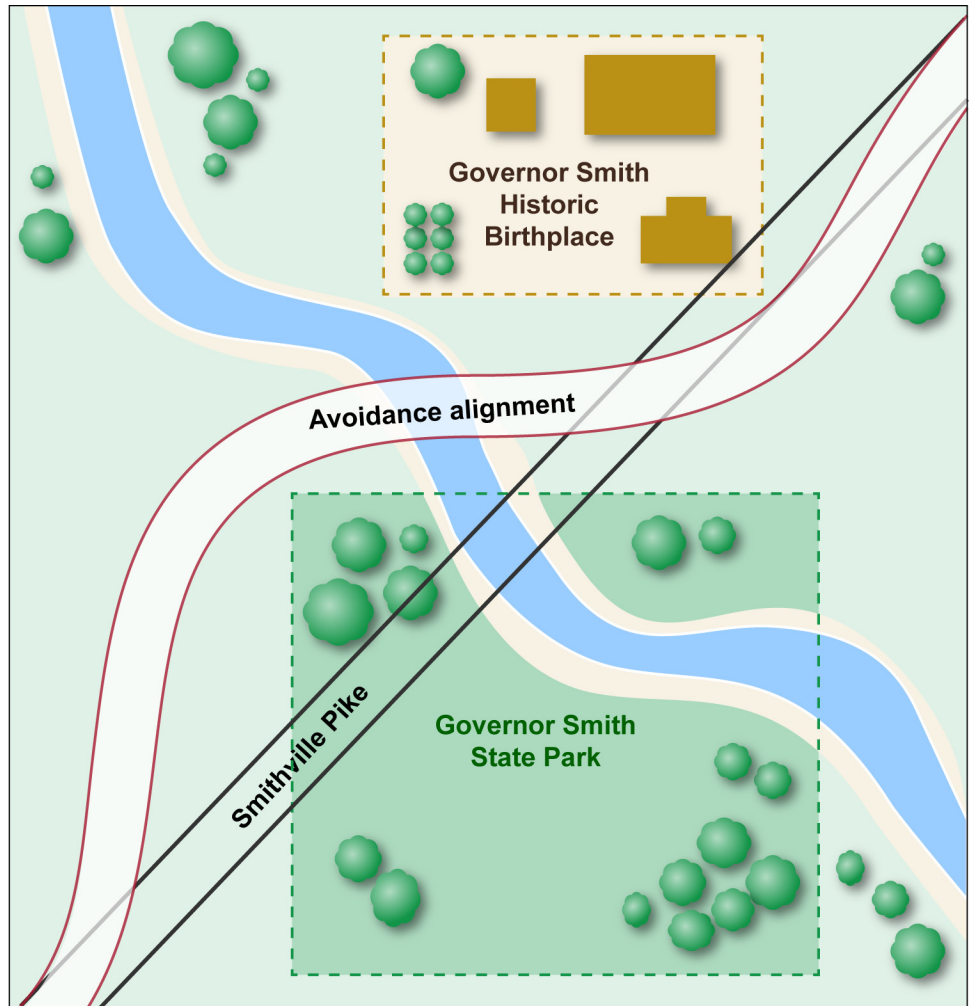
<sup>61</sup>HAW. ADMIN. CODE §§ 11-200-10(7), 11-200-17(b)(3), 11-200-17(m).

<sup>62</sup>As mentioned above, different sections of the Endangered Species Act may apply, depending on whether the project involves federal authorizations or funding.

---

regard to the consideration of project impacts on resources that were eligible for protection, but were not yet on the federal registry of protected resources. Conversely, specific laws in some states provide protection that may be more stringent than what is required under federal law for certain resources. For example, Hawaii has an historic protection requirement for certain cultural resources that goes beyond the requirements in Section 106. Having less stringent or no state requirements for parkland protection and historic preservation may affect whether a project is determined to have significant impacts and therefore whether, for those states that require mitigation, those impacts are considered and mitigated. In addition, less stringent state requirements can provide an incentive to avoid using federal funds for a project, according to state officials in 3 of the 9 states where we conducted in-depth interviews.

**Figure 11: Hypothetical Example of an Avoidance Alternative for Parklands**

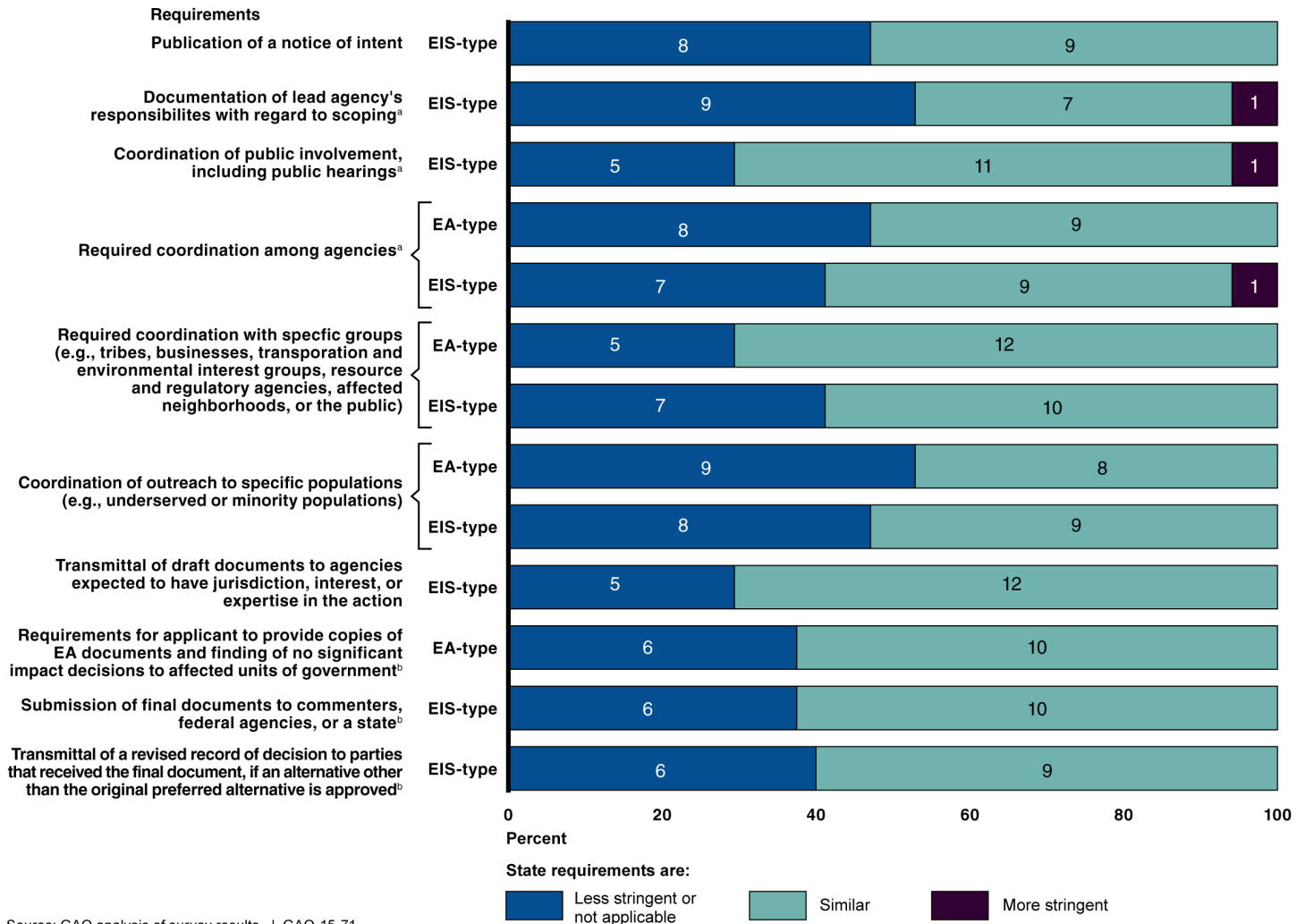


Source: GAO. | GAO-15-71

**State Interagency  
Coordination  
Requirements Are  
Generally Similar to  
FHWA's NEPA  
Requirements, with  
Exceptions**

For each of the 13 individual requirements related to interagency coordination of environmental reviews, from 8 to 12 (of 17) states reported in our survey that their respective requirements are similar or more stringent. Figure 12 illustrates the variation among states for each of the 13 requirements associated with interagency coordination for environmental reviews.

**Figure 12: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for Interagency Coordination for Environmental Assessments (EA) and Environmental Impact Statements (EIS), as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

<sup>a</sup>Three different states account for the three instances in which states reported more stringent requirements.

<sup>b</sup>Some survey response totals amount to fewer than 17 because some state DOTs did not respond to all of the questions.

Under NEPA, FHWA, as the lead federal agency, is required to coordinate the timing and scope of environmental reviews to develop consensus among a wide range of stakeholders with diverse interests. These coordination requirements are intended to make the review process more efficient, eliminate duplication, and reduce delays, by



---

including tribes, businesses, transportation or environmental interest groups, resource and regulatory agencies, neighborhoods, and affected populations, among others, in the environmental review process. As part of state requirements for interagency coordination, some states encourage cooperation and consultation with federal or state agencies, among others, but state requirements vary in how similar they are to FHWA's NEPA requirements. (See fig. 12.) Specifically, state requirements regarding the coordination of outreach to specific populations—such as underserved or minority groups—are often less stringent than FHWA's NEPA requirements. In fact, 9 (of 17) state DOTs we surveyed reported that for EAs, their state requirements for coordinating outreach to specific populations are less stringent than FHWA's NEPA requirements, with 8 (of 17) state DOTs reporting less stringent requirements for EIS-type reviews. In states reporting less stringent requirements, there may be less involvement from minority or underserved populations, affecting how and whether potentially affected populations are involved in the review of proposed projects.

In our legal analysis, we found that a few states had requirements that corresponded to the “single-process review” included in FHWA's NEPA requirements to promote efficiency and avoid delays by including insofar as practical, the completion of all environmental permits, approvals, reviews, or studies as part of the NEPA process, including those by other federal agencies such as permits from the Corps under the Clean Water Act. Some state officials we interviewed told us that their state encouraged, but did not require, cooperation and consultation with federal or state agencies during the environmental review process. For example, while not requiring the completion of all permits or reviews, Washington's SEPA requires that environmental reviews include a list of all licenses (e.g., permits) that will be needed for the project.<sup>63</sup> State DOT officials in several states told us that in practice they employ systems that may go beyond minimum state requirements to coordinate with federal and state agencies, including FHWA, for the review of highway projects. These officials described various state efforts to develop consensus among stakeholders, ranging from regularly scheduled meetings to the use of state clearinghouses to ensure timely stakeholder receipt of documentation for comment. For example, Wisconsin DOT officials have

---

<sup>63</sup>This requirement is focused on ensuring that the state's growth management process and Model Toxics Control Act are integrated into environmental reviews.

---

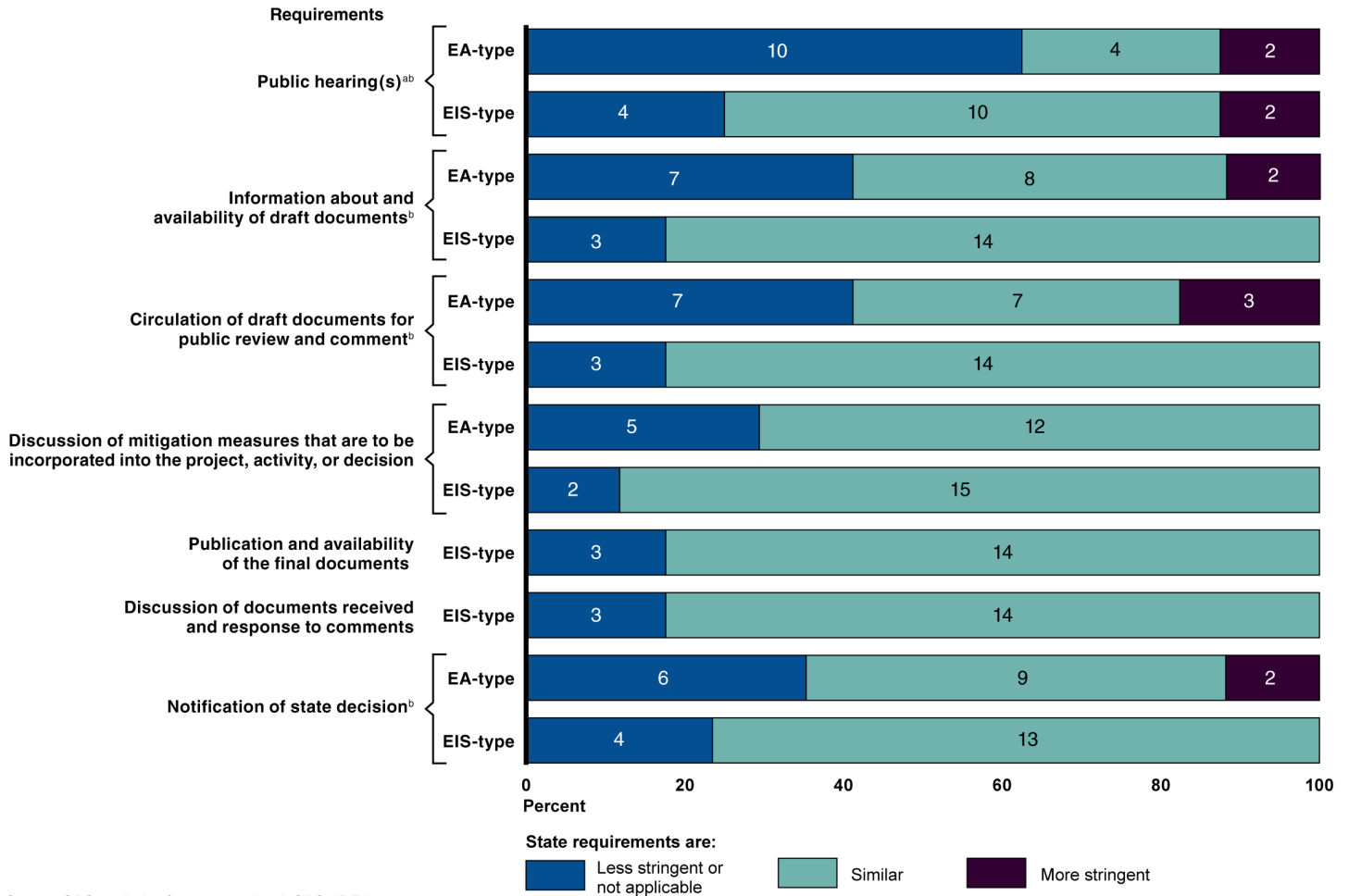
developed an agreement with the state's Department of Natural Resources to meet and coordinate on impacts analyses prior to issuing a draft EIS-type document. Also, in North Carolina, regulations empower the state agency responsible for compliance with the state's SEPA to seek information from federal as well as local and special units of government. According to North Carolina officials, sometimes a formal interagency process is used, even in the absence of a federal NEPA review, because it allows for better coordination.

---

**States' Public Involvement Requirements Are Generally Similar to FHWA's NEPA Requirements, Though a Number of States Have Less Stringent Requirements when Conducting EAs**

State environmental review requirements for public involvement are generally similar to FHWA's NEPA requirements overall, although public involvement requirements for EA-type reviews varied. Figure 13 illustrates the variation among states for each of the 5 EA-type review requirements and 7 EIS-type review requirements associated with public involvement.

**Figure 13: Comparison of State Requirements with Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) Requirements for Public Involvement for Environmental Assessments (EA) and Environmental Impact Statements (EIS), as Indicated by State Departments of Transportation (state DOT) Survey Responses**



Source: GAO analysis of survey results. | GAO-15-71

<sup>a</sup>For the question on requirements for public hearings there was one state that did not respond.

<sup>b</sup>Five states account for the eleven instances in which states reported more stringent requirements. The five instances in which three or fewer states reported less stringent requirements are divided among three states—the District of Columbia, Georgia, and New Jersey.

FHWA’s NEPA requirements allow for robust public involvement in the NEPA process, requiring reasonable notice of and an opportunity to participate in public hearings, where appropriate, and an adequate and meaningful opportunity to submit comments. State responses to our survey indicated that public involvement requirements vary, ranging from states that have no requirement to allow public involvement, to others that

---

may have more stringent requirements than FHWA's NEPA rules.<sup>64</sup> Moreover, we found as part of our legal analysis that requirements allowing public participation for state EIS-type reviews are more likely to parallel FHWA's NEPA requirements than do such requirements for state EA-type reviews. Conversely, public involvement requirements for EA-type reviews in Wisconsin may exceed FHWA's NEPA requirements in some circumstances as the state's SEPA allows for additional hearings by request, while New York officials told us that they are not required to conduct a public hearing for either EA-type or EIS-type reviews. In several other states, hearings for EIS-type reviews are not automatic.<sup>65</sup>

Individual state requirements for notification and circulation of draft documents for comment also vary, as do requirements for public hearings. (See fig. 13.) While only 3 (of 17) states surveyed reported less stringent requirements for disseminating draft EIS-type documents than required by FHWA NEPA, 7 (of 17) states surveyed reported less stringent requirements for draft EA-type documents. By contrast, Massachusetts state officials reported having more stringent requirements for providing and circulating draft EA-type documents because the state posts environmental review documents on a public website and requires a written response to all comments by the lead agency. Some states have less stringent requirements governing public involvement, particularly regarding public hearings for EA-type reviews in which 10 (of 17) states surveyed reported less stringent requirements. In our legal analysis, we found that while Indiana requires EIS-type reviews to be made publicly available, it does not require the transportation agency to seek or respond to public comments on draft versions of these documents, and Virginia's law contains no specific public notice and comment procedures for environmental review documents.

States with less stringent formal public participation requirements may in practice align with FHWA. Officials in three states told us that they match the higher standard of FHWA's NEPA public involvement requirements for state-only reviews to meet public expectations, even if less was

---

<sup>64</sup>For most projects, including projects requiring an EA or EIS, 23 U.S.C. § 128 requires that states afford an opportunity for a public hearing (with transcript) for federal-aid highway projects to consider, among other matters, environmental issues.

<sup>65</sup>In several states, hearings are only held at the request of the project sponsor or an association with a minimum number of members (e.g., 25) who will be affected by the project.

---

required by state law. According to state officials in North Carolina, for example, this could mean holding a public hearing and addressing comments for a state-only EA when neither step is required by state law. According to New York state DOT officials, they conduct public hearings for EA- and EIS-type reviews, even though state law is less rigorous than NEPA and does not require hearings. Additionally, some state officials we interviewed reported practices that served to encourage public involvement, such as Washington’s on-line registry of ongoing and completed reviews, which allows citizens or groups to search for projects by location.<sup>66</sup>

---

## Few Instances of Federal–State Duplication Were Reported; FHWA and States Have Improved Coordination

---

<sup>66</sup>Washington DOT’s local project search allows the public to search for projects by location—either using an address or an interactive map—and provides information such as funding sources, as well project cost, status, and projected improvements, among other things.

---

## Few States Reported Duplication Resulting from Federal and State Environmental Review Processes; More Than Half Reported No Duplication for Any Reason

Officials in 4 (of 18) states expressly identified instances of federal–state duplication in environmental review processes. For purposes of this report, we focused on duplication that might occur between state and federal processes where there is duplication of effort.<sup>67</sup> In those instances where state officials identified duplication, it resulted either from supplemental state requirements or from the misalignment of federal and state environmental review documents, according to state officials. Officials in Washington reported duplication from both of these causes.

- Two of the four states reporting potential federal–state duplication in our survey, Maryland and Washington, include a SEPA EA-checklist in addition to their federal review documents. State officials in both states explained that completing the checklist may be duplicative because it includes information that is similar to the information in the FHWA review, but noted that doing so is not burdensome in terms of time or resources. More specifically, in Washington, state officials said that the checklist serves a “due diligence” role for the state’s SEPA, while Maryland officials said the checklist is used to scope EIS-type reviews during the beginning of the review process.
- Three states we surveyed, including Washington, reported that the lack of alignment between required state and federal document types for the same project could result in additional effort. For example, both Massachusetts and Minnesota sometimes use a different state review type for some projects than would be required for the FHWA NEPA process, depending on characteristics of the project. Consequently, in Minnesota, some projects are reviewed with a state EA-type process, while being categorically excluded by FHWA. In these situations, parallel efforts may be required to satisfy the different requirements—which may be more stringent for one of the required reviews—precluding the use of a blended process or combined document to coordinate similar processes. Washington has recently completed a rulemaking to align federal and state CEs to avoid this type of duplication.

Ten (of 18) states responding to our survey reported that there was no duplication in either the procedural steps or substantive tasks required by

---

<sup>67</sup>We have defined duplication as occurring when two or more agencies or programs are engaged in the same activities or provide the same services to the same beneficiaries. See [GAO-13-631T](#).

---

state or federal environmental review requirements.<sup>68</sup> In seven of these states, adopting a NEPA review fulfills SEPA requirements, and state officials pointed to this adoption as the reason for reporting no duplication in their survey responses.<sup>69</sup> Connecticut and Hawaii allow for the adoption of the federal NEPA review as long as the review meets certain state SEPA requirements, according to state officials. Montana and New York reported that their processes are not duplicative because they have integrated or blended processes to meet both sets of requirements concurrently. According to state and federal officials we interviewed, several other reasons contribute to minimal duplication between state and federal processes. The development of required state and federal environmental review documents is typically carried out by the same state officials (or other project sponsors), who can use analyses for different purposes without replicating effort when federal and state requirements are similar. Finally, state and federal review processes frequently require—or encourage—coordination, as mentioned above, and officials pointed to this coordination as a reason for the lack of duplication. For example, officials in North Carolina described meetings held every 2 months involving state and federal officials from the transportation and resource agencies that are typically involved in environmental review. At these meetings, officials are able to coordinate state and federal efforts, among other things.

We previously found that FHWA does not collect information on the cost of environmental reviews, and during the course of this review, FHWA officials at the headquarters and division levels confirmed that such data

---

<sup>68</sup>Officials from the District of Columbia reported duplication between state and federal requirements in their survey, but explained that the requirements overlap and that state requirements provide an exemption for projects that have completed and approved NEPA documents. As a result, there is no duplication of effort to satisfy state requirements, and we have included the District of Columbia among the states reporting no duplication.

<sup>69</sup>State adoption of federal documents or analyses is discussed in more detail in appendix I.

---

are not collected.<sup>70</sup> Likewise, state officials we surveyed reported no information on the cost to states of any federal–state duplication, and, as mentioned above, officials in those states identifying instances of federal–state duplication from the use of SEPA checklists described the additional effort as being negligible, although they were unable to quantify any additional costs.<sup>71</sup>

---

### States Reported Other Examples of Duplication or Overlap

During the course of our review, we identified other examples of potential duplication or overlap, but these did not result from the interaction of federal and state environmental review requirements. In addition to the four states reporting federal–state duplication, four additional states reported other examples of potential duplication or overlap.<sup>72</sup> For example, state DOT officials in Maryland noted that there may be potential duplication resulting from the need to keep federal reviews up to date for projects taking a number of years, either because initial reviews have expired or because environmental conditions—or requirements—have changed.<sup>73</sup> In our survey, three states reported potential duplication—or overlap—when federal permitting agencies (e.g., the Corps) carried out additional analyses because they did not accept the

---

<sup>70</sup>See GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, [GAO-14-369](#) and [GAO-14-370](#) (Washington, D.C.: Apr. 15, 2014), citing a 2003 study funded by FHWA. The FHWA study evaluated the performance of environmental “streamlining” and noted that NEPA cost data would be difficult to segregate for analysis. (See U.S. Department of Transportation, Federal Highway Administration, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C.: 2003).) We also reported that FHWA and its 52 division offices have traditionally used an internal data system to track EIS documents. At the time, FHWA officials told us that the agency is in the process of replacing the agency’s legacy system with the new Project and Program Action Information (PAPAI) system, which went online in March 2013. PAPAI is capable of tracking information on EISs, EAs, and CEs, including project completion time frames, but its use is not mandatory, according to DOT officials.

<sup>71</sup>In all, six of the nine states where we conducted in-depth interviews reported using checklists for their EA-type reviews, a practice that could result in some level of federal–state duplication.

<sup>72</sup>Puerto Rico in its survey responses identified duplication, but did not provide an explanation or examples of the duplication. Because we did not interview state DOT officials, we were unable to determine the type or cause of the potential duplication.

<sup>73</sup>CEQ regulations require that an agency must prepare a supplemental EIS if (a) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (b) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.



---

FHWA-approved NEPA review. CEQ officials noted, however, that while the goal of the NEPA process may be that there is one NEPA review and approval process, often the level of detail required by one agency (e.g., FHWA) to review a proposed decision under NEPA may be different than what is required by another agency to issue a permit (e.g., the Corps or the Coast Guard).

Officials with Caltrans reported potential duplication in our survey, but did not provide examples of the cause or type of duplication. When we interviewed Caltrans officials, they explained that while additional analyses may be required for the state's SEPA, there is no duplication of effort caused by the interaction of the state and federal requirements given the agency's blended review process. Separately, officials with the California State Association of Counties contacted us regarding potential duplication in the development of state and federal reviews at the local level. Under the state's SEPA, local governments prepare both state and FHWA NEPA environmental reviews for local projects, but they can approve only the SEPA reviews. FHWA or Caltrans has approval authority for FHWA NEPA reviews.<sup>74</sup> County officials stated that they are not able to do a blended document given the different reviewers, a situation that results in potential duplication, adding time and additional cost to projects.<sup>75</sup> We spoke with officials with the National Association of Counties, and they stated that this concern has not been raised by county officials outside of California.

---

<sup>74</sup>Through the NEPA Assignment and CE Assignment Memorandums of Understanding, Caltrans is now responsible for FHWA's responsibilities under NEPA and other federal environmental laws such as the Endangered Species Act and Section 106 of the National Historic Preservation Act. This assignment was carried out under 23 U.S.C. §§ 326 and 327.

<sup>75</sup>According to officials with the California State Association of Counties, revisions add about \$2,000 to \$5,000 per technical report and typically delay highway projects by 1 to 3 months. In California, approximately 40 percent of federal-aid highway funds are for projects sponsored by Caltrans, according to state officials, while the remainder of the funds is used for projects sponsored by counties or other non-state project sponsors. Under the state's assumption of FHWA oversight responsibilities, Caltrans reviews and approves FHWA NEPA reviews for all projects receiving federal-aid highway funds.

---

## States Reported Benefits from Efforts to Improve Coordination and Efficiency, Including Reduced Uncertainty in Projects' Time Frames

All 18 states we surveyed reported having agreements with FHWA or other federal agencies to improve coordination or make environmental review processes more efficient. Nearly all of these states (16 of 18) provided examples of programmatic agreements, such as those allowing state officials to review and approve CE determinations for FHWA or other efforts to improve interagency coordination for conducting reviews and obtaining permits.<sup>76</sup> Many programmatic agreements and other improvement efforts were developed as part of FHWA's Every Day Counts initiative,<sup>77</sup> which is an effort to identify and deploy innovation aimed at shortening project delivery, enhancing the safety of roadways, and protecting the environment.<sup>78</sup> Examples of FHWA or state-led improvement efforts identified by state officials we surveyed and interviewed include the following:

- Two states in our survey have developed an interagency process to plan and review highway projects under the auspices of the Section 404 merger process to reduce inefficiencies in assessment and permitting under the Clean Water Act. For example, officials in North Carolina told us that the state has been working to make environmental reviews more efficient through its Section 404 merger process since the 1990s, through which the state DOT coordinates with FHWA, the Corps, the U.S. EPA, and several other state and federal agencies, including the state's Department of Environment and Natural Resources.
- Three states in our survey reported having liaison positions with other state or federal agencies to alleviate resource challenges and to improve interagency coordination. For example, Texas funds a liaison

---

<sup>76</sup>While states may approve categorical exclusions or make other decisions on FHWA's behalf under these programmatic agreements, FHWA remains legally subject to challenge for these decisions.

<sup>77</sup>According to FHWA, programmatic agreements are documents that establish a streamlined process for handling routine environmental requirements for commonly encountered project types. These agreements should clearly specify roles and responsibilities between state DOTs and other resource and regulatory agencies for consultation, review and compliance with one or more federal laws concerning cultural and historic preservation, environmental review processes and natural resource protection and conservation. The agreements usually set procedures for consultation, review and compliance with one or more federal laws.

<sup>78</sup>The first round of Every Day Counts was launched in 2010. It was expanded in 2012 to include 13 other innovations to build higher-quality and longer-lasting roads. FHWA announced a third round of Every Day Counts initiatives in 2014.

---

position at U.S. Fish and Wildlife Service. Massachusetts also funds such positions with the Corps—in collaboration with FHWA—and the Massachusetts Departments of Environmental Protection and Fisheries and Wildlife. According to Massachusetts DOT officials, having a liaison with the Corps has facilitated coordination, reduced the time needed to review permit applications, and allowed for the use of more proactive protection for some endangered species, including turtles.<sup>79</sup> Officials in two other states, California and Wisconsin, also pointed to improved coordination by funding positions in coordinating agencies.

- Eleven (of 18) states in our survey reported having programmatic agreements under Section 106 (assessing impacts on historic properties) with FHWA and other federal agencies. According to FHWA, Section 106 programmatic agreements are one way to expedite the environmental review process, while protecting and enhancing the environment. These agreements authorize state DOTs to conduct all or some Section 106 reviews on behalf of FHWA, when such reviews are required.
- Individual states have efforts to improve processes, as well. For example, officials with the California Office of Planning and Research worked with CEQ to develop a handbook on the interaction of state environmental review requirements and NEPA to smooth and better coordinate the dual reviews that are often required, which was released in 2014. According to a state official, many of the challenges in coordinating the two processes stemmed from a lack of understanding of the other requirements, and the state worked with CEQ to develop a guide to explain key differences and to define terminology.

Eleven (of 18) states responding to our survey reported benefits from efforts to improve coordination or to make state and federal processes more efficient, most notably decreased time frames. Other benefits included increased public involvement, increased agency engagement, and decreased costs. State officials were unable to quantify these benefits. State officials also pointed to increased certainty in project timelines, costs, and processes, as well as improved coordination with other agencies and tribes.

---

<sup>79</sup>Several turtles species are endangered in the state, including the plymouth red-bellied turtle entire (*Pseudemys rubriventris bangsi*), the sea turtle, hawksbill entire (*Eretmochelys imbricata*), the sea turtle, kemp's ridley entire (*Lepidochelys kempi*), and the sea turtle, leatherback entire (*Dermochelys coriacea*).

---

## Agency Comments

We provided a draft of this report to the U.S. Department of Transportation (DOT) and the Council on Environmental Quality (CEQ) for review and comment. DOT and CEQ provided technical corrections about federal and state environmental review requirements, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Transportation, and the Chair of the Council on Environmental Quality. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact us at (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov) or at (202) 512-6417 or [sawtelles@gao.gov](mailto:sawtelles@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.



David J. Wise,  
Director, Physical Infrastructure Issues



Susan Sawtelle,  
Managing Associate General Counsel

---

# Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects

---

As discussed in the body of this report, we identified state statutes, regulations, and orders in the 18 states where review of highway projects is required under a state environmental policy act (SEPA), and we compared those requirements to the federal requirements for federal-aid highway projects under the National Environmental Policy Act (NEPA) and implementing regulations issued by the Council on Environmental Quality (CEQ) and the Federal Highway Administration (FHWA). We focused our comparison on 12 key elements characterizing NEPA programs, which we developed in consultation with CEQ and FHWA. This appendix summarizes the results of our review of state legal requirements, not state practices, as discussed in the body of this report, and the examples are illustrative and are not intended to describe all aspects of each state's SEPA program.

---

## Element 1: Policy and purpose of the environmental review requirements

The key purposes of NEPA include:

- declaring a national policy which will encourage productive and enjoyable harmony between man and his environment; and
- promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man and enriching understanding of the ecological systems and natural resources important to the nation.

42 U.S.C. § 4321.

A majority of SEPAs establish objectives that are at least somewhat similar to these NEPA goals, although a few states have more limited policy goals.<sup>1</sup> Many states' SEPAs establish a state policy that encourages harmony between humans and their environment or that enriches understanding of the natural environment.<sup>2</sup> In addition, SEPAs generally establish a state policy requiring that environmental concerns

---

<sup>1</sup>Under the Texas SEPA, for example, the Texas Department of Transportation must "focus on delivering safe, efficient transportation projects and making sound decisions based on a balanced consideration of transportation needs and of social, economic and environmental impacts of proposed transportation improvements." 43 TEXAS ADMIN. CODE § 2.2.

<sup>2</sup>See, e.g., MINN. STAT. § 116D.01(a); Mont. Code Ann. § 75-1-102(2); N.Y. ENVTL. CONSERV. LAW § 8-0101; WASH. REV. CODE § 43.21C.010.

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

be evaluated in connection with state-funded or otherwise state-supported projects,<sup>3</sup> although several do not.<sup>4</sup>

Several SEPAs establish a policy of avoiding or mitigating environmental damage. Others explicitly refer to the desirability of informing and involving the public in environmental decision making, and some SEPA purpose-and-policy statements specifically refer to management of natural resources, waste disposal or maintenance of the public health. A few SEPAs address local functions such as land use management and zoning. Finally, a few SEPAs have other declared objectives such as strengthening the state economy (Georgia, see GA. CODE ANN. § 12-16-2(1)) or supporting the right to use and enjoy private property (Montana, see MONT. CODE ANN. § 75-1-102(2)).

---

**Element 2: Types of projects covered**

NEPA generally requires review of “every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(c). Our review looked at how NEPA applies to projects authorized under Title 23 of the U.S. Code, consisting primarily of federal-aid highway projects where FHWA provides funds to state or local governments and serves as the federal lead agency for the NEPA review. FHWA’s review also includes supplemental environmental requirements contained in Title 23.

When a project is funded solely with state or local funds, it rarely requires an FHWA NEPA review. Federal permitting requirements also can trigger a NEPA review, however, even when only state or local funds are used such as when U.S. Army Corps of Engineers (Corps) or U.S. Coast Guard (Coast Guard) approval is required due to the presence of a wetland or navigable waterway. In those cases, the Corps or Coast Guard could serve as the federal lead agency.

SEPAs vary with respect to which state or local “actions” trigger review. The California environmental assessment statute, for example, generally applies to any activity of any public agency that may have a substantial

---

<sup>3</sup>SEPAs in Massachusetts, New Jersey, New York, and North Carolina reflect this policy. See MASS. GEN. LAWS, ch. 30, § 61; N.J. GOV. KEAN, EXEC. ORDER No. 215; N.Y. ENVTL. CONSERV. LAW § 8-0109; N.C. Gen. Stat. § 113A-4.

<sup>4</sup>Several states limit their SEPAs to legislative, appropriations or planning functions. See, e.g., MD. CODE ANN., NAT. RES. § 1-301(d).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

environmental impact, including highway projects. “Public agencies” include state agencies, boards and commissions, as well as local agencies including counties, cities, regional agencies, public districts, redevelopment agencies and other political subdivisions. CAL. PUB. RES. CODE § 21062. “Projects” include activities undertaken directly, financed in whole or in part, or requiring approval by a government agency and are generally any activity subject to the state statute. CAL. PUB. RES. CODE. § 21065. Certain projects in California have been excluded from review, however. See, e.g., CAL. PUB. RES. CODE. §§ 21080.01-21080.14.

By comparison, Massachusetts’ SEPA covers all projects undertaken or financially assisted by a government agency, including any authority of any political subdivision. MASS. GEN. LAWS, ch. 30, §§ 61, 62. Minnesota requires an environmental impact study where there is potential for significant effects from major government actions, defined to include local and municipal agencies. MINN. STAT., § 116D.04, Subd. 1a(e). Some states’ SEPA’s do not apply to locally managed and funded projects, for example Georgia (GA. CODE ANN. § 12-16-3(5)) and Maryland (Md. CODE ANN., NAT. RES. § 1-301(e)). Maryland’s SEPA also focuses primarily on providing environmental assessments to the state legislature. Md. CODE ANN., NAT. RES. § 1-301(d). One state’s SEPA—North Carolina’s—does not apply to local units of government unless they elect to be covered. See N.C. GEN. STAT. § 113A-8(a).

Finally, SEPA’s vary with respect to which project characteristics trigger an environmental review, as well as what type of review is required, and can include thresholds related to project costs and physical length, project use, and geographic area, among other things. These thresholds differ from the federal triggers for the type of review, which generally focus on the potential for significant environmental impacts rather than the scale or size of the project.<sup>5</sup> For example, in Virginia, reviews are required for state projects costing \$500,000 or more. VA. CODE ANN. § 10.1-1188(A). Other dollar-value thresholds are built into the SEPA requirements of the District of Columbia<sup>6</sup>, Georgia,<sup>7</sup> and New Jersey.<sup>8</sup> Some states, such as

---

<sup>5</sup>In January 2014, pursuant to MAP-21, FHWA adopted a regulation allowing, among other things, projects that receive less than \$5,000,000 of federal funds to be treated as a CE. 79 Fed. Reg. 2107, 2118-2119 (Jan. 13, 2014).

<sup>6</sup>20 D.C. MUN. REGS. § 7201.1.

<sup>7</sup>GA. CODE ANN. § 12-16-3(7)(B).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

Massachusetts, require environmental impact reviews for the construction of new roadways 2 or more miles in length. 301 MASS. CODE REGS., tit.301, § 11.03(6)(a). Likewise, Minnesota requires an Environmental Impact Statement (EIS) for new road projects four or more lanes in width and 2 or more miles in length. Minn. R. 4410.4400, Subp. 16. Minnesota also requires certain types of reviews for new roads over 1 mile in length that will function as collector roadways. Minn. R. 4410.4300, Subp. 22. New York's SEPA does not apply to projects within the jurisdiction of the Adirondack Park Agency, N.Y. COMP. CODES R. & REGS., tit. 17, § 15.2(l)(3), and no EIS is required under the District of Columbia's SEPA if the project is located in what is known as the Central Employment Area, an area including but not limited to federal government facilities. D.C. CODE § 8-109.06(a)(7). Finally, some states, such as Indiana, do not extend coverage to state licensed or permitted projects, *see, e.g.*, IND. CODE § 13-12-4-8, while Texas' SEPA applies only to certain transportation projects.<sup>9</sup>

---

**Element 3: Level of detail (“depth”) of environmental impact evaluation**

Under NEPA, an EIS must be prepared for a project that has the potential for a “significant” effect on the environment.<sup>10</sup> “Categorical exclusions” (CEs) apply to projects fitting within a category of activities previously determined not to have the potential for significant environmental impacts. When project effects are uncertain, an “environmental assessment” (EA) is prepared to determine whether the project may have a potentially significant impact on the human environment. An EA briefly provides evidence and analysis sufficient to determine whether to prepare an EIS or a “finding of no significant impact” (FONSI). A FONSI presents the reasons why the agency has concluded that no significant environmental impacts will occur if the project is implemented.

---

<sup>8</sup>N.J. GOV. KEAN, EXEC. ORDER NO. 215.

<sup>9</sup>Texas excludes transportation projects that are not on the state highway system and are funded solely with special funds or that are being developed by a local governmental entity with no state or federal funds. 43 TEXAS ADMIN. CODE § 2.3(b)(1).

<sup>10</sup>CEQ's regulations broadly define “human environment” to include the natural and physical environment and the relationship of people with that environment. Economic and social effects are not intended by themselves to require preparation of an EIS, but when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS must discuss all of these effects on the human environment. 40 C.F.R. § 1508.14.



---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

A majority of SEPA states have adopted processes that provide for analyses that are generally comparable to the federal approach. Connecticut, for example, requires an EIS-type report if there are effects that “could have a major impact on the state’s land, water, air, historic structure and landmarks, existing housing, or other environmental resources, or could serve short term to the disadvantage of long term environmental goals.” CONN. GEN. STAT. § 22A-1C. Wisconsin’s law, like NEPA, requires an EIS for “major actions significantly affecting the quality of the human environment,” see WIS. STAT § 1.11(2)(c), and its implementing regulations identify four types of analysis and specify numerous types of transportation projects for which each type of analysis must be performed.<sup>11</sup> Texas’s environmental review process for highway projects is by definition similar to NEPA because Texas regulations defer to FHWA’s procedures whenever there would otherwise be any inconsistency between Texas’ and FHWA’s processes.<sup>12</sup> See 43 TEXAS ADMIN. CODE § 2.84(f). The Massachusetts SEPA treats any damage to the environment as significant, excluding only that which is found to be “insignificant.” MASS. GEN. LAWS, ch. 30, § 61.

Finally, several SEPA states leave the decision whether to prepare an EIS and the extent of any EIS largely to the discretion of state project management officials. Virginia determines environmental effects using what it calls a “Preliminary Environmental Inventory,” a computer-generated summary of environmental features derived from state

---

<sup>11</sup>The types of analysis required are an EIS, EA, CE, and an environmental report, a brief document provided for under WisDOT regulations and used by WisDOT to demonstrate that a proposed action meets the criteria or conditions for a categorical exclusion. See WIS. ADMIN. CODE TRANS. §§ 400.04(9) (EIS), 400.07(2)(b) (EA), 400.04(3) (CE), 400.04(10) (environmental report), 400.08 (categorization of transportation projects).

<sup>12</sup>Texas has applied for participation in the Surface Transportation Project Delivery Program, which allows for states to apply to assume, and for FHWA to assign, environmental review responsibilities under NEPA and part or all of FHWA’s responsibilities for environmental reviews, consultations, or other actions required under any federal environmental law with respect to one or more federal highway projects within the state. 79 Fed. Reg. 61370 (Oct. 10, 2014). FHWA has determined that the application is complete and has developed a draft Memorandum of Understanding with Texas, available for public comment, outlining how the state will implement the program with FHWA oversight. *Id.*

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

databases and submitted to resource agencies. The agency project manager receives this information and may or may not prepare an EIS.<sup>13</sup>

---

**Element 4: Level of significance (“breadth”) addressed in environmental impact evaluation**

NEPA and its implementing regulations require consideration of the significance of a project’s direct, indirect, and cumulative effects. Direct effects are those “caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects are the secondary consequences on local or regional social, economic or natural conditions or resources which could result from additional activities (such as associated investments and changed patterns of social and economic activities) induced or stimulated by the proposed action, both in the short-term and in the long-term. 40 C.F.R. § 1508.8(b). Cumulative impacts are the impacts on the human and physical environment which result from the incremental impact of the proposed action when added to other past, present or reasonably foreseeable future action. 40 C.F.R. § 1508.7. Positive as well as negative impacts, and long-term as well as short-term impacts, must be considered. For federal-aid highway projects, Title 23 and FHWA also require consideration of potential project impacts on certain types of public parklands and historic sites, see 23 U.S.C. § 138, 49 U.S.C. § 303 (so-called “section 4(f) requirements”).<sup>14</sup>

Like NEPA, several SEPA states and jurisdictions, such as Massachusetts (MASS. GEN. LAWS, ch. 30, §§ 61, 62A), Minnesota (MINN. R. 4410.1700, Subp 7), New York (N.Y. COMP. CODES R. & REGS., tit. 6, § 617.7) and Puerto Rico (P.R. REGS. JCL REG. 7948, Rule 109 DD), require broad consideration of a project’s impacts. Requirements or practices in a number of states differ from NEPA requirements, however. For example, about half of the SEPA states limit consideration of indirect or cumulative impacts, the presence of which may increase the need for an EIS (their presence alone does not require an EIS under NEPA). In Connecticut, for example, cumulative effects do not need to be considered if they are not caused by the lead agency or the proposed

---

<sup>13</sup>See Memorandum of Agreement for the Review of Highway Projects Undertaken by the Va. Dep’t of Transp. (Nov. 27, 2001).

<sup>14</sup>Section 4(f) refers to the Department of Transportation Act, Pub. L. No. 89-670, § 4(f), 80 Stat. 931, 934 (1966), which restricted use of any land in a public park, recreation area, wildlife or waterfowl refuge, or historic site unless there was no feasible alternative. That statute and others were recodified and the substance of the “section 4(f)” parkland requirements are now contained in 23 U.S.C. § 138 and 49 U.S.C. § 303.

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

project. See CONN. AGENCIES REGS. § 22a-1a-3(b) (cumulative impacts result from the incremental impact of the action when added to other past, present or reasonably foreseeable future actions “to be undertaken by the sponsoring agency”). See also Ga. CODE ANN. § 12-16-8(3); 326 IND. ADMIN. CODE § 16-2.1-6(5); MONT. ADMIN. R.18.2.238(1). In addition, several states only consider environmental justice or economic impacts if they have a direct impact on physical conditions within the area affected by the project. For example, while the California statute requires consideration of “growth-inducing impacts,” the law also states that “evidence of social or economic impacts” can only be shown by evidence establishing “a physical impact on the environment.” Cal. Pub. Res. § 21082.2(c). Nearly half of SEPA states (the District of Columbia,<sup>15</sup> Georgia,<sup>16</sup> Hawaii,<sup>17</sup> Indiana,<sup>18</sup> Maryland,<sup>19</sup> New Jersey<sup>20</sup>, Virginia<sup>21</sup>, and Wisconsin<sup>22</sup>) have statutes, executive orders and regulations that include little or only general discussion of indirect or cumulative impacts.

---

**Element 5: Consideration of alternatives**

NEPA requires an EIS to contain a detailed statement regarding “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(c)(iii). The agency must rigorously explore and objectively evaluate all “reasonable” alternatives to the proposed action, including a “no action” alternative, in response to a specified underlying purpose and need. 40 C.F.R. §§ 1502.13, 1502.14; 23 C.F.R. §§ 771.123(c), 771.125. See generally *Biodiversity Conservation Alliance v. Jiron*, 762 F. 3d 1036 (10th Cir. 2014). NEPA does not specifically require agencies to choose the most environmentally protective alternative, or indeed any specific alternative. FHWA policy provides that federal-aid highway decisions should be made “in the best overall public interest based upon a balanced consideration of

---

<sup>15</sup>20 D.C. MUN. REGS. 7299.1.

<sup>16</sup>Ga. CODE ANN. § 12-16-8 (3).

<sup>17</sup>HAW. CODE R. § 11-200-12.

<sup>18</sup>326 IND. ADMIN. CODE § 16-2.1-6(5).

<sup>19</sup>MD. CODE REGS. 11.01.08.03(B)(8)(c), 11.01.08.08.

<sup>20</sup>N.J. GOV. KEAN, EXEC. ORDER No. 215.

<sup>21</sup>VA. ANNO. CODE §§ 10.1-1188 to 10.1-1192.

<sup>22</sup>WIS. ADMIN. CODE TRANS. §§ 400.08(1)(d), 400.10(4)(7).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.” 23 C.F.R. § 771.105(b).

Most SEPAs also require the relevant agency (typically the state transportation agency) to analyze the environmental impacts of alternatives to the proposed project, in addition to impacts of the proposed project itself, and most require inclusion of a no-action alternative. Many SEPAs do not specify in detail how alternatives should be evaluated, although some states specify the types and characteristics of the alternatives that must be considered or not considered. For example, Minnesota regulations require the agency to consider alternative sites, technologies, and modified designs or layouts in preparing EISs. MINN. R. 4410.2300G. Many states, like NEPA, also require consideration only of reasonable or feasible alternatives.<sup>23</sup>

A few states favor selection of a particular alternative or prohibit selection of certain options. The California legislature, for example, has declared that “it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives . . . available which would substantially lessen the significant environmental effects of such projects.” CAL. PUB. RES. § 21002. The District of Columbia prohibits selection of an alternative that would substantially endanger public health, safety, or welfare, unless those effects can be avoided or mitigated. D. C. CODE § 8-109.04. Minnesota requires selection of any “feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.” 11D MINN. STAT. ANN. § 116D.04, subdiv. 6. And in Wisconsin, the agency must select the alternative that is in the best overall public interest, determined by a balanced consideration of several factors including the findings of the EIS and the need for a safe and efficient transportation system. WIS. ADMIN. CODE TRANS. § 400.06(3).

---

<sup>23</sup>See, e.g., MASS. GEN. LAWS, ch. 30, § 62B (requiring consideration of “reasonable alternatives to the proposed project and their environmental consequences”); WASH. ADMIN. CODE § 197-11-440(5) (reasonable alternatives must be considered); N.Y. COMP. CODES R. & REGS., tit. 6, § 617.9(b)(5)(v) (must consider a “range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor”); MONT. CODE ANN. § 75-1-201(1)(b)(iv)(C) (“Alternatives considered must be reasonable” and only those using current technology and which are economically feasible must be included).

---

Element 6: Consideration of mitigation

NEPA and its regulations require agencies to consider mitigation of adverse environmental impacts in some circumstances, but do not specifically require agencies to carry out mitigation. Mitigation is defined to include: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments. 42 U.S.C. § 4332(2)(C)(ii); 40 C.F.R. § 1508.20. FHWA requirements, by contrast, require reasonable mitigation measures to be taken, which are eligible for federal funding. 23 C.F.R. § 771.105(d).

Likewise, many SEPA requirements require that a project's environmental review documents identify mitigation measures that could lessen the environmental effects of a project. For example, in Wisconsin, a project's Record of Decision (ROD) must indicate that all practicable means to avoid or mitigate environmental harm have been adopted or, if not adopted, include a statement explaining why. WIS. ADMIN. CODE TRANS. § 400.04(23). The ROD also must identify "mitigation measures selected" or the "reason for rejection of suggested reasonable mitigation measures."

Other state SEPA mitigation requirements vary. For example:

- The California legislature has declared that "it is the policy of the state that public agencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." CAL. PUB. RES. CODE § 21002. See *also* CAL. PUB. RES. CODE § 21100(b)(5); CAL. CODE REGS., tit. 14, § 15041 (authority to mitigate); *cf.* CAL. CODE REGS., tit. 14, § 15004(b) (prohibiting actions that would adversely affect or limit the viability of mitigation

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

measures). Massachusetts and New York have similar requirements.<sup>24</sup>

- The District of Columbia does not authorize approval of a project that would have a significant environmental effect unless mitigation measures are available that would reasonably eliminate the adverse effects. In particular, if the EIS identifies an adverse effect that would substantially endanger the public, the District government must disapprove the action unless the applicant proposes mitigating measures to avoid the danger. D.C. CODE ANN. § 8-109.04.
- Some states link or combine identification of mitigation measures with identification of alternatives. Hawaii's law, for example, requires mitigation to be considered as part of its alternatives analysis, but only if mitigation actions are proposed. HAW. REV. STAT. § 343-2 (EIS must include "measures proposed to minimize adverse effects"). Moreover, Hawaii officials told us that environmental mitigation actions, once considered, are not binding. Montana's statute, by comparison, defines its alternative analysis to include mitigation, see MONT. CODE ANN. §§ 75-1-102(2), 75-1-220(1), and EAs can be used where the action is one that might normally require an EIS if the effects which might otherwise be deemed significant appear to be capable of mitigation by making design changes, imposing enforceable government controls or stipulations, or both. MONT. ADMIN. R. 18.2.237(4).

---

<sup>24</sup> See MASS. GEN. LAWS, ch. 30, § 61 (state "shall use all practicable means and measures to minimize damage to the environment"); N.Y. ENVTL. CONSERV. § 8-0109.2(f); N.Y. COMP. CODES R. & REGS., tit. 6, § 617.11(d)(5) (final EIS must "certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.").

---

Element 7: Requirement for collaboration to enhance efficiency and avoid duplication

To achieve efficiencies and to minimize duplication, CEQ's and FHWA's regulations require all federal agencies to collaborate with each other, and with state and local governments, to the fullest extent possible.<sup>25</sup> Collaboration begins with consultation with other relevant federal and state agencies, Indian tribes, and the public; includes early identification of stakeholders, project scoping, and project planning; and extends through development of draft and final environmental impact documentation.<sup>26</sup>

The regulations reflect the federal government's policy to encourage collaboration of all interested parties from the outset on projects that may require environmental impact analyses, including involvement of state agencies and other federal agencies. 23 U.S.C. § 139 codifies and expands the CEQ regulatory practices as statutory mandates for federal-aid highway projects, designating the Department of Transportation (DOT) as the federal lead agency and requiring the Secretary to administer the NEPA process, including optional establishment of a schedule for completion of the environmental review process. The Secretary is also encouraged by statute to facilitate use of programmatic approaches through which states may be authorized to resolve issues that would otherwise require federal action.<sup>27</sup>

About half of SEPA states have policies that specifically promote or require collaboration. For example:

---

<sup>25</sup>See 40 C.F.R. §§ 1500.2(c) (integration of environmental review and planning procedures), 1501.5 (selection of lead agencies), 1501.6 (designation of cooperating agencies), 1500.4(i) (use of tiering to reduce repetitive analyses; tiering means use of a broad EIS to frame multiple subsequent EISs; see 43 Fed. Reg. 55978, 55979 (Nov. 29, 1978)), 1500.4(n) (joint preparation and adoption of environmental analyses to reduce duplication), 1500.5(h) (same, to reduce delay), 1502.5(b) (encouraging federal agencies to begin preparation of environmental assessments or statements early, preferably jointly with applicable state or local agencies), 1506.2 (requiring cooperation to eliminate duplication with state and local procedures). For FHWA regulations, see 23 C.F.R. part 771.

<sup>26</sup>This requirement for collaboration is viewed as enhancing the overall efficiency of the NEPA process as applied to federal-aid highway projects and is also reflected in the requirements for coordination and for a "single-process review," discussed in Elements 8 and 9 below, as well as in authorization by many SEPA states of the state's use of some or all of a project's NEPA documentation or analysis, discussed in Element 10 below.

<sup>27</sup>23 U.S.C. § 139(b)(3)(A).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

- California generally requires collaboration among lead, responsible and trustee agencies assisted by the Governor's Office of Planning and Research. CAL. PUB. RES. CODE §§ 21080.1, 21080.3, 21080.4. In this regard, the California legislature has recognized the importance of processes such as tiering to avoid duplicative analysis of environmental effects. CAL. PUB. RES. Code § 21093.
- Minnesota requires responsible governmental units to collaborate to the extent practicable to avoid duplication of effort between state and federal environmental reviews and between environmental reviews and environmental permitting. MINN. STAT. § 116D.04, Subp. 2a(g).
- Other states with formal cooperation policies include Connecticut (CONN. GEN. STAT. § 22a-1; see also CONN. GEN. STAT. § 22a-1a); the District of Columbia (D.C. CODE § 8-109.07); New York (N.Y. COMP. CODES R. & REGS., tit. 6, §§ 617.3(d), 617.6; N.Y. ENVTL. CONSERV. LAW § 8-0111.1); and Montana (through its rules, which include a section on cooperation with federal agencies, MONT. ADMIN. R. 18.2.250).

The law in some states is unclear regarding how broadly state agencies are required to cooperate with federal agencies, including federal resource agencies. For example, although the Hawaii SEPA lists cooperation and coordination as important government objectives, see HAW. REV. STAT. § 343-1, the regulations refer specifically to the importance of cooperation and coordination between the state accepting authority or approving agency and other state authorities or agencies only in determining the applicability of requirements for supplemental environmental statements (see HAW. ADMIN. CODE § 11-200-27) and in avoiding duplication with NEPA requirements. The North Carolina regulations authorize but do not require state agencies to seek information from federal as well as local and special units of government. 1 N.C. ADMIN. CODE § 25.0210. Puerto Rico requires consultation with federal and state agencies prior to submitting the environmental document but does make the recommendations of federal agencies within their areas of jurisdiction binding. P.R. Reg. 7948, Rule 118 E.

Finally, New York requires state cooperation with federal agencies. N.Y. ENVTL. CONSERV. LAW. § 8-0111.1. Washington establishes as policy that the Department of Ecology is to "utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies." WASH. REV. CODE § 43.21C.110(2)(b). Wisconsin incorporates CEQ's (but not FHWA's) processes, (see WIS. ADMIN. CODE TRANS. § 400.06(b), App.



citing 40 C.F.R. § 1500.5), while North Carolina authorizes but does not require that agencies seek information from federal as well as local and special units of government. (see 1 N.C. ADMIN. CODE § 25.0210(b)).

---

**Element 8: Requirement for coordination to ensure involvement of all relevant agencies**

Title 23 and CEQ regulations require the lead federal agency to coordinate the timing and scope of its reviews with cooperating agencies. 23 U.S.C. § 139(g); 40 C.F.R. § 1501.7(a)(6). Generally, for Title 23 funded projects, the lead federal agency is a modal administration within the Department of Transportation. See 23 U.S.C. § 139(c). See also 40 C.F.R. §§ 1501.1(b) (early and cooperative interagency consultation); 1501.2(d)(2) (requiring federal agency consultation with state, local, and tribal authorities and private persons and organizations); 1501.5 (lead agencies); 1501.6 (cooperating agencies).

Some states' SEPA's also provide for robust coordination. For example:

- California generally requires not only collaboration (as discussed in Element 7 above) but also requires coordination among lead, responsible and trustee agencies assisted by the Office of Planning and Research. See CAL. CODE REGS., tit. 14, § 15082(c). And when a proposed project is of sufficient statewide, regional, or area-wide environmental significance, California uses a clearinghouse process to facilitate and coordinate review of draft Environmental Impact Reports and other environmental documentation. CAL. PUB. RES. CODE, §§ 21083(d) (review of draft EIRs, negative declarations, or mitigated negative declarations); CAL. PUB. RES. §§ 21082.1(c) (4), 21091. See also CAL. CODE REGS., tit. 14, §§ 15004(b) (timing), 15006 (reducing delay and paperwork), 15083 (consulting), 15063(c)(2) (mitigating effects to facilitate documented CE or negative declaration).
- Hawaii requires that “[t]he [Office of Environmental Quality Control within the state Department of Health] and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements.” Haw. Rev. Stat. § 343-5(h).
- In Massachusetts, the SEPA review process “is intended to involve any interested Agency or Person as well as the Proponent and each Participating Agency.” Code of Mass Regs., tit. 301, § 11.01(b).
- In Minnesota, to the extent practicable, responsible governmental units must avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Minn. Stat. § 116D.04, Subd. 2a(g).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

In other states, the laws require little or no formal attention to coordination in applying their SEPA requirements. For example:

- The Maryland MDOT regulations only require that the lead agency describe “the coordination and liaison relationship established in developing the proposal,” with the content of the description largely up to the agency. There is no clear requirement defining the responsibilities that the lead agency assumes. 11 CODE OF MD. REGS. § 01.08.03(B)(9). *See also* 11 CODE OF MD. REGS. § 01.08.04(A)(3) (“The timing and type of community and public agency involvement in this analysis will be determined on a case-by-case basis . . .”).
- Virginia provides specifically for coordination between VDOT and state resource agencies only. VA. CODE ANN. § 10.1-1191.
- Coordination is not mentioned in the New Jersey executive order, N.J. GOV. KEAN, EXEC. ORDER No. 215, or in guidance.

---

**Element 9: Requirement for single-process review**

Reflecting the requirements for federal coordination and collaboration discussed in Elements 7 and 8 above, federal environmental reviews of Title 23-funded highway projects also must include “completion of any environmental permit, approval, review, or study required for a project under any Federal law other than NEPA.” 23 U.S.C. § 139(a)(3)(B). This requirement reflects a policy that the NEPA process and the permitting processes should not be treated as separate and distinct processes but as one.

Most SEPA states do not require or conduct single-process reviews as such. As discussed in Element 8 above, the Minnesota statute requires that the responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. MINN. STAT. § 116D.04, Subp. 2a(g). North Carolina and Washington require a list of all licenses that the project is known to require, *see* 1 N.C. ADMIN. CODE § 25.0603(2), WASH. ADMIN. CODE § 197-11-440(2)(d), and Washington has made significant efforts to integrate its Growth Management Act and Model Toxics Control Act processes with its SEPA processes.<sup>28</sup> In Puerto Rico the responsibility for issuing construction permits is centralized in a Permit Management

---

<sup>28</sup>Growth Management Act, WASH. REV. CODE Ch. 36.70A; Model Toxics Control Act, WASH. REV. CODE Ch. 70.105D.

Office. See P.R. LAWS ANN., tit.12, § 8001a(c). This office assesses compliance with Puerto Rico's Environmental Public Policy Act. See *id.* Finally, as noted in Element 3 above, Texas regulations defer to FHWA's procedures whenever there would otherwise be any inconsistency between Texas' and FHWA's processes.

---

Element 10: State adoption of federal NEPA reviews

To avoid duplication that might otherwise result, a number of SEPA's authorize or encourage preparation of documentation that meets both federal and state NEPA and SEPA requirements, or use of information, documentation, or analyses developed for the NEPA review. The SEPA procedures vary from state to state, ranging from provisions allowing use of some or all of the paperwork prepared to meet federal requirements to full adoption of the federal process and results so that no separate state funds are required. These issues arise in the context of three basic scenarios:

- About half of SEPA states are authorized to forgo the SEPA process and determination entirely if the proposed project is covered by a completed NEPA review. For example, in Georgia, an agency is deemed to have complied with the requirements of the SEPA if the proposed government action requires and has received federal approval of an environmental document prepared in accordance with NEPA. See GA. CODE ANN. § 12-16-7. In Indiana, if any state agency is required by NEPA to file a federal EIS, it is not also required to file an EIS with the state government. See IND. CODE § 13-12-4-10.
- Some SEPA states are authorized to use NEPA documentation to meet their SEPA requirements but state officials must make some kind of independent decision under state law. For example, in Minnesota, if a federal EIS will be or has been prepared for a project, the state may use the draft or final federal EIS as the draft state EIS if the federal EIS addresses the scoped issues and satisfies the state content standards for an EIS. See Minn. R. 4410.3900, Subp. 3; Minn. R. 4410.2300. In Montana, implementation of NEPA and the Montana SEPA are separate and distinct federal and state functions, but state agencies are required to coordinate with other state and federal agencies in the preparation of a single environmental review that is legally sufficient for both NEPA and MEPA. MONT. ADMIN. R. 18.2.250(c).

- Some SEPA states allow preparation of a single set of documentation meeting both the NEPA and additional SEPA requirements.<sup>29</sup> The state must only prepare separate findings—in effect, a separate Record of Decision or similar documentation. For example, in California, the SEPA and regulations mandate use of NEPA EISs and other documentation in lieu of state Environmental Impact Reports and meeting other state requirements whenever possible. See CAL. PUB. RES. §§ 21083.5-21083.7; CAL. CODE REGS., tit. 14, §§ 15063, 15082, 15110, 15127, 15220-15528. The state SEPA does not, however, dispense with the need to meet its state-specific requirements. In New York, the SEPA requires cooperation between state and federal agencies in creating an environmental review and exempts a project from additional state review if a federal NEPA review is conducted. See N.Y. ENVTL. CONSERV. LAW § 8-0111(1)-(2); N.Y. COMP. CODES R. & REGS., tit 17, § 15.10. If the proposed action is subject to NEPA, the statute is interpreted to require that NYDOT must comply with the federal requirements which then excuses further statutory obligations. See N.Y. COMP. CODES R. & REGS. tit. 17, § 15.6; see also N.Y. ENVTL. CONSERV. LAW § 8-0111(1)-(2) (single combined document prepared along with state and federal report.). In Washington, state documentation is not required if federal documentation already has been prepared for the same project, see WASH. REV. CODE § 43.21C.150, but the statute does not waive the requirement for a state decision concerning the adequacy of any prior NEPA review, even if that decision is based on NEPA documentation. *Id.*; see also WASH. ADMIN. CODE §§ 197-11-600, 197-11-630.

---

## Element 11: Opportunity for public participation

The federal NEPA process requires the opportunity for robust public participation. At the least, the public must be notified of the proposed project and given an opportunity to comment on it. See, e.g., 40 C.F.R. §§ 1501.4(b), (e) (EAs); 1502.19 (EISs); 1506.6 (NEPA implementation generally). There are also specific public participation requirements in Title 23 for federal-aid highway projects. See, e.g., 23 U.S.C. §§ 128, 139; 23 C.F.R. §§ 771.111(h)(1)-(2), 771.113(a)(2). Moreover, 23 U.S.C. § 128 requires that an opportunity for a public hearing be provided to

---

<sup>29</sup>This is authorized at the federal level under CEQ's regulations. See 40 C.F.R. §§ 1500.4(n), 1506.2, 1506.3 (eliminating duplication with State and local procedures, by providing for joint preparation, and with other federal procedures, by providing that a federal agency may adopt appropriate environmental documents prepared by another agency).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

consider the impact of each federal aid-highway project on the environment.

Similarly, almost all SEPA states or their implementing regulations provide for some degree of public participation. Three SEPA states do not require agencies to consider public input at all: Indiana (only authorized comments must be considered, 327 IND. ADMIN. CODE §§ 11-1-4, 11-3-3), New Jersey (N.J. GOV. KEAN, EXEC. ORDER No. 215, and guidance), and Virginia (generally, comments are invited from interested agencies, planning district commissions and localities (VA Dept. of Env. Qual., Procedure Manual, July 2013)). The opportunities for public participation in other states vary. For example:

- In New York, public notice must be provided for all determinations that a project will have no significant effect; that a project may have a significant effect; that a draft or final EIS has been completed; and any subsequent notice of a negative declaration. N.Y. COMP. CODES R. & REGS. tit. 17, § 15.10. Public notice of hearings also must be given, although this may be combined with a notice of completion of a draft EIS, and public comments must be permitted for draft and final EISs. N.Y. ENVTL. CONSERV. LAW § 8-0109 (4); N.Y. COMP. CODES R. & REGS., tit. 17, §§ 15.6(d), 15.10(d). The regulations also provide for consideration of public comments on scoping and other matters. N.Y. COMP. CODES R. & REGS., tit. 6, §§ 617.8(e), 617.7.
- Washington State provides many opportunities for public participation and comment. *See, e.g.*, WASH. REV. CODE § 43.21C.110(1); WASH. ADMIN. CODE §§ 197-11-340(2)(c), 197-11-350(5), 197-11-355, 197-11-400(4), 197-11-405, 197-11-408, 197-11-455(6)-(8), 197-11-502, 197-11-560. *See also* WASH. ADMIN. CODE § 197-11-410(1)(d).
- In Wisconsin, it is WisDOT's policy that "public involvement, interagency coordination and consultation, and a systematic interdisciplinary approach to analysis of the issues shall be essential parts of the environmental process for proposed actions." WIS. ADMIN. CODE TRANS. § 400.06(4). As part of the scoping process, the Wisconsin regulations "establish a schedule for document preparation and for opportunities for public involvement." WIS. ADMIN. CODE TRANS. § 400.09(4)(c). Public comment must be allowed on EISs and EAs, *see* WIS. ADMIN. CODE TRANS. § 400.11(3)-(5), but not on FONSI and Environmental Reports. *See* WIS. ADMIN. CODE TRANS. § 400.11(6)-(7).
- In California, the importance of public participation in the SEPA process is specifically recognized in the regulations. CAL. CODE REGS, tit. 14, § 15002(a)(1), (4). Key environmental review documents are

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

classified as public documents. *Id.*, § 15002(f), (j) (“Under [the California law], an agency must solicit and respond to comments from the public and from other agencies concerned with the project.”); see also *id.* § 15022(a)(5) (duty of California public agencies to consult with the public regarding environmental effects).

A number of SEPA’s limit public participation to commenting on specific aspects of the process. For example, the Massachusetts statute and regulations provide notice-and-comment procedures at critical points in the process. See MASS. GEN. LAWS, ch. 30, § 62C; CODE OF MASS REGS., tit. 301, § 11.15. Several jurisdictions, such as Georgia, Connecticut, and the District of Columbia, authorize public hearings but base the decision to hold them on the number of requests received. See GA. CODE ANN. § 12-16-5; CONN. GEN. STAT. § 22a-1d; D.C. CODE § 8-109.03 (“If 25 registered voters in an affected single member district request a public hearing on an EIS or supplemental EIS or there is significant public interest, the Mayor, board, commission, or authority shall conduct a public hearing.”). Montana provides for notice of EIS scoping to “affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups,” but not the general public. MONT. ADMIN. R. 18.2.241(2)(a).

---

**Element 12: Opportunity for judicial review of agency decisions**

The opportunity to obtain meaningful review of agency action by a court is an important protection against arbitrary, capricious or otherwise unlawful agency decision making. At the federal level, judicial review of NEPA decisions issued by lead agencies and other involved federal agencies occurs under the federal Administrative Procedure Act, 5 U.S.C. §§ 701-706 (APA).<sup>30</sup> Not everyone who is dissatisfied with a NEPA decision may challenge it in court; only those who suffer specific and sufficient injury as a result of the decision, and thus have “standing,” may file suit. For federal-aid highway projects, a lawsuit generally must be filed within 150

---

<sup>30</sup>The APA allows aggrieved parties to challenge “final agency action for which there is no other adequate remedy in a court,” 5 U.S.C. § 704, which includes FHWA issuance of a NEPA Record of Decision. See, e.g., *Sierra Club v. Slater*, 120 F.3d 623 (6<sup>th</sup> Cir. 1997).

---

**Appendix I: A Comparison of Federal NEPA Requirements and State Environmental Policy Act Requirements as Applied to Federal-Aid Highway Projects**

---

days after publication of a notice in the Federal Register announcing a final approval, permit, or license. See 23 U.S.C. § 139(I)(1).<sup>31</sup>

Similarly, while some of the 18 states with SEPAs required for highway projects provide for court review of decisions in their SEPA legislation, most do so either in their general administrative agency procedure legislation (typically based on the Model State Administrative Procedure Act) or in specialized legislation. Most states also have followed federal law by limiting who may challenge the state agency decision, how the agency's action will be reviewed, and what the scope of that review will be. In particular, as applied to state and federal-aid highway projects, SEPA laws based on the Model Act<sup>32</sup> establish five key prerequisites to challenge a state agency decision:

- The challenger must suffer particularized harm. For example, individuals owning property that might be acquired or adjacent to the project area, or organizations representing such persons (including environmental groups), likely could bring suit.
- The agency decision must be final, that is, the challenger generally must have exhausted any dispute resolution process available at the agency.
- The court challenge generally must be based only on the evidence presented to the lead agency and the issues already raised to the agency (the administrative record).
- The challenge generally must allege that the agency's decision was legally arbitrary and capricious, contrary to state or federal law, or not supported by the evidence before the agency.
- The remedy being requested generally must be limited to an order directing the agency to take a certain action, rather than seeking monetary damages.

An important difference between federal NEPA-decision judicial review requirements and state SEPA requirements is the difference in the time for filing a challenge. The federal period is generally 150 days, as noted above, while state laws typically provide only 30 days to appeal. See,

---

<sup>31</sup>FHWA division offices, in consultation with state DOTs, can decide whether to publish a notice in the *Federal Register*. In the absence of a notice, a claim for judicial review must be filed within 6 years of the agency decision. See 28 U.S.C. § 2401(a) (general six-year statute of limitations for civil actions against the United States).

<sup>32</sup>Model State Admin. P. Act (1961), § 15; Model State Admin. P. Act (1981), §§ 5-101 to 5-205.

---

**Appendix I: A Comparison of Federal NEPA  
Requirements and State Environmental Policy  
Act Requirements as Applied to Federal-Aid  
Highway Projects**

---

*e.g.*, IND. CODE § 4-21.5-5-5; IND. STAT § 116D.04, Subd. 10;  
N.C. GEN. STAT. § 150B-45. Washington provides only 21 days. WASH.  
REV. CODE § 43.21C.080(2)(a).



---

# Appendix II: Objectives, Scope, and Methodology

---

The Moving Ahead for Progress in the 21st Century Act (MAP-21) contains a mandate requiring that GAO review state laws and procedures for conducting environmental reviews with regard to projects funded under title 23 of the United States Code (primarily federal-aid highway projects).<sup>1</sup> This report addresses: (1) the factors that determine whether federal or state environmental reviews are required for highway projects, and how the types of federal and state environmental review documents compare; (2) how state environmental review requirements and practices compare with federal requirements for assessing federal-aid highway projects; and (3) the extent of any duplication in federal and state reviews, including frequency and cost, in states with environmental review requirements for highway projects.

We identified 18 states with state environmental policy acts (SEPA) required for highway projects for inclusion in our review (see table 1). In these states, statutes or regulations require some assessment of potential environmental effects from highway projects that may mirror requirements under the National Environmental Policy Act (NEPA)<sup>2</sup> for federal-aid highway projects. The list of states with SEPAs derives largely from the 18 states identified by the Council on Environmental Quality (CEQ) as having SEPAs, including New Jersey, which has an executive order that requires environmental reviews. In addition, during the course of our work, we learned that Texas does not have a general state-level SEPA but does have a state statute and regulations that apply to transportation projects, and we confirmed with CEQ officials that we should include Texas in our scope. By contrast, we excluded South Dakota because its SEPA provides the option of preparing an environmental impact statement, but does not require one, and South Dakota Department of Transportation officials told us that they do not conduct environmental reviews under the state law.

---

<sup>1</sup>Pub. L. No. 112-141, § 1322, 126 Stat. 405, 552 (2012).

<sup>2</sup>Pub. L. No. 91-190 (1970), codified at 42 U.S.C. §§ 4321-4347.

**Table 1: States with State Environmental Policy Acts (SEPA) Required for Highway Projects**

<b>California</b>	<b>Montana</b>
Connecticut	New Jersey
District of Columbia	New York
Georgia	North Carolina
Hawaii	Puerto Rico
Indiana	Texas
Maryland	Virginia
Massachusetts	Washington
Minnesota	Wisconsin

Source: GAO. | GAO-15-71

Note: We included entities that are defined as “states” under Title 23 and that have SEPAs required to be applied to highway projects. Thus, we did not include the Nevada/California-Tahoe Region, which has SEPA requirements, because it is not defined as a state under Title 23. We included New Jersey, which has an executive order that serves as a SEPA, and Texas, which does not have a general state SEPA but does have a state statute and regulations that apply to transportation projects. We excluded South Dakota because although its SEPA provides the option of preparing an environmental impact statement, there is no requirement to do so, and South Dakota DOT officials told us that they do not conduct environmental reviews under the state law.

For each of our objectives, we reviewed relevant publications, including our prior reports on NEPA and highway projects.<sup>3</sup> We obtained documents and analysis from federal agencies related to NEPA reviews for federal-aid highway projects, including CEQ, the Congressional Research Service (CRS), and the Federal Highway Administration (FHWA), including FHWA’s Environmental Review Toolkit for NEPA and Transportation Decisionmaking (FHWA’s NEPA Toolkit), which provides guidance on FHWA’s NEPA environmental review process for state department of transportation (state DOT) officials. In addition, we interviewed officials with FHWA, CEQ, and CRS. We also interviewed two academics who authored a treatise on environmental review requirements and were cited by CEQ as having expertise on NEPA and SEPAs—Professor Daniel Mandelker at Washington University and

<sup>3</sup>See GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, [GAO-14-369](#) (Washington, D.C.: Apr. 14, 2014); GAO, *Federal-Aid Highways: Federal Requirements for Highways May Influence Funding Decisions and Create Challenges, but Benefits and Costs Are Not Tracked*, [GAO-09-36](#) (Washington, D.C.: Dec. 12, 2008); and GAO, *Highway Projects: Some Federal and State Practices to Expedite Completion Show Promise*, [GAO-12-593](#) (Washington, D.C.: June 6, 2012).

Arianne Aughey—and representatives from two professional associations with expertise in federal or state environmental review requirements or state practices—the American Association of State Highway and Transportation Officials (AASHTO) and the National Association of Counties.

To respond to the first two objectives, we conducted a legal analysis and a survey, which included all 18 states that we identified as having SEPAs required for highway projects. Our legal analysis compared key elements of SEPAs and related state regulations with key elements of NEPA and FHWA regulations for federal-aid highway projects. Our comparison of NEPA and FHWA regulations with requirements in state statutes, regulations, and executive orders focused on the key NEPA statutory and regulatory requirements and did not systematically examine court decisions or legislative history. We identified the key NEPA elements by reviewing relevant federal statutes and regulations in consultation with CEQ and FHWA. Specifically, we started with the statutory language of NEPA, which requires agencies to prepare, for major federal actions significantly affecting the quality of the human environment, a detailed statement on, among other things: (1) the environmental impact of the proposed action, (2) any adverse environmental effects which cannot be avoided should the proposal be implemented, and (3) alternatives to the proposed action.<sup>4</sup> NEPA, CEQ regulations, and—for federal-aid highway projects—FHWA regulations then specify detailed environmental review processes, which include requirements for interagency coordination, avoiding duplication, and participation by state and local governments as well as the general public, among other things. In addition, the regulations provide for more efficient methods of environmental review and a process for determining when use of these methods is appropriate. Based on these statutory and regulatory requirements, and in consultation with CEQ and FHWA, we distilled 12 key elements of environmental review.

1. Policy and purpose of the environmental review requirements
2. Types of projects covered
3. Level of detail (“depth”) of environmental impact evaluation
4. Level of significance (“breadth”) addressed in environmental impact evaluation

---

<sup>4</sup>42 U.S.C. § 4332(2)(C).

5. Consideration of alternatives
6. Consideration of mitigation
7. Requirement for collaboration to enhance efficiency and avoid duplication
8. Requirement for agency coordination
9. Requirement for single-process review
10. State adoption of federal NEPA reviews
11. Opportunity for public participation
12. Opportunity for judicial review of agency decisions

In additional to this legal analysis, we conducted a survey of state DOTs in all the 18 states with SEPAs required for highway projects to compare in more detail state environmental review requirements with FHWA's NEPA requirements for reviews of federal-aid highway projects. Using FHWA's NEPA Toolkit as a guide, we developed survey questions to gather information comparing states' environmental review requirements and practices with FHWA's NEPA requirements.<sup>5</sup> These requirements align with five of FHWA's six principles of the NEPA process and reflect key elements in our legal analyses.<sup>6</sup>

- consideration of the social, economic, and environmental impacts of a proposed action or project;

---

<sup>5</sup>One state did not complete the portion of the survey comparing state and federal requirements.

<sup>6</sup>The six principles were derived from FHWA's *Environmental Review Toolkit for NEPA and Transportation Decision Making*, which was accessed in 2014 at: <http://environment.fhwa.dot.gov/projdev/pd3tdm.asp>. The requirements identified in FHWA's NEPA Toolkit are not exhaustive of all FHWA's NEPA requirements; rather, FHWA highlights key requirements under each of six areas identified as a NEPA principle, and discusses documentation and disclosure. We asked states to compare their requirements with FHWA requirements for five of these principles in our survey, among other things. A sixth principle—establishing the purpose and need of a project—is essential in establishing a baseline for the development of the range of reasonable project alternatives required in environmental reviews. In the survey, we asked state DOT officials to report on the whether their state requires documentation of their discussion about the purpose and need of a proposed project for EIS-type reviews, but we did not ask them to compare specific requirements associated with establishing the purpose and need for a project.

- development and evaluation of a range of reasonable alternatives to the proposed project, based on the applicants defined purpose and need for the project;
- mitigation of project effect by means of avoidance, minimization and compensation;
- interagency coordination and consultation; and
- public involvement including opportunities to participate and comment.

For each of these principles, we developed questions to assess the extent to which state requirements were less stringent than, similar to, or more stringent than FHWA's NEPA requirements.<sup>7</sup> After we drafted the survey, we conducted pretests with state DOT officials in Maryland, Washington, and North Carolina to ensure that respondents interpreted our questions in the way we intended. That is, we verified that the questions were clear and unambiguous and that we used appropriate terminology in the survey, to ensure that respondents had the necessary information and ability to respond to the questions. Where necessary, we revised the screening tool to improve the survey instrument in response to feedback from the pretests and internal GAO review. We divided the final screening-tool questions into four parts: Part I: Contact Information; Part II: Documentation; Part III: Duplication and Coordination; and Part IV: Environmental Review Requirements.

We administered the survey by emailing an electronic form to state DOT officials in all 18 states with SEPAs required for highway projects.<sup>8</sup> Two states provided clarifications or supplementary information along with their survey responses. To improve the accuracy and completeness of the data, we used the clarifying information provided by agency officials to update responses where necessary. Because this effort was not a sample survey, it has no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as

---

<sup>7</sup>Part IV of the survey asked states to categorize their requirements as "less stringent," "similar," or "more stringent" than FHWA's NEPA requirements. States could also select "not applicable." By comparing our legal analysis to the responses of states who most frequently indicated that FHWA's NEPA requirements were "not applicable" to their SEPA, we determined that a "not applicable" response indicated less stringent requirements than FHWA NEPA or no comparable requirements. Therefore, we combined responses from the "less stringent" and "not applicable" categories.

<sup>8</sup>We surveyed South Dakota DOT officials before determining that the state does not have a SEPA that is mandatory for transportation projects. We excluded the state from our analysis.

nonsampling errors. For example, difficulties in interpreting a particular question or sources of information that are unavailable to respondents can introduce unwanted variability into the survey results. We took steps to minimize such nonsampling errors in developing the survey tool—including using a social science survey specialist to help design and pretest the survey. We also minimized the nonsampling errors when analyzing the data, including using an independent analyst to review all computer programming related to the survey. Finally, there were a few instances where state DOTs should have indicated one response to a question and instead provided two. In these cases we followed up with the state DOT officials to clarify their response.

To identify which states had requirements that were “generally similar” to FHWA’s NEPA requirements overall, we determined which states in our survey reported having environmental review requirements that we found to be similar or somewhat similar to 42 individual requirements for FHWA NEPA reviews. We characterized state survey responses as being similar overall if 75 percent or more of the questions about individual state requirements under a NEPA principle were marked as “similar” or “more stringent” than FHWA’s NEPA requirements.<sup>9</sup> If 50 to 74 percent of the requirements were marked as “similar” or “more stringent,” we characterized state survey responses as somewhat similar. If 51 to 74 percent of the requirements were marked as “less stringent” or “not applicable,” we characterized state survey responses as somewhat less stringent. If 75 percent or more of the requirements were marked as “less stringent” or “not applicable,” we characterized state survey responses as less stringent. Then we determined that states where officials indicated that at least half of their responses for each requirement within the principle were similar to or more stringent than FHWA’s NEPA requirements were “generally similar” to federal requirements. For example, regarding the consideration of impacts, we determined that state requirements were “generally similar” overall if the state DOT officials reported that 3 of the 5 individual requirements were at least similar (if not identical) to FHWA’s NEPA requirements: (1) identification

---

<sup>9</sup>For the purposes of reporting the survey results at a high level, we determined that a “more stringent” response is like a “similar” response in that the state requirement is at least comparable to FHWA’s NEPA requirements. In addition, for the 42 individual requirements about which we surveyed, no state reported more than 4 state requirements as more stringent than FHWA’s NEPA requirements. Therefore, for this analysis we combined responses from the “similar” and “more stringent” categories.

of impacts, as well as assessment of (2) cumulative effects, (3) context, (4) cultural or historical impacts, and (5) social or environmental justice.

In addition to these analyses, we interviewed state DOT officials and officials with state natural resource agencies in 9 of the 18 states with SEPAs. (See table 2.) We selected SEPA states for additional interviews and site visits based on four criteria: robustness (or lack thereof), number of active EIS reviews, “uniqueness,” and, in some cases, proximity to GAO offices. Our findings for these 9 states are not generalizable to the other 9 states with SEPAs but provide examples of varying state requirements and practices.

**Table 2: States Agencies in Selected States with State Environmental Policy Laws (SEPA) Interviewed by GAO**

<b>State</b>	<b>State Agencies Interviewed</b>
California	California Department of Transportation (Caltrans) California State Association of Counties The Governor’s Office of Planning and Research
Hawaii	Hawaii Department of Transportation
Maryland	Maryland Department of Transportation, State Highway Administration, Office of Planning and Preliminary Engineering, Environmental Planning Division Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
Massachusetts	Massachusetts Executive Office of Energy and Environmental Affairs, Massachusetts Environmental Policy Act Massachusetts Department of Transportation, Highway Division
Minnesota	Minnesota Environmental Quality Board Minnesota Department of Transportation
North Carolina	North Carolina Department of Transportation North Carolina Department of Environment and Natural Resources
New York	New York State Department of Transportation
Washington	Washington State Department of Transportation
Wisconsin	Wisconsin Department of Transportation Wisconsin Department of Natural Resources

Source: GAO and state agencies. | GAO-15-71

To respond to the third objective, we included questions about duplication in our survey of state DOTs, as well as interviewing state officials and FHWA officials at the division offices in those states we selected for additional interviews. We have defined duplication as occurring when two or more agencies or programs are engaged in the same activities or

provide the same services to the same beneficiaries, in accordance with GAO's body of work on duplication in the federal government.<sup>10</sup> This report focuses on duplication that might occur between state and federal processes for environmental review of highway projects where there is duplication of effort. In the context of environmental review requirements, such duplication could occur if states were required to carry out two separate—but similar—analyses to satisfy federal and state requirements, for example, but not if the same analysis could be used to satisfy both state and federal documentary (i.e., procedural) requirements. In our interviews with state and FHWA officials, we inquired about duplication within and among highway projects, as well as duplication that may occur across time within a project. We also asked FHWA and state officials about the cost of any potential duplication (and how such cost might be measured) and the frequency of any potential duplication. Finally, we asked state officials about efforts to make the environmental review process more efficient in our survey, as well as the potential benefits of any such efforts.

We conducted this performance audit from May 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

<sup>10</sup>See GAO, *Government Efficiency and Effectiveness: Strategies for Reducing Fragmentation, Overlap, and Duplication and Achieving Cost Savings*, [GAO-13-631T](#) (Washington, D.C.: May 16, 2013). GAO has applied this definition in numerous reports examining potentially duplicative activities in the federal government. See also GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, [GAO-11-318SP](#) (Washington, D.C.: Mar. 1, 2011); *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, [GAO-12-342SP](#) (Washington, D.C.: Feb. 28, 2012); and *2013 Annual Report: Actions Needed to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, [GAO-13-279SP](#) (Washington, D.C.: Apr. 9, 2013).



---

# Appendix III: GAO Contact and Staff Acknowledgments

---

## GAO Contact

Susan D. Sawtelle, (202) 512-6417 or [sawtelles@gao.gov](mailto:sawtelles@gao.gov)  
David J. Wise, (202) 512-2834 or [wised@gao.gov](mailto:wised@gao.gov)

---

## Staff Acknowledgments

In addition to the individuals named above, Susan Zimmerman (Assistant Director), Richard Calhoun, Heather Halliwell, Bert Japikse, Delwen Jones, Molly Laster, Hannah Laufe, Gerald B. Leverich, III, Jaclyn Nelson, Joshua Ormond, Richard P. Johnson, and Elizabeth Wood made key contributions to this report.

---

---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (<http://www.gao.gov>). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to <http://www.gao.gov> and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## Connect with GAO

Connect with GAO on [Facebook](#), [Flickr](#), [Twitter](#), and [YouTube](#). Subscribe to our [RSS Feeds](#) or [E-mail Updates](#). Listen to our [Podcasts](#). Visit GAO on the web at [www.gao.gov](http://www.gao.gov).

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: <http://www.gao.gov/fraudnet/fraudnet.htm>

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Katherine Siggerud, Managing Director, [siggerudk@gao.gov](mailto:siggerudk@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

