



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

November 13, 2020

**MEMORANDUM FOR SECRETARIAL OFFICERS AND HEADS OF
OPERATING ADMINISTRATIONS**

From: Steven G. Bradbury
General Counsel

A handwritten signature in black ink, appearing to read "Steven G. Bradbury".

Subject: Implementation of Section 6 of Executive Order 13924

On May 19, 2020, the President issued Executive Order (EO) 13924 entitled “Executive Order on Regulatory Relief to Support Economic Recovery” (85 Fed. Reg. 31,313 (May 22, 2020)). Subsequently, on August 31, 2020, Paul J. Ray, Administrator, Office of Information and Regulatory Affairs issued guidance on the implementation of Section 6 of the EO.

Section 6 of the EO directs “heads of all agencies” to “consider the principles of fairness in administrative enforcement and adjudication” and to “revise their procedures and practices in lieu of them, consistent with applicable law and as they deem appropriate in the context of particular statutory and regulatory programs and the policy considerations identified in section 1” of EO 13924. In December 2019, the Department of Transportation (DOT or Department) adopted procedural requirements for DOT enforcement actions that generally address the requirements in Section 6 of the EO. See 49 CFR part 5, Subpart D.

This memorandum sets forth additional guidance regarding the implementation of DOT’s December 2019 procedural requirements governing DOT enforcement actions, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court. The purpose of this memorandum is to bring the Department’s enforcement actions into compliance with section 6 of EO 13924.

I. APPLICABILITY

The requirements set forth herein apply to all enforcement actions taken by each DOT operating administration (OA) and each component of the Office of the Secretary of Transportation (OST) with enforcement authority.

II. ENFORCEMENT ATTORNEY RESPONSIBILITIES

All attorneys, decisional personnel, administrative law judges (ALJs) and enforcement personnel of OST and the OAs involved in enforcement activities are responsible for carrying out and adhering to the policies set forth herein. All supervisors (attorneys, decisional personnel, ALJs and program officials) with responsibility over enforcement, enforcement adjudications, administrative enforcement proceedings, and other enforcement actions are accountable for the successful implementation of these policies and for reviewing and monitoring compliance with this memorandum by the employees under their supervision. The Office of Litigation and Enforcement (C-30) within the Office of the General Counsel is delegated authority to interpret this memorandum and provide guidance on compliance with the policies contained herein. C-30 shall exercise this authority in coordination with the Chief Counsels of the OAs (and the Office of Hearings when appropriate) and subject to the direction and supervision of the General Counsel.

III. DEFINITIONS

1. The definitions found in 49 CFR § 5.57 are incorporated herein.

IV. POLICY AND REQUIRED PROCEDURES

1. *Limiting the Duration of an Investigation.* Absent the showing of unusual or extenuating circumstances, or if necessitated for good cause, each OST component or OA with enforcement authority shall apply limiting principles to the duration of investigations. On-site investigations should generally be limited to 10 business days or less and enforcement staff shall make a formal decision on pursuing an administrative action within 30 days of the completion of the inspection or investigation and commence an enforcement action as soon as possible thereafter—unless otherwise required by statute.

OST component or OA attorneys are reminded that 49 CFR § 5.89 requires the prompt initiation of proceedings or prosecution of matters referred to them. That regulation also requires attorneys to not allow cases to linger unduly after the adjudicatory process has begun. Similarly, attorney staff, as counsel to the program enforcement staff, have an obligation to address any lingering inspections or investigations being conducted by the program enforcement staff.

2. *Termination of Investigation.* When the facts disclosed by an investigation indicate that further action is not warranted, the OST component or OA with enforcement authority will close the investigation without prejudice to further investigation and will notify the person being investigated of the decision. This notification requirement should only be applied where a subject of an investigation has previously been made aware of the investigation, or other pre-enforcement activity. Nothing herein precludes civil enforcement action at a later time related to the findings of the investigation.
3. *Publicly Available Decisional Quality and Efficiency Metrics.* Each OST component or OA should annually identify, collect, and make publicly available decisional quality and efficiency metrics regarding adjudication under administrative, judicial, and split enforcement models (of adjudication), to include, *e.g.*, the number of matters that have been pending with the agency over relevant time periods, the number of matters disposed by the agency annually, and data on the types of matters before and disposed of by the agency. This data shall be made available and prominently published on the OST component or OA's website within 180-days of the close of the fiscal year.
4. *Representation of Regulated Parties.* Subject to ethical standards governing post-Federal employment and applicable State bar requirements, regulated entities are free to choose their representatives—attorney or non-attorney—who will represent them before an OST component or OA. Each OST component or OA should assist *pro se* litigants and those who are unfamiliar with our procedures to the extent practical and allowable under ethical and State bar requirements.
5. *Initiation of Additional Investigations.* OST components and OAs should not initiate additional investigations of a party after commencing an enforcement action absent a showing of good cause (*e.g.*, new complaints, accidents, or incidents), except when the additional investigation is prompted by facts uncovered in the initial investigation.

6. *No Third-Party Rights or Benefits.* This memorandum is intended to improve the internal management of the Department. As such, it is for the use of DOT personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, officers, or any person.