

DEPARTMENT OF TRANSPORTATION

[4910-9X]

Office of the Secretary of Transportation

49 CFR Part 13

[Docket No. DOT-OST-2025-0171]

Procedures for Considering Environmental Impacts

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of Availability; Request for Comments.

SUMMARY: The U.S. Department of Transportation (DOT) is updating DOT Order 5610.1C “Procedures for Considering Environmental Impacts,” which establishes procedures for complying with the National Environmental Policy Act (NEPA). The Order was last updated in 1985. This update is necessary in light of the recent rescission of the Council on Environmental Quality’s (CEQ’s) NEPA procedures, which DOT’s procedures were designed to supplement. In addition, the update incorporates provisions from the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Moving Ahead for Progress in the 21st Century Act (MAP-21); the Fixing America’s Surface Transportation (FAST) Act, the Infrastructure Investment and Jobs Act (IIJA); and the Fiscal Responsibility Act of 2023 (FRA 2023) related to the environmental review process. The updated Order promotes collaboration and efficiencies in the implementation of NEPA and modernizes the processes and procedures for environmental review. This update enables DOT to conduct coordinated, consistent, predictable, and timely environmental reviews, thus reducing unnecessary burdens and delays.

DATES: Comments must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following means, identifying your submission by docket number DOT-OST-2025-0171. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. S.E., West Building, Ground Floor, Room W12-140, Washington D.C. 20590-0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building, Ground Floor, Room W12-140, Washington, D.C. 20590-0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: All comment submissions must include the agency name, docket name, and docket number (DOT-OST-2025-0171). Submit two copies of your comments if you submit them by mail. For confirmation that OST received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. DOT solicits comments from the public to better inform the Department's process. For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents and comments received, go to <https://www.regulations.gov/> at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue S.E., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, D.C. 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

The Order will also be available at www.transportation.gov/transportation-policy/nepa.

FOR FURTHER INFORMATION CONTACT: Rhonda Solomon, Interim Director, Infrastructure Permitting Improvement Center, 202.366.5397, rhonda.solomon@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. 42 U.S.C. § 4332(2)(C). The CEQ previously issued regulations at 40 CFR Parts 1500–1508 (CEQ regulations) implementing NEPA that were binding on Federal agencies. On February 25, 2025, CEQ issued an interim final rule to remove the existing implementing regulations consistent with Executive Order (E.O.) 14154, *Unleashing American Energy*. See *Removal of National Environmental Policy Act Implementing Regulations*, ([90 FR 10610](#); Feb. 25, 2025). This action was necessitated by and consistent with Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353; January 29, 2025), in which President Trump rescinded President Carter’s [E.O. 11991](#), *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which was the basis CEQ had invoked for its authority to make the CEQ Regulations to begin with. DOT’s NEPA implementing procedures, which were a supplement to those CEQ regulations, thus stand in obvious need of fundamental revision. President Trump in E.O. 14154 further directed agencies to revise their NEPA implementing procedures consistent with the E.O., including its direction to CEQ to rescind its regulations.

In addition, Congress recently amended NEPA in significant part, in the Fiscal Responsibility Act of 2023 (FRA), [Public Law 118-5](#), signed on June 3, 2023, in which Congress

added substantial detail and direction in Title I of NEPA, including in particular on procedural issues that CEQ and individual acting agencies had previously addressed in their own procedures. DOT recognized the need to update its procedures in light of these legislative changes. Since DOT's procedures were originally designed as a supplement to CEQ's NEPA regulations, DOT had been awaiting CEQ action before revising its procedures, consistent with CEQ direction. *See* 40 C.F.R. 1507.3(b) (2024); *see also* 86 FR 34154 (June 29, 2021). However, with CEQ's regulations now rescinded, and with DOT's implementing procedures still unmodified more than two years after the legislation, it is important that DOT move quickly to conform its procedures to the statute as amended.

Finally, the Supreme Court on May 29, 2025 issued its decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 No. 23-975, 605 U.S. Ct. 1497 ___, 2025 WL 1520964 (2025), in which it described the “transform[ation]” of NEPA from its roots as “a modest procedural requirement,” into a significant “substantive roadblock” that “paralyze[s]” “agency decisionmaking.” *Id.* at 1513 (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a “course correction” mandating that courts give “substantial deference” to reasonable agency conclusions underlying its NEPA process. *Id.* at 1513-14. But the Court also acknowledged, and through its course correction sought to address, the effect on “litigation-averse agencies” which, in light of judicial micromanagement, had been “tak[ing] ever more time and to prepare ever longer EISs [environmental impact statements] for future projects.” *Id.* at 1513. DOT, thus, is updating its procedures to align its actions with the Supreme Court's decision and streamline its process of ensuring reasonable NEPA decisions. This revision has

thus been called for, authorized, and directed by all three branches of government at the highest possible levels.

DOT has reviewed its current implementing procedures and has developed this Order in consultation with CEQ. This Order is effective immediately upon publication of this notice in the Federal Register; however, the Department is providing an opportunity for public review and comment of this Order, which will inform any future revisions.

B. Background

NEPA establishes a national environmental policy of the federal government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. NEPA Section 101, 42 U.S.C. § 4331(a). NEPA Section 102(2) requires Federal agencies to prepare detailed environmental statements on major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C).

There have been numerous statutory changes to NEPA since the last update to DOT's NEPA procedures in 1985. In 2005, Congress enacted 23 U.S.C. § 139, "Efficient environmental reviews for project decisionmaking," a streamlined environmental review process for highway, transit, and multimodal transportation projects through the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, sec. 6002 (2005).

In 2012, Congress declared it in the national interest to accelerate transportation project delivery and reduce costs, and ensure that transportation planning, design, and construction are

completed in an efficient and effective manner in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, sec. 1301 (2012) (set out at 23 U.S.C. § 101 note).

In 2015, Congress directed the Department to implement a variety of reforms to streamline and accelerate its environmental review process. *See* Fixing America’s Surface Transportation Act (FAST) Act, Pub. L. 114-94 (2015).

On November 15, 2021, the Bipartisan Infrastructure Law was enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58). The IIJA modified the environmental requirements at 23 U.S.C. § 139 (“Efficient environmental reviews for project decisionmaking and One Federal Decision”), which applied to the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA). The IIJA also modified 23 U.S.C. § 138 (Section 4(f) Requirements) and added a new 23 U.S.C. § 157 (National Environmental Policy Act (NEPA) Reporting Program).

The Fiscal Responsibility Act of 2023 (FRA 2023) was signed into law on June 3, 2023. FRA 2023 amended the NEPA statute, including limiting the scope of *major Federal action*, limiting the scope of an environmental impact statement (EIS) review, and limiting the alternatives in an EIS. In addition, the FRA 2023 amendments established page and time limits for environmental assessments (EAs) and EISs, outlined specific roles for lead agencies, and directed a lead agency to prescribe procedures to allow a project sponsor to prepare an EA or EIS under the supervision of the agency. Further, FRA 2023 provided guidelines for the use of analysis from a prior programmatic environmental review document in a subsequent document for a specified time period, and a streamlined process for adopting another agency’s categorical exclusions (CEs).

C. Expected Impact of the Order

This Order revises the internal procedures of the Department, promoting consistent implementation across the Department of its responsibilities under NEPA while still allowing flexibility for each of the Department's Operating Administrations (OAs) to carry out its own mission. These policies and procedures provide consistency, aid efficiency, reduce duplication, and refocus agency practice on fostering informed decisionmaking, rather than generating paperwork. The Department expects that this Order will reduce unnecessary delays. The Department also expects the changes to increase the availability and use of CEs, early collaboration, and dispute resolution and coordination techniques, and to improve timely completion of the environmental review process.

The Order outlines the Department's interpretations of existing law and provides guidelines for agency procedure and practice with respect to NEPA compliance. The Order does not in fact, nor does it intend to, govern the rights and obligations of any party outside the federal government. Further, nothing contained in the Order is intended or should be construed to limit the Department's other authorities or legal responsibilities.

D. Reliance Interests

In deciding to revise its Order, the Department acknowledges that third parties may claim to have reliance interests in the Department's existing NEPA procedures. But revised agency procedures will have no effect on sufficiently advanced ongoing NEPA reviews, where the Department, following CEQ guidance, has held that it will continue to apply existing procedures. Moreover, as the Supreme Court has just explained, NEPA "is a purely procedural statute" that "imposes no substantive environmental obligations or restrictions." *Seven County*, 145 S.Ct. at 1507. Any asserted reliance interests grounded in substantive environmental concerns, such

interests are not in accord with the best meaning of the law and are entitled to “no... weight.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1914 (2020).

Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in *prospective* procedures. To the extent such interests exist, the Department holds that they are “outweigh[ed]” by “other interests and policy concerns.” *Id.* Namely, the complex web of regulations that preexisted the 2023 amendments to NEPA and these new procedures repeatedly “led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation,” which in turn has meant that “[f]ewer projects make it to the finish line,” or even “to the starting line.” *Seven County*, 145 S.Ct. at 1513-14. This has increased the cost of projects dramatically, “both for the agency preparing the EIS and for the builder of the project,” resulting in systemic harms to America’s infrastructure and economy. *Id.* Correspondingly, the wholesale revision and simplification of this regime, effectuated by these Procedures, is necessary to assure efficient and predictable reviews, with significant upsides for the economy and for projects of all sorts. This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures.

The Department has revised its NEPA implementing procedures to conform to the 2023 statutory amendments, to respond to President Trump’s direction in EO 14154 to, “[c]onsistent with applicable law, prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process,” and to address the pathologies of the NEPA process and NEPA litigation as identified by the Supreme Court.

Where the Department has retained an aspect of its preexisting NEPA implementing procedures, it is because that aspect is compatible with these guiding principles; where the Department has revised or removed an aspect, it is because that aspect is not so compatible.

II. Summary of Revisions

The Department is revising its current procedures, DOT Order 5610.1C, “Procedures for Considering Environmental Impacts,” originally issued in 1979, 44 FR 56420 (Oct. 1, 1979), and updated in 1982 and 1985 (1985 procedures).¹ This Order updates and modernizes the 1985 procedures to reflect current departmental NEPA practice. The Department has proposed several revisions to the 1985 NEPA procedures that have not been finalized to date. Comments received on these revisions to the DOT NEPA procedures in response to the publication of proposed Order 5610.1D in the Federal Register on December 20, 2016, 81 FR 92966, and the publication of a proposed rule in the Federal Register on November 23, 2020, 85 FR 74640 were considered in developing the revisions to this Order.. The Order comprehensively updates the 1985 procedures. This Order updates the organization of the 1985 procedures to align with current Department organization, practice, and policies to implement the DOT NEPA policies and the FRA 2023 amendments to NEPA more effectively and efficiently. The Order reduces ambiguity regarding the entities responsible for taking the actions specified in the Order. To improve readability, this Order designates “OA” as the entity responsible for conducting NEPA analyses and defines “OA” to include a Secretarial Office that carries out its own NEPA responsibilities (as opposed to an office that relies on an OA’s expertise to prepare the NEPA document). This

¹ Available at https://www.transportation.gov/sites/dot.gov/files/docs/Procedures_Considering_Environmental_Impacts_5610_1C.pdf.

Order also updates the names of the relevant offices that have responsibilities, including the Office of Environment and Office of the General Counsel (and relevant subdivisions thereof). The Order applies to the Department's programs and actions, and, to the extent possible, avoids creating conflicts with existing OA programs and actions. DOT did not include the Attachments of the 1985 procedures, which provided a list of the States and localities with EIS requirements as well as guidance for contents of Statements. This Order also updates terminology for consistency with modern NEPA practice and the Department's current operations, including updating the definition of "major federal action" and distinguishing between "related actions" and "connected actions."

This Order updates the 1985 procedures to account for relevant project delivery provisions and other streamlining efforts included in SAFETEA-LU, MAP-21, the FAST Act, IIJA, and the FRA 2023 amendments to NEPA that apply departmentwide. Accordingly, the Order reflects the Department's modern NEPA practices and unique project delivery statutory authorities by providing direction on analyzing multimodal projects in an expedited and streamlined manner, enhancing early coordination, and incorporating a process that allows the OAs to utilize each other's CEs. The Order also incorporates agency practice, including environmental review tracking requirements, and provides accountability for agency compliance with NEPA as recently amended by Congress.

The Order seeks to faithfully implement the recent significant changes to NEPA prescribed by Congress, instruction provided by the President, and guidance provided by the Supreme Court. The Order modernizes the 1985 procedures to streamline and improve efficiency of the environmental review process; expedite project delivery; provide enhanced customer service to stakeholders through consistent implementation of NEPA across the Department and,

where possible, provide support for the Department's OAs to apply OA-specific NEPA implementing procedures to their specific programs; and balance the needs of all OAs. These reforms are intended to ensure that NEPA documents inform and, to the extent appropriate, involve the public, focus on the significant issues that require analysis, and foster informed decisionmaking based on an understanding of the potential action's environmental impacts.

Other revisions include removing references to the rescinded CEQ regulations, allowing reliance on previously prepared EISs, EAs, and CEs, expanding upon DOT's emergency environmental review process, setting forth procedures for applicant-prepared environmental documents, and setting forth procedures for the use of programmatic environmental documents.

Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA) NEPA implementing procedures will remain in 23 CFR Part 771 because those agencies have specific statutory provisions related to 23 U.S.C. § 139 projects that do not apply departmentwide. In addition, Federal Aviation Administration (FAA) NEPA implementing procedures will remain in separate procedures in FAA Order 1050.1. Both 23 CFR Part 771 and Order 1050.1 have been revised to be consistent with this Order to the extent possible.

This Order cancels DOT Order 5610.1C, "Procedures for Considering Environmental Impacts," issued September 18, 1979, and amended July 13, 1982 and July 30, 1985. In addition, it cancels and incorporates the following OA's individual NEPA implementing procedures: PHMSA Order 5610.3, "Procedures for Considering Environmental Impacts," dated January 16, 2025; FMCSA Order 5610.1, "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts," issued March 2004; MARAD Order 600-1, issued July 23, 1985; and St. Lawrence Seaway Order SLSDC 10-5610.1C, issued May 28,

1981. This Order will be effective immediately as an interim order but may be updated based on comments received.

Sections 1-25 of the Order apply to all of the OAs departmentwide. The Subparts in A-E contain information specific to each OA. The contents of these subparts previously existed in the OA's individual NEPA implementing procedures. Most of the changes from existing orders to the procedures listed in Subparts A-E are non-substantive changes. There have been no modifications to any OA CEs, including technical amendments.

However, the Department does plan to supplement this Order in the near future to establish new CEs, and to revise existing CEs, including the technical corrections needed. The following provides an overview of the contents of Subparts A through E.

Subpart A provides the OA-specific NEPA procedures not covered in Sections 1-25 for the Great Lakes St. Lawrence Seaway Development Corporation (GLS). GLS NEPA procedures were originally located in St Lawrence Seaway Order SLSDC 10-5610.1C, issued May 28, 1981. In addition to listing the OA specific procedures in this subpart, GLS makes minor updates.

Subpart B provides the OA-specific NEPA procedures not covered in Sections 1-25 for the Federal Motor Carrier Safety Administration (FMCSA). FMCSA NEPA procedures were originally located in FMCSA Order 5610.1, "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts," issued March 2004. In addition to listing the OA specific procedures in this subpart, FMCSA makes minor updates.

Subpart C provides the OA-specific NEPA procedures not covered in Sections 1-25 for the Maritime Administration (MARAD). MARAD NEPA procedures were originally located in MARAD Order 600-1, issued July 23, 1985. In addition to listing the OA specific procedures in this subpart, MARAD makes minor updates. MARAD also makes updates to the Determination

of the Level of NEPA Review, specifically the identification of Deepwater Port license applications and large port infrastructure projects as major actions. MARAD adds a section specific to the OA procedures for long-lead time purchases and pre-NEPA field investigations in NEPA and Agency Decisionmaking to clarify the procedures for complex projects and the needs to secure construction materials and equipment prior to the completion of NEPA. In addition, MARAD adds an OA specific update to Procedures for Applicant-Prepared Environmental Documents to add Roles and Responsibilities, a section for applicant prepared NEPA documents, and clarify their levels of NEPA review.

Subpart D provides OA-specific NEPA procedures not covered in Sections 1-25 for the National Highway Traffic Safety Administration (NHTSA). NHTSA NEPA procedures were originally located in regulations at 49 CFR Part 520. These regulations will be rescinded through a separate rulemaking. In addition to listing the OA specific procedures in this subpart, NHTSA makes minor updates.

Subpart E provides OA-specific NEPA procedures not covered in Sections 1-25 for the Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA's NEPA procedures were originally located in PHMSA Order 5610.3, "Procedures for Considering Environmental Impacts," dated January 16, 2025.

Appendix A lists the existing Departmental CEs. No modifications have been made from the 1985 procedures.

Issued in Washington, D.C. on [DATE]:

Loren Smith
Deputy Assistant Secretary for Transportation Policy

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