ORDER

U.S. DEPARTMENT OF
TRANSPORTATION
Office of the Secretary
of Transportation

DOT Order
5610.1D

SUBJECT: DOT'S PROCEDURES
FOR CONSIDERING
ENVIRONMENTAL IMPACTS

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1. PURPOSE

The purpose of these procedures is to describe the process by which DOT determines what actions are subject to the National Environmental Policy Act's (NEPA's) procedural requirements and the applicable level of NEPA review. These procedures ensure that relevant environmental information is identified and considered early in the process to ensure informed decision making. The procedures will enable DOT to conduct coordinated, consistent, predictable, and timely environmental reviews, thus reducing unnecessary burdens and delays. Furthermore, the procedures implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and applicant preparation of environmental documents.

This Order sets forth DOT's procedures and practices for implementing NEPA. It further explains DOT's interpretation of certain key terms in NEPA. Sections 1 through 25 of this Order establishes procedures and processes that all Operating Administrations (OAs) should apply when implementing NEPA. In addition, OAs have specific NEPA implementing procedures that are either outlined in the subparts below or are contained in individual NEPA procedures. The following OAs have OA-specific guidance contained in the subparts of this Order below: Great Lakes St. Lawrence Seaway Development Corporation (GLS), Pipelines and Hazardous Materials Safety Administration (PHMSA), Maritime Administration (MARAD), Federal Motor Carrier Safety Administration (FMCSA), and National Highway Traffic Safety Administration (NHTSA). Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration NEPA implementing procedures are contained in 23 CFR Part 771. Federal Aviation Administration NEPA implementing procedures are outlined in FAA Order 1050.1. To the extent that NEPA implementing procedures exist outside the Order, those OAs should update their implementing procedures to be consistent with this Order and the NEPA statute.

This Order does not in fact, nor does it intend to govern the rights and obligations of any party outside the Federal government. Nothing contained in these procedures is intended or should be construed to limit DOT's other authorities or legal responsibilities.

2. CANCELLATION AND EFFECTIVE DATE

This Order cancels:

a. DOT 5610.1C, "Procedures for Considering Environmental Impacts," issued September 18, 1979, and the changes issued July 13, 1982, and July 30, 1985;

b. PHMSA Order 5610.3, "Procedures for Considering Environmental Impacts," dated January 16, 2025;

c. FMCSA Order 5610.1, "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts," issued March 2004;

d. St Lawrence Seaway Order SLS 10-5610.1B, issued May 28, 1981; and

e. MARAD Order 600-1, issued July 23, 1985.

This Order will be effective immediately as an interim Order, but DOT is soliciting public comment on this Order and may update it based on comments received. This Order does not apply to or alter any decisions made and final environmental documents issued prior to the effective date of this Order. This Order should be applied to actions initiated on or after the effective date of this Order.

3. APPLICABILITY

a. Authority. NEPA only imposes certain procedural requirements on the exercise of an OA's existing legal authority in relevant circumstances. To determine if NEPA applies, an OA must determine if the proposed action is a major federal action in Section 3b below.

b. Major Federal Actions. NEPA only applies to major Federal actions. In determining whether NEPA applies to a proposed agency action, DOT will consider only the action or project at hand. The terms "major" and "federal action" each have independent force. NEPA applies only when both of these criteria are met. While such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved for the judgment of each agency in each instance, DOT provides the following interpretive guidance:

(1) DOT major federal actions may include grants, construction, regulatory actions, certifications, licenses, permits, approval of policies and plans, adoption or implementation of programs, waivers, legislation proposed by DOT, and any renewals or approvals of the above.

(2) An action is not a major federal action if:

(a) The activities or decisions do not result in final agency action under the Administrative Procedure Act (see 5 U.S.C. § 704) or other relevant statutes that also include a finality requirement;

(b) The proposed activity or decision is exempt from NEPA by law. For example, decisions concerning plans, Transportation Improvement Programs (TIPs), and Statewide Transportation Improvement Programs (STIPs) are not actions subject to NEPA pursuant to the express exemptions in 23 U.S.C. §§ 134 and 135;

(c) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another law;

(d) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that an OA retains no residual discretion to alter its action based on the consideration of environmental factors. In these circumstances, the OA's function is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively);

(e) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act; or

(f) The action is a "non-Federal action." NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of a project. NEPA § 111(10)(B)(i), 42 U.S.C. § 4336e(10)(B)(i)(42 U.S.C. § 4336(a)(4)). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. Minimal Federal funding or involvement, which may in a causal sense be a but-for cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute.

(3) The issuance or update of DOT or OA NEPA procedures is not subject to NEPA review.

(4) OAs can expressly identify actions that are subject to NEPA as well as actions that are not subject to NEPA under their individual agency NEPA procedures contained either in this Order as a subpart, FAA Order 1050.1, or within 23 CFR Part 771.

OAs are encouraged to define within their individual NEPA procedures their specific actions that are presumptively exempt from NEPA because the activities presumptively do not meet the definition of major federal action above. OAs should also consider whether a threshold could be established for "minimal" federal funding or involvement, such as a monetary or percentage threshold, that would exempt those activities from NEPA.

4. POLICY

a. Consistent with NEPA, the Department's policy is to integrate Federal environmental objectives into the programs of DOT to ensure the safest, most efficient and modern transportation system in the world, while avoiding or minimizing adverse environmental impacts where practicable, consistent with other considerations of National policy. DOT aims to preserve the natural beauty of the Nation's vital resources and preserve, restore, and enhance environmental quality of these resources in an effective and efficient manner.

b. The Department will strive to synchronize NEPA and other Federal environmental requirements and authorizations into a single, concurrent environmental review process that satisfies the requirements of all agencies with a role in a proposed action and expedites project delivery.

c. The Department will apply sound science, reliable data, and a systematic interdisciplinary approach to the environmental review process, including the use of geographic information systems and interactive maps, as appropriate.

d. The Department will maximize the use of proven strategies to efficiently complete the environmental review process, including use of electronic collaboration tools, applicable government-wide data standards[1], programmatic agreements and approaches, and planning processes and products with utility for satisfying NEPA requirements pursuant to applicable laws and regulations.

e. The Department encourages meaningful, proactive, open, and transparent public participation and collaboration with affected and interested stakeholders, including Federal agencies, States, Tribes, localities, and the public in its environmental decision-making process.

5. ROLES AND RESPONSIBLITIES

a. Responsibility. The Assistant Secretary for Transportation Policy (Assistant Secretary) establishes policy and oversees the implementation of the NEPA process for the Department. The Assistant Secretary may determine which OA will serve as the lead agency to prepare the environmental document for specific major federal actions taken by the Department for a proposed activity or decision. 42 U.S.C. § 4336a.

b. Office of Environment and Permitting. The Office of Environment and Permitting (Office of Environment) within the Office of Policy, Office of the Secretary oversees day-to-day NEPA implementation and compliance with related environmental requirements. OAs must consult with or notify the Office of Environment as set forth in this Order. The Office of Environment in turn must coordinate with the Office of the General Counsel, Office of Operations (OGC

[1] Including, but not limited to, permitting data standards such as that available at https://permitting.innovation.gov/resources/data-standard/

Operations) to ensure compliance with legal requirements. The Office of Environment promotes best practices to streamline the environmental review process. Additional information on the environmental review process may be obtained from the Office of Environment. The Office of Environment will consult on any revisions to this Order, in accordance with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

c. Office of the General Counsel. OGC Operations provides counsel to the Department in interpretation and compliance with NEPA, this Order, and other applicable laws; determines the legal sufficiency of the Department's environmental documents, where appropriate; and liaises with OAs, the Office of Litigation and Enforcement, and the Department of Justice on NEPA-related litigation.

d. Operating Administrations at DOT. Each OA must implement NEPA in accordance with the criteria set forth by this Order. An OA may have procedures and processes for their NEPA practitioners as well as any project applicant or sponsor, where appropriate. The OA procedures can be found as either a subpart to this Order, within Order 1050.1 for Federal Aviation Administration, or included in 23 CFR Part 771 for Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration.

When an OA has a proposal for revised OA procedures, they must consult with the Office of Environment, OGC Operations, and Council on Environmental Quality (CEQ). NEPA § 102(2)(B), 42 U.S.C. § 4332. The OAs should submit the proposals to the Office of Environment and OGC Operations for review and concurrence prior to CEQ consultation and any public notification. These offices will assist with CEQ consultation. OAs may provide notice of proposed revisions to OA procedures in the Federal Register for public comment. OAs should update their procedures, if warranted, in response to any public comments and provide a response to comments in a subsequent Federal Register notice. The OA must consult with and receive written concurrence by the Office of Environment, OGC Operations, and CEQ prior to publishing the final OA procedures in the Federal Register.

6. DETERMINING THE APPROPRIATE LEVEL OF NEPA REVIEW

a. Process Overview. At all steps in the following process, OAs will consider the proposed action and *its* impacts. The environmental review process should follow the following steps:

(1) Determine if NEPA applies, see Section 3;

(2) Define scope of the proposed action;

(3) Determine appropriate level of NEPA Review; and

(4) Analyze and document the environmental impacts of the proposed action in accordance with the NEPA statute, the Order, and any applicable OA-specific processes in their respective NEPA procedures, where appropriate.

b. Scope of the Proposed Action. If an OA has determined that the proposed activity or decision (proposed action) is subject to NEPA, as outlined in Section 3.b, the OA will then make the determination as to the scope of the action and the appropriate level of NEPA review for the proposed action. The OA should consider the scope of the proposed action and determine if there are connected actions that should be considered in the same NEPA review. Connected actions are actions that are within the authority of DOT that are closely related to the proposed action because the proposed action:

(1) automatically triggers other Federal actions;

(2) cannot or will not proceed unless other Federal actions are taken previously or simultaneously; or

(3) are interdependent parts of a larger Federal action and depend on the larger action for their justification.

c. Determine Potential for Impacts. When considering whether the reasonably foreseeable impacts of the proposed action are significant, the OA will analyze the potentially affected environment and degree of the impacts of the proposed action. The OA must consider the proposed action and its impacts.

(1) The potentially affected environment should encompass the geographic scale, the physical resources and the socioeconomic characteristics appropriate for the specific action.

(2) Level of significance is determined by examining the difference between the impacts of the proposed action compared to the no action alternative. Whether an impact rises to the level of "significant" is a matter of the OA's expert judgment. The OA should consider the degree of impacts for each of the following, as appropriate, with respect to the difference between the no action alternative and the proposed action:

(a) Both short- and long-term environmental impacts.

(b) Both beneficial and adverse environmental impacts

(c) Impacts on public health and safety

(d) Economic Impacts

(e) Impacts on the quality of life of the American people

(3) OAs must use available reliable data sources and will not undertake new scientific or technical research to inform their analysis unless it is essential to a reasoned choice among alternatives and the cost and time of obtaining it are not unreasonable when analyzing the potentially affected environment and the degree of the impacts of the action.

(4) When an OA is evaluating an action's reasonably foreseeable impacts on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, the OA will make clear in the relevant environmental document that such information is lacking.

d. Scoping. The scoping process is a tool for early coordination to determine the scope of issues for analysis in an environmental document, including identifying any substantive issues that meaningfully inform the consideration of environmental impacts and the resulting decision. Scoping can help eliminate from further study non-substantive issues and can ensure that all interested or affected persons or agencies are invited and have an opportunity to participate early in the process. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. As part of scoping, OAs should use early coordination tools such as planning, interactive maps, cloud-based repositories for documents, interagency working groups or agreements, programmatic approaches, coordination plans, and project schedules.

e. Level of Review. Once the scope of the action and an initial evaluation of the potential impacts of the action have been determined, the OA can identify the appropriate level of review for the proposed action in the following sequence:

(1) If a categorical exclusion (CE) has been established or adopted (pursuant to NEPA § 109, 42 U.S.C. § 4336c) that covers the proposed action, an OA will determine whether they can apply the CE to the proposed action. See Section 9 below.

(2) If the proposed action is not covered by a CE, is not likely to have reasonably foreseeable significant impacts, or the significance of the impacts is unknown, an OA will prepare an environmental assessment (EA). See Section 10 below.

(3) If the proposed action is likely to have reasonably foreseeable significant impacts, an OA will prepare an environmental impact statement (EIS). See Section 14 below.

(4) Some OAs may have identified criteria and/or specific examples of proposed projects that meet the appropriate class of action. If so, these are contained within their NEPA implementing procedures either located as a subpart of this Order, FAA's Order 1050.1 or 23 CFR Part 771.

(5) If there is an unresolved disagreement between the OA and the project applicant regarding the appropriate class of action, the OA must notify the Office of Environment. The Office of Environment will assist in making the determination, when necessary.

7. NEPA AND AGENCY DECISIONMAKING

a. Timing. OAs should begin the environmental review process as early as reasonably practicable in the planning or development of an action.

(1) OAs should integrate the consideration of environmental resource impacts with other planning at the earliest possible time to avoid delays later in the process, head off potential conflicts, and ensure that the agency considers environmental impacts in their planning and decisions. For actions likely to require an EA or EIS, OAs must engage in early identification and evaluation of the environmental impacts of the proposed action, the purpose and need, reasonable alternatives, and measures to mitigate adverse environmental impacts, as appropriate.

(2) Unless otherwise provided by law, prior to making a final decision, OAs must not take any action that would have an adverse environmental impact or that may limit the choice of reasonable alternatives. If an OA becomes aware that an applicant is about to take an action within the OA's jurisdiction that would have an adverse environmental impact or that may limit the choice of reasonable alternatives, the OA must promptly notify the applicant and the Assistant Secretary for Transportation Policy and take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

b. Coordination with Applicants. OAs must provide information so that applicants are aware of the environmental analysis and review requirements of this Order and any individual subparts or other OA NEPA implementing procedures and processes.

c. Actions Developed by Non-Federal Entities. For proposed actions that are initially developed by applicants or other non-Federal entities, OAs must advise applicants to:

(1) Coordinate with the OA at the earliest reasonable time in the planning process to inform what information the OA might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with NEPA's statutory deadlines and any internal OA NEPA scheduling requirements; and

(2) Begin the NEPA process by determining whether NEPA applies in coordination with the OA, and if it does, determine the appropriate level of NEPA review in coordination with the OA, as soon as practicable. Specific procedures exist for applicant-prepared environmental documents. See Section 25 below.

If an OA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within the OA's jurisdiction that would meet either of the criteria in section 7(a)(2), the OA will promptly notify the applicant that the OA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, the OA may authorize such activities, including, but not limited to purchase of long lead-time equipment and purchase options made by applicants.

d. Applicant Preparation. An applicant or contractor hired by the applicant may prepare documentation for a categorical exclusion, environmental assessment or environmental impact statement, where applicable. Please see section 25 below.

e. Use of Contractors hired by the OA. NEPA decision making is an inherently governmental function. OAs may use contractors to assist in the preparation of environmental documents, but must require contractors to comply with this Order, OA procedures, and relevant guidance. OAs must furnish guidance, participate in the preparation, and independently evaluate EAs and EISs, taking responsibility for their scope and contents when they use a contractor to prepare an environmental document.

When an OA acts as the lead agency and uses a contractor, it may select the contractor for preparation of an EIS or EA. The OA may select the contractor in cooperation with cooperating agencies. When an OA is selecting the contractor, the OA must require the contractor to execute a disclosure statement prior to entering into a contract for the preparation of an EA or EIS. The disclosure statement should specify any financial or other interest in the outcome of the proposed action, or attest that the contractor has no financial or other interests in the outcome of the proposed action.

f. Tracking. OAs must track and report environmental review milestones in compliance with DOT established tracking procedures and other applicable requirements, consistent with 23 U.S.C. § 139(o) and all reporting standards issued by the Office of Environment. As applicable, OAs must post information for infrastructure projects requiring an EA or EIS for which they serve as the lead agency, including the NEPA review and any permitting or authorization actions and associated milestones to the publicly accessible Federal Infrastructure Permitting Dashboard. OAs must post project information and schedules in a timely manner and update it as necessary within the timeframes established by the reporting standards. All OAs must publish project schedules for EISs, whether using their agency website, posting to the Federal Register, or using the Federal Permitting Dashboard. Any change to the initial schedule for EISs should be announced in the same manner as the original schedule.

g. Conflict Resolution.

(1) OAs should seek to expeditiously resolve all disputes as early as possible in the NEPA process, consistent with applicable requirements. OAs should communicate and collaborate to recognize and resolve disputes as they arise to maintain constructive relationships among all parties, including other OAs, Federal and State agencies, Tribes, localities, and members

of the public. OAs must report on their use of formal environmental conflict resolution in annual reports to the Office of Environment and OGC Operations on Environmental Collaboration and Conflict Resolution (ECCR).

(2) Projects under 23 U.S.C. § 139 have specific requirements and time limits for conflict resolution. Please see the FHWA, FTA, and FRA NEPA implementing procedures at 23 CFR Part 771, for these requirements and time limits.

(3) There may be times when a conflict arises that requires assistance by CEQ.

(a) DOT Referrals to CEQ on Other Agency Proposals. Whenever possible, OAs should make efforts to resolve issues informally to avoid referrals to CEQ. If the issues are not resolved prior to filing the Final EIS with EPA, the OA Administrator must obtain concurrence from the Office of Environment and OGC Operations to make a referral to CEQ.

(b) Referrals on DOT Actions. If another Federal agency advises an OA that it intends to make a referral to CEQ, the OA must coordinate with the Office of Environment. The OA should make a concerted, timely effort to resolve issues raised by another Federal agency with respect to an EIS for a proposed DOT action to avoid a referral to CEQ. The OA should document these efforts in the administrative record.

8. LEAD AND COOPERATING AGENCIES

In many instances, a proposed activity or decision is undertaken in a context which entails activities or decisions undertaken by other federal agencies (e.g., where multiple federal authorizations are required with respect to an applicant's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency, but they are all related in a manner relevant to NEPA, e.g., by their relationship with one overarching project. These related actions should be reviewed under one environmental document. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, that agency is ultimately responsible for completing the NEPA process. When a joint lead agency relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), the joint lead agencies are collectively responsible for completing the NEPA process.

a. Lead Agency. An OA with primary responsibility for a proposed action, including a multimodal transportation project, generally will serve as the lead agency for preparing and processing EAs and EISs, where appropriate, and inviting other agencies to serve as cooperating agencies or otherwise participate in the NEPA process. When an OA serves as lead agency, it is responsible for the scope, objectivity, accuracy, and content of the environmental documents and ensuring completion of the environmental review process. When more than one OA is involved in an action, the OAs should determine together their respective roles (i.e., lead agency, joint lead agency, cooperating agency) early in the process. However, if the OAs cannot agree on this determination, they must consult the Office of Environment, which will resolve the dispute. The lead agency must:

(1) Request participation of cooperating and participating agencies in the NEPA process at the earliest practicable time;

(2) Meet with a cooperating agency at their request;

(3) To the extent practicable, prepare a single environmental document and joint FONSI or record of decision (ROD) for the lead and cooperating agencies;

(4) Use environmental analysis and proposals from cooperating agencies with jurisdiction by law or special expertise to the maximum extent practicable;

(5) Determine the scope and the significant issues to be analyzed in depth in an EIS;

(6) Determine the purpose and need and range of alternatives in consultation with the cooperating agencies;

(7) Create and update as necessary the project schedule in consultation with the joint lead, cooperating agencies, and the applicant;

(8) Publish a notice of intent (NOI) after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS;

(9) Notify the Office of Environment if an environmental review milestone will miss a target completion date and elevate issues to the Under Secretary for timely resolution, where appropriate; and

(10) Prepare an annual report to Congress in June for any missed deadline for an EA or final EIS where the schedule has not been extended pursuant to 42 U.S.C. § 4336a(h)), Section 107(h) of NEPA.

b. Joint Lead Agencies. An OA serving as a joint lead agency assumes the same roles, responsibilities, and authority as a single lead agency. An OA should invite State, Tribal, or local agencies to serve as joint lead agencies, when appropriate.

c. Coordination with Other Agencies. OAs must coordinate with other OAs, Federal, State, Tribal, and local resource and regulatory agencies, stakeholders, and the public, as appropriate, to satisfy their responsibilities under NEPA, Section 4(f) of the DOT Act (49 U.S.C. §303 and 23 U.S.C. §138), and other relevant statutes, regulations, and Executive Orders. OAs should communicate with agencies early and often to identify and resolve issues. OAs may prioritize actions and improve early coordination with regulatory and resource agencies by executing interagency agreements such as Memoranda of Understanding (MOUs), Memoranda of Agreement (MOAs), or Programmatic Agreements (PAs), and using other tools at their disposal.

d. Cooperating Agencies. When serving as a lead or joint lead agency, OAs should identify and request Federal, State, Tribal, and local agencies that have jurisdiction by law or special expertise to be cooperating agencies. When an OA serves as a cooperating agency, it must fulfill its responsibilities in coordination with the lead agency.

(1) If another agency declines an OA's invitation to serve as a cooperating agency, the OA must still provide the declining agency with a copy of the environmental document and should attempt to coordinate with it to avoid potential issues that could delay the action. If that agency raises concerns or indicates that it may delay or withhold action on some aspect of the proposed action, the OA should initiate a conflict resolution process.

(2) When an agency requests an OA to serve as a cooperating agency, the OA must accept and participate if it has jurisdiction by law and should make every practicable effort to accept and participate if it has special expertise.

(3) If another agency fails to invite an OA to serve as a cooperating agency when it has jurisdiction by law or special expertise, the OA should ask the lead agency to extend an invitation to participate as a cooperating agency.

e. Participating Agencies. OAs should invite other agencies (including other Federal, State, Tribal, or local agencies) that may have an interest in the proposed action and are not identified elsewhere in this section to participate in the environmental review process. OAs should invite such other agencies as early as possible (ideally before or during scoping). However, OAs may invite these other agencies at any time during the environmental review process.

9. CATEGORICAL EXCLUSIONS (CEs)

CEs are categories of actions that an agency has determined normally do not significantly affect the quality of the human environment. This section describes the process an OA must use for applying a CE, revising existing or establishing new CEs, or relying on a CE determination from another agency.

a. List of CEs. DOT's CEs are listed in Appendix A. Each OA may list established CEs in either their subpart to this Order or in their separate NEPA implementing procedures, if applicable, in either FAA Order 1050.1 or 23 CFR Part 771. The list of CEs in Appendix A may be applied by any OA without consultation with the Office of the Environment as they are applicable department wide.

b. Application of a CE. If an OA determines that a CE covers a proposed action, the OA will evaluate the action for extraordinary circumstances that indicate when a normally excluded agency action is likely to have a reasonably foreseeable significant adverse impact. When determining whether there are extraordinary circumstances, the extraordinary circumstance list for the given CE must be used. For CEs in Appendix A of this Order, OAs should refer to the extraordinary circumstances listed in Section 9.c. below. For CEs listed in an OA's NEPA implementing procedures, OA should use the corresponding extraordinary circumstances in that OA's procedures. If the OA determines that it cannot apply a CE to a proposed action, the OA will prepare an environmental assessment or environmental impact statement, as appropriate.

c. Extraordinary Circumstances. With respect to the CEs listed in Appendix A of this part, extraordinary circumstances include 8.c(1) – 8.c(5). If an extraordinary circumstance is present, an OA may nevertheless apply a CE listed in Appendix A of this part to an action if the OA determines that the proposed action is not likely to result in reasonably foreseeable significant impacts. An OA may use mitigation measures to modify the proposed action to avoid significant impacts. Extraordinary circumstances include, but are not limited to:

(1) Inconsistency with any applicable Federal, State, Tribal, or local law, requirement, or administrative determination relating to protection of the environment;

(2) Substantial increases of noise in a noise-sensitive area;

(3) Substantial adverse impacts on the following aspects of the environment:

(a) Species listed or proposed to be listed on the List of Endangered or Threatened Species, or designated Critical Habitat for these species as promulgated under 16 U.S.C. § 1533(c)(1);

(b) Properties protected under Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108);

(c) Properties protected under Section 4(f) of the U.S. Department of Transportation Act of 1966 (23 U.S.C. § 138 and 49 U.S.C. § 303);

(d) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, park land, a wetland, a wild and scenic river, a designated wilderness or wilderness study area, a sole source aquifer (potential source of drinking water), or an ecologically critical area; or

(e) Applicable Federal, State, or local air quality standards, including those under the Clean Air Act, as amended;

(4) Substantial short- or long-term increases in traffic congestion or traffic volumes on any mode of transportation; or

(5) Substantial impacts on the environment resulting from the reasonably foreseeable release of hazardous or toxic substances.

d. Applying legislative categorical exclusions. If an OA determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed an OA to establish, covers a proposed agency action, the OA will conclude review consistent with applicable law.

e. Multimodal Projects. An OA may use the process created under 49 U.S.C. § 304 for the application of another OA's CEs for multimodal projects, as defined by 23 U.S.C. § 139(a), as applicable.

f. Use of Other OA's CEs. An OA may apply a CE established in another OA's procedures. If an OA seeks to apply a CE established in another OA's procedures, it must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.

g. Documentation of CEs. When applying a CE listed in Appendix A, an OA should document the use of the CE, identifying the proposed action, why it falls within the category, any extraordinary circumstances that were identified, and what measures, if any, were applied to alter the proposed action to avoid any potential for significant impacts. OAs may use an OA CE checklist to document the CE as long as the extraordinary circumstances on the OA CE checklist cover the same types of extraordinary circumstances listed in 8.c.

(1) Reliance on a CE Determination by Another Federal Agency. An OA may also rely on another Federal agency's CE determination if the agency action covered by that determination and the OA's proposed action are substantially the same or if an OA's proposed action is a subset of the agency action covered by that determination. The CE documentation should describe how the OA determined that the actions are substantially the same.

h. Establishing and Revising CEs. OAs are encouraged to review their agencies' EAs and findings of no significant impact (FONSIs) to determine if there are areas where a new CE can be established. To establish or revise a CE, an agency must determine that a category of actions normally does not significantly affect the quality of the human environment absent extraordinary circumstances. In making this determination, an OA must:

(1) Develop a written record containing information to substantiate its determination;

(2) Consult with CEQ on its proposed CE, including the written record, for a period not to exceed 30 days prior to providing public notice; and

(3) Provide public notice in the Federal Register of DOT's proposed CE or revision of a CE, and the location of availability of the written record.

i. Establishing CEs Through a Programmatic Document.

(1) OAs may establish CEs through a decision document supported by a programmatic EA or programmatic EIS, or other equivalent planning or programmatic decision for which an environmental document has been prepared, so long as the OA:

(a) Provides CEQ an opportunity to review and comment for a period not to exceed 30 days prior to public comment;

(b) Provides notification;

(c) Substantiates its determination that the category of actions normally does not have significant impacts individually or in the aggregate;

(d) Identifies extraordinary circumstances;

(e) Establishes a process for determining that a CE applies to a specific action; and

(f) Publishes a list of all programmatic CEs on their website.

(2) Programmatic CEs can be established that:

(a) Cover specific geographic areas or areas that share common characteristics, e.g., habitat type;

(b) Have a limited duration;

(c) Provide criteria that would cause the CE to expire because the agency's determination that the category of action does not have significant impacts, individually or in the aggregate, is no longer applicable, including, as appropriate, because:

1. The number of individual actions covered by the CE exceeds a specific threshold;

2. Individual actions covered by the CE are too close to one another in proximity or time; or

3. Environmental conditions or information upon which the agency's determination was based have changed.

j. Establishing CEs by Adopting CEs from Other Federal Agencies. OAs are encouraged to identify and adopt CEs of other federal agencies, where appropriate. Consistent with NEPA § 109, 42 U.S.C. § 4336c, an OA may adopt a CE listed in another agency's NEPA procedures. When adopting a CE, an OA must:

(1) Identify the CE listed in another agency's NEPA procedures that covers its category of proposed actions;

(2) Consult with the agency that established the CE to ensure that the proposed adoption of the CE is appropriate;

(3) Provide public notification of the CE that DOT is adopting, including a brief description of the proposed action or category of proposed actions to which DOT intends to apply the adopted

CE, a brief summary of the consultation with the originating agency, and the list of extraordinary circumstances that will apply; and

(4) Document that the OA has adopted the CE in accordance with these implementing procedures.

(5) Update the OA's or Department's NEPA procedures to include the adopted CE when those procedures are next revised.

k. Coordination with Office of Environment and OGC Operations. OAs who establish a CE through 8.g. or 8.h. or adopt a CE through 8.i. must coordinate with the Office of Environment and OGC Operations prior to consulting with CEQ. OAs should consider whether to publish the CE in the Federal Register and whether to solicit comments.

10. ENVIRONMENTAL ASSESSMENTS

a. In General. If an action is subject to NEPA, and the action cannot be categorically excluded under Section 9. above, the OA may prepare an EA for a proposed action that does not have reasonably foreseeable significant impacts or if the significance of the impacts is unknown. OAs should be mindful of Congress' direction that environmental assessments are to be "concise." NEPA § 106(b)(2); 42 U.S.C. § 4336(b)(2).

b. Elements. For providing evidence and analysis to determine whether to prepare a finding of no significant impact (FONSI) or to prepare an EIS, EAs will briefly discuss the following:

(1) The purpose and need for the OA's proposed action based on their statutory authority. When the proposed action concerns an OA's duty to act on a request from a project applicant, the purpose and need for the proposed agency action should be informed by the goals of the project applicant.

(2) Alternatives in the EA, to the extent required by NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H), should address alternatives to a degree commensurate with the nature of the proposed action and OA experience with the environmental issues involved. The EA should indicate a preferred alternative if the OA has identified one. and

(3) The reasonably foreseeable impacts of the proposed agency action and the alternatives considered, including the no action alternative.

c. Scope of analysis.

(1) In preparing the EA, the OA will focus its analysis on whether the environmental impacts of the action are significant.

(2) Similarly, the OA will document in the EA where and how it drew a reasonable and manageable line relating to its consideration of any environmental impacts from the action that extend outside the geographical territory of the project or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, the OA may, but is not required to by NEPA, analyze environmental impacts from other projects separate in time, or separate in place, or that fall outside of the OA's regulatory authority, or that would have to be initiated by a third party. If the OA determines that such analysis would assist it in reasoned decisionmaking, it will document this determination in the EA and explain where it drew a reasonable and manageable line relating to the consideration of such impacts from such separate projects.

d. Compliance with Other Applicable Environmental Laws, Regulations, and Orders. The EA should reflect compliance or identify concrete steps being taken for compliance with the requirements of other applicable environmental laws, regulations, and orders. The EA should also reflect coordination with relevant agencies authorized to implement such laws, regulations, or orders.

e. Independent Evaluation. If an applicant prepares an EA, the OA must independently evaluate the environmental issues and take responsibility for the accuracy, scope, and contents of the EA.

f. Public Comment. An OA should involve the public, State, Tribal and local governments, relevant agencies, and any applicants, to the extent practicable, in the development of the EA. At its discretion, an OA may release a draft EA for public comment. When an OA releases a draft EA for public comment, it must consider substantive comments received on the draft EA. For rulemaking processes, the draft EA should normally accompany the proposed rule.

g. Public Notification. OAs must notify the public of the availability of an EA and any accompanying FONSI. An OA should make all EAs available to the public on a project or agency website. OA procedures or subparts to this Order should identify where EAs will be made available.

h. Page Limits.

(1) Pursuant to 42 U.S.C. § 4336a, EAs are strictly prohibited from exceeding 75 pages, not including citations and appendices.

(2) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(3) An EA should be as concise as possible while proportional to the magnitude of the proposed action and anticipated impacts. EAs must be formatted for an 8.5”x11” page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5”x11”, each such item shall count as one page. IIJA major projects have different page limits as described in 23 CFR Part 771.

i. Deadlines. , NEPA is governed by a rule of reason. In establishing deadlines for the EA process in the 2023 revision of NEPA, § 107(g),),),) of NEPA, 42 U.S.C. § 4336a(g),Congress indicated that the agency, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to complete the analysis. Thus:

(1) Pursuant to 42 U.S.C. § 4336g, EAs must be completed within one year from the start of the EA to the FONSI, unless it is determined to be a major project as defined under 23 U.S.C. § 139(a)(7). For most projects, the agency’s determination to prepare an EA will be the official start of the environmental review process.

(2) To the maximum extent practicable, schedules for the environmental review process for major projects, as defined under 23 U.S.C. § 139(a)(7), should be consistent with an agency average of not more than 2 years.

(3) The EA and FONSI will publish no later than one year from the start of the EA, in as substantially complete form as is possible, unless the deadline is extended, pursuant to section h.(4) below.

(4) The lead agency may extend the deadline in consultation with any applicant pursuant to NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), to allow for only so much additional time as is needed to complete the EA. Cause of establishing a new deadline is only established if the EA is so incomplete at the time at which the OA determines it is not able to meet the statutory deadline that issuance would, in the OA's view, result in inadequate analysis. The announcement of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(5) IJJA major projects have different page limits and deadlines as described in 23 CFR Part 771.

j. Certifications. Each EA should include the following two certifications signed by a responsible agency official:

(1) *Certification with respect to page limits.* The breadth and depth of analysis in an EA will be tailored to ensure that the environmental analysis does not exceed the page limit. In this regard, as part of the finalization of the EA, a responsible official will certify (and the certification will be incorporated into the EA) that the OA has considered the factors mandated by NEPA. The EA represents DOT's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits. This prioritization reflects the OA's expert judgment. Any considerations addressed briefly or left unaddressed were, in the OA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental impacts and the resulting decision on how to proceed.

(2) *Certification with respect to deadlines.* When the EA is published, a responsible official will certify (and the certification will be incorporated into the EA) that the resulting EA represents that the OA has made a good faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the OA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the OA's judgment, the analysis contained therein is adequate to inform and reasonably explain the OA's final decision regarding the proposed federal action.

11. FINDINGS OF NO SIGNIFICANT IMPACT

a. In General. An OA will prepare a FONSI if the OA determines, based on the EA, that there are no significant impacts, and therefore the proposed action does not require the preparation of an EIS. The FONSI must briefly explain why a proposed action analyzed in an EA will not have a significant impact on the environment. The FONSI must include the EA or summarize it and incorporate the EA by reference. The FONSI should identify any other related environmental documents and state that an EIS will not be prepared, concluding the NEPA process for that action.

b. Mitigated FONSIs. OAs may rely on mitigation measures to reduce potentially significant adverse impacts below the level of significance that would trigger the preparation of an EIS. To use this approach the OA must:

(1) Describe in the EA or FONSI the mitigation measures necessary to reduce the potential impacts below the threshold of significance and how any mitigation requirements or commitments will be enforced;

(2) Ensure that sufficient legal authority and an adequate commitment of resources exist to execute the mitigation measures, including funding, as necessary;

(3) Ensure that the articles of agreement, award or grant agreement, permit, license, authorization, or other document reflecting the OA's final decision on the action will require implementation of the mitigation measures;

(4) Ensure that monitoring strategies described in the FONSI will be adopted when the OA deems them appropriate for the particular action and set of mitigation measures. This may include making an applicant responsible for implementing the monitoring strategies. Environmental Management Systems may be used for tracking and monitoring mitigation commitments; and

(5) Provide for corrective action, where appropriate, in the event of a failure to implement the mitigation measures or a failure in the effectiveness of the mitigation measures.

12. NOTICES OF INTENT

A Notice of Intent (NOI) is normally the agencies' start of an EIS after the agency has determined that the proposed action has reasonably foreseeable significant impacts.

a. Pre-NOI activities. OAs should engage in activities, such as planning, interagency working groups or agreements, programmatic approaches, coordination plans, and project schedules prior to issuing the NOI to make the environmental review process more efficient.

b. Notice of Intent. As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS, an OA will publish a notice of intent to prepare an EIS in the Federal Register.

(1) The notice of intent should include:

(a) The purpose and need for the proposed action;

(b) A preliminary description of the proposed action and alternatives the EIS will consider;

(c) A brief summary of expected impacts;

(d) Anticipated permits and other authorizations (i.e., anticipated related actions);

(e) A schedule for the decisionmaking process;

(f) A description of the public scoping process, including any scoping meeting(s);

(g) Contact information for a person within the OA who can answer questions about the proposed action and the EIS; and

(h) Identification of any cooperating and participating agencies (i.e., agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations; and

(2) The notice of intent must include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action. NEPA § 107(c); 42 U.S.C. § 4336a(c).

13. ENVIRONMENTAL IMPACT STATEMENTS

a. When to Prepare an EIS. An OA must prepare an EIS for any proposed major Federal action that is not excluded pursuant to a categorical exclusion and that has a reasonably foreseeable significant impact on the quality of the human environment. 42 U.S.C. §§ 4332(2)(C), 4336(a)(2). Whether an impact rises to the level of "significant" is a matter of the OA's expert judgment.

b. Notice of Intent. To formally initiate the EIS process, the OA must publish a notice of intent (NOI) to prepare an EIS in the *Federal Register*.

c. EIS Impacts on Another State or Federal Land Management Agency. Pursuant to 42 U.S.C. § 4332(2)(G)(iv), when a State agency or official with statewide jurisdiction initiates a proposed action that may have significant impacts on another State or a Federal land management entity, the OA must provide early notice to and solicit the views of that State or Federal land management entity.

d. Purpose and Need. The EIS must briefly describe the purpose and need for the proposed action, including the proposed agency action. The purpose and need is based on the OA's statutory authority and should also be informed by the goals of the applicant, if applicable (42 U.S.C. § 4336a(d) and 42 U.S.C. § 4332(c)(iii)).

e. Alternatives. The OA must evaluate a reasonable range of alternatives, including the proposed action, and the no action alternative. The OA should present the environmental impacts of the proposal and alternatives in comparative form. Alternatives should be technically and economically feasible and meet the purpose and need of the proposal. The EIS must identify alternatives considered but eliminated from detailed analysis and briefly discuss the reasons for their exclusion. Where the OA is issuing a draft EIS, such draft EIS should identify the OA's preferred alternative or alternatives, if one or more exists, unless it would conflict with other laws. (42 U.S.C. § 4332(c) and 42 U.S.C. § 4332(h)).

f. Analysis within the EIS.

(1) The EIS will include a detailed statement on:

(a) Reasonably foreseeable environmental impacts of the proposed agency action;

(b) Any reasonably foreseeable adverse environmental impacts which cannot be avoided should the proposal be implemented;

(c) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(d) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and

(e) Any means identified to mitigate adverse environmental impacts of the proposed action. Each OA should be mindful in this respect that NEPA itself does not require or authorize the OA or an applicant to impose any mitigation measures.

g. Scope of analysis.

(1) In preparing the EIS, an OA will focus its analysis on whether the environmental impacts of the action are significant.

(2) The EIS will discuss impacts in proportion to their significance. With respect to issues that are not substantive and do not meaningfully inform the consideration of environmental impacts and the resulting decision on how to proceed, there will be no more than the

briefest possible discussion to explain why those issues are not substantive and therefore not worthy of any further analysis. EISs will be analytic, concise, and no longer than necessary to comply with NEPA in light of congressionally mandated page limits and deadlines.

(3) Similarly, an OA will document in the EIS where and how it drew a reasonable and manageable line relating to its consideration of any environmental impacts from the action that extend outside the geographical territory of the project or might materialize later in time.

(4) To the extent it assists in reasoned decision-making, an OA may, but is not required to by NEPA, analyze environmental impacts from other projects separate in time, or separate in place, or that fall outside of an OA OA's regulatory authority, or that would have to be initiated by a third party. If an OA determines that such analysis would assist it in reasoned decisionmaking, it will document this determination in the EIS and explain where it drew a reasonable and manageable line relating to the consideration of such impacts from such separate projects.

(5) OAs must consult with any and obtain comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards, this includes EPA's authority to comment on proposed projects that have a significant impact under their authority under Section 109 of the Clean Air Act.

h. Page Limits.

(1) Except as provided in paragraph (2) and (4), the text of an EIS will not exceed 150 pages, not including citations or appendices.

(2) An EIS for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. An OA should determine at the earliest possible stage of preparation of an EIS whether the conditions for exceeding the page limit in paragraph (1) are present.

(3) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(4) EISs will be prepared on 8.5"x11" format with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

(5) IJJA Major Projects have different page limit and deadlines and are described in 23 CFR Part 771.

i. Deadlines. NEPA is governed by a "rule of reason." In establishing deadlines for the EIS process in the 2023 revision of NEPA § 107(g), 42 U.S.C. § 4336a(g), Congress indicated that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to complete the analysis. Thus:

(1) An OA will issue the Final EISs no later than 2 years after the start of the EIS per NEPA § 107(g)(1), 42 U.S.C. § 4336(a)(g). For most DOT projects, this will be the date of the NOI.

(2) If an OA cannot issue the ROD within 2 years from the NOI, the OA must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). Any extension of the deadline requires consultation with the project applicant. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which the OA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (c) above would, in the OA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EIS. The announcement of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(3) IJJA Major Projects have different page limit and deadlines and are described in 23 CFR Part 771.

j. Filing Any Draft EISs with EPA. If an OA makes a Draft EIS available for public comment, the OA will file the Draft EIS with the U.S. Environmental Protection Agency (EPA) Office of Federal Activities for publication in the Federal Register no earlier than when they are transmitted to commenting agencies and made available to the public, or immediately thereafter. OAs must file EISs with EPA in accordance with EPA filing guidance.

k. Availability of a Draft EIS.

(1) Although NEPA does not require that a Draft EIS is published for comment, some OAs require public comment on a Draft EIS per statute. In addition, OAs should consider whether soliciting comments from the following would aid in the decisionmaking for the proposed action:

(a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards. This includes any cooperating agency.

(b) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(c) State, Tribal or local governments that may be affected by the proposed action;

(d) Any agency that has requested to receive statements on actions of the kind proposed;

(e) The members of the public who may be interested or affected by the proposed action;

(f) Interested or affected persons, agencies, and organizations;

(g) The applicant; and

(h) Other OAs, where appropriate

(2) When issuing the Draft EIS for public comment, notifications to the public may include online notices, social media, direct notification to interested parties, and notices in local media to inform persons and agencies who may be interested or affected by the proposed action. In the case of an action with impacts of national concern, notice must include publication in the *Federal Register* (through EPA's notice of availability of EISs or a separate notice) and notice by email, mail, or other reasonable means to national organizations

reasonably expected to be interested. Although electronic distribution is preferred, the OA should make documents available in other formats when reasonably necessary and must make available hard copies of the EIS upon request. Notification to the public must comply with Federal civil rights laws including Section 508 of the Rehabilitation Act of 1973 and accommodate for individuals with limited English proficiency, when appropriate. For rulemaking, if an EIS is required, the Draft EIS should accompany the proposed rule and be available in the Docket for the rulemaking. In certain circumstances, a public hearing may be required. If a public hearing is required, the OA should ensure that any draft documents are made available prior to the hearing, where appropriate.

(3) Electronic Submission. OAs must provide for electronic submission of public comments as well as ensure that the comment process is accessible to persons who may be affected by the proposed action(s) when they are seeking public comment.

(4) Addressing Comments. DOT will address any substantive comments received during the EIS process. Substantive comments received during scoping will be summarized and considered in the analysis of the environmental impacts. Substantive comments received on a draft EIS will be responded to and may be included in the final EIS.

(5) The process of obtaining and requesting comments pursuant to k.(1) or k.(2) above may be undertaken at any time that is reasonable in the process of preparing the EIS. DOT will ensure that the process of obtaining and requesting comments and DOT's analysis of and response to those comments does not cause DOT to violate the congressionally mandated deadline for completion of an EIS.

l. <u>The Final EIS</u>

(1) For proposed actions that do not have an associated Draft EIS, the EIS that is prepared will be considered the Final EIS.

(2) Compliance with Other Requirements. To the fullest extent possible, the Final EIS should reflect compliance or plans for compliance with the requirements of other applicable environmental laws, regulations, and orders. If such compliance is not possible by the time of Final EIS preparation, the Final EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the OA can meet the requirements.

(3) The Final EIS should identify the preferred alternative, including identifying any mitigation measures that the agency intends to adopt.

(4) Internal Review and Approval. The Administrator or Secretarial Officer (or designee) of the lead agency may approve a Final EIS. OAs should ensure that EISs are evaluated for technical sufficiency consistent with this Order and OA Procedures. The Chief Counsel of the OA, or designee, must review all Final EISs for legal sufficiency. OGC Operations must review Final EISs prepared by Secretarial offices for legal sufficiency.

(5) Office of Environment Notification. For Final EISs on highly controversial actions (i.e., actions opposed on environmental grounds by a Federal, State, or local government agency, or by a substantial number of the persons affected by such action), the OA must notify the Office of Environment that the Final EIS is under development. OAs should notify the Office of Environment as early as possible, and, where practicable, provide at least two weeks' notice before approving the Final EIS.

(6) Certifications. Each Final EIS should include the following two certifications signed by a responsible agency official:

(a) *Certification with respect to page limits.* The OA has considered the factors mandated by NEPA. The EIS represents the OA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits. This prioritization reflects the OA's expert judgment. Any considerations addressed briefly or left unaddressed were, in the OA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental impacts and the resulting decision on how to proceed.

(b) *Certification with respect to deadlines.* The resulting EIS represents the OA's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the OA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the OA's judgment, the analysis contained therein is adequate to inform and reasonably explain the OA's final decision regarding the proposed federal action.

(7) Addressing comments contained in the EIS. The OA should attach to the Final EIS substantive comments received on the Draft EIS, or summaries of comments where comments are particularly voluminous. The OA should make every practicable effort to resolve major relevant issues identified in comments on the Draft EIS, the public involvement process, and consultation with cooperating agencies. The Final EIS should identify any unresolved major issues, and the consultation and efforts made to resolve those issues. In response to substantive comments on the Draft EIS, the OA should do one or more of the following and state the response in the Final EIS:

(a) Supplement, improve, or modify its analyses, alternatives, or proposed mitigation measures;

(b) Make factual corrections; and

(c) Explain why the comments do not warrant further response, citing the sources, authorities, or reasons that support the OA's position, and if appropriate, indicate those circumstances that would trigger the OA's reappraisal or further response.

(8) Errata Sheets. In preparing a Final EIS, if the OA makes minor changes to the Draft EIS in response to comments, and the changes are confined to factual corrections or explanations of why the comments do not warrant further response, the OA may write the changes on errata sheets attached to the Draft EIS instead of rewriting the Draft EIS. See 49 U.S.C. § 304a(a), 23 U.S.C. § 139(n). The errata sheets must cite the sources, authorities, and reasons that support the OA's position; and, if appropriate, indicate the circumstances that would trigger the OA's reappraisal or further response.

m. Combined Final Environmental Impact Statement and Record of Decision (Final EIS/ROD). Pursuant to 49 U.S.C. § 304a(b) or 23 U.S.C. § 139(n)(2), and 42 U.S.C. § 4336(b), as applicable, to the maximum extent practicable, an OA must expeditiously develop a single document that consists of a Final EIS and ROD, unless the Final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or if there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action. Cooperating agencies must, to the extent practicable, issue the Final EIS/ROD jointly with the lead agency for transportation actions.

n. Circulation. After the Final EIS is finalized, the OA will publish the Final EIS (or combined Final EIS/ROD). The OA will make available the entire Final EIS to any Federal agency with jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Trial, or local agency authorized to develop and enforce environmental standards; the applicant; and any Federal, State, Tribal, and local agencies, and private organizations and individuals that commented substantively on the Draft EIS or requested copies of the Final EIS, as well as the entities to which the OA was required to distribute the Draft EIS.

o. Filing Final EIS with EPA. OAs will file the Final EIS, together with comments and responses, if any were received, with the U.S. Environmental Protection Agency (EPA), Office of Federal Activities for notice in the Federal Register. OAs must file EISs with EPA in accordance with EPA filing guidance.

14. AGENCY DECISION MAKING

a. Final EIS/ROD. To the maximum extent practicable, an OA will develop a single document consisting of a combined Final EIS and ROD in accordance with 49 U.S.C. § 304a(b) and 23 U.S.C. § 139(n). When the proposal requires action by multiple Federal agencies, the OA should issue a single ROD with the other Federal agencies. An OA may integrate the ROD with any other record or decision document, such as a final rule.

b. Record of Decision. At the time of its decision on its proposed action, the OA will prepare and timely publish a concise public decision document or joint decision document notifying the public that the decisionmaker has certified that the OA has considered all relevant information raised in the NEPA process and that the NEPA process has closed. The ROD should not repeat analysis contained in the EIS but rather document the OA's decision; and briefly document compliance with all environmental laws applicable to the action, or the procedures and expected timeframe for completion of such compliance. The ROD may discuss preferences among alternatives based on relevant economic, technical, or other factors and OA mission.

15. TERMINATION OF AN ENVIRONMENTAL DOCUMENT

When an OA terminates an action, they must notify the public that the action has been terminated or cancelled in the same manner they notified the public in announcing its availability or intent to prepare the document.

16. EFFICIENT ENVIRONMENTAL REVIEWS

a. Integration of All Environmental Reviews into the NEPA Process. OAs should integrate relevant environmental and planning studies, reviews, and consultations into the NEPA process, as appropriate. To the extent possible, OAs should develop a single environmental document for all Federal agency actions necessary for a proposed activity or project. (42 U.S.C. § 4336(a)(b)).

b. Incorporation by Reference. OAs should incorporate by reference previously prepared and publicly available analyses wherever possible and provide a brief summary of the incorporated material in an environmental document. Types of documents that may be incorporated by reference include previously prepared studies, analyses, and, to the extent permitted by law, decisions from prior environmental or planning processes. When incorporating material by reference, the OA will cite and briefly describe the content and relevance to the environmental document and make the materials reasonably available for review by potentially interested parties within the time allowed. An OA will not use incorporation by reference as a means to evade the statutory page limits.

Although NEPA itself does not require cost-benefit analysis, an OA may conduct cost-benefit analysis for proposed rules. To the extent that this cost-benefit analysis is relevant to any alternatives analysis an OA is conducting pursuant to NEPA, an OA will incorporate the cost-benefit analysis by reference or append it to the statement to avoid duplication in evaluating the environmental impacts. In such cases, the environmental document will discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities.

c. Focused, Quality Documents. Environmental documents should effectively and concisely communicate the environmental impacts of a proposed action to the public and the decision maker. Environmental documents should be written in plain language and be analytic rather than encyclopedic. The depth and scope of analysis and resulting documentation must be meaningful, high-quality, relevant, and proportionate to the complexity of the project and level of anticipated environmental impacts.

d. Interdisciplinary Approach. OAs must use an interdisciplinary approach throughout the planning and preparation of EAs and EISs, as applicable, and ensure a systematic evaluation of alternatives and their potential environmental impacts. Analyses should identify applicable methodology and explain the use of best available information. Where appropriate, OAs may use professional services from other Federal, State, Tribal, or local agencies, universities, consulting firms, or other experts as long as OA staff have the capacity to evaluate the information these entities provide, and OAs take responsibility for the final content of their environmental documents.

17. PROGRAMMATIC ENVIRONMENTAL DOCUMENTS

a. In General. An OA may prepare environmental documents for programmatic Federal actions, such as the adoption of new agency programs. DOT may evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development.

b. Eliminating Repetition. OAs should use programmatic documents and reliance on other documents to improve or simplify the environmental analysis of proposed actions that are similar in nature, broad in scope, or where future decisions or unknown future conditions preclude a complete NEPA analysis. This eliminates repetitive discussions of the same issues, focuses on issues ripe for decision, and excludes issues already decided or not yet ripe at each level.

c. Validity. Consistent with NEPA § 108, 42 U.S.C. § 4336b, after completing a programmatic environmental document, an OA may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse environmental impacts that bear on the analysis. The OA may continue to rely on the document after 5 years, as long as the OA reevaluates the analysis in the programmatic environmental document and any underlying assumptions to ensure that reliance on the analysis remains valid, and briefly documents its reevaluation and explains why the analysis remains valid, considering any new and substantial information or circumstances.

18. RELIANCE ON EXISTING ENVIRONMENTAL DOCUMENTS

a. In General. An OA may rely on any pre-existing EIS, EA, or determination that a CE applies to a given project, or portion thereof, provided that the statement, assessment, determination, or portion thereof meets the standards for an adequate statement or assessment under their procedures. When relying on an EIS, EA, CE or portion thereof, an OA will cite and briefly describe the content and relevance to the environmental document and may make modifications that are necessary to render the relied-upon document, or portion thereof, sufficient to fulfill the requirements of NEPA for the proposed action.

b. Reliance.

(1) If the actions covered by the original EIS or EA and the proposed action are substantially the same, an OA can rely on that document. If the OA would normally seek public comment or post for public notice for the proposed action, the OA should publish or post the relied-upon statement or assessment, as appropriate.

(2) If the actions are not substantially the same, an OA may modify the statement or assessment as necessary to render the content fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. Where appropriate, an OA may solicit comment to the extent that solicitation of comment will assist DOT in expeditiously adapting the relied-upon statement or assessment so that it is sufficient to fulfill the DOT requirements of NEPA for the proposed action.

(3) An OA may adopt an EA, Draft EIS, or Final EIS of another OA in accordance with 49 U.S.C. § 304a(c)(2).

c. Reevaluation.

(1) A reevaluation is a process that OAs should use to evaluate an existing CE determination, EA, or EIS to determine whether it remains adequate, accurate, and valid, or whether a supplemental NEPA analysis is needed.

(2) An OA should engage in a reevaluation, consistent with its OA Procedures, where applicable, when, prior to the OA's completion of an action, there are changes in the proposed action that are relevant to environmental concerns; or there are new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(3) An OA must reevaluate in writing a Draft EIS or EA if the OA has not issued a Final EIS or Final EA within five years. An OA must reevaluate in writing a Final EIS or EA if major steps toward implementation have not commenced within five years from the date of the Final EIS, Final EIS supplement, or final EA.

d. Supplements to environmental documents. An OA will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; or

(2) An OA decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse environmental impacts that bear on the proposed action or its impacts.

19. INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REQUIREMENTS

a. To the fullest extent possible, the OA will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.

b. The OA will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, the OA may combine an environmental document with related plans, rules, or amendments as a single consolidated document.

c. If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how the OA has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

20. ELIMINATION OF DUPLICATION WITH STATE, TRIBAL, AND LOCAL PROCEDURES

An OA will cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

a. Joint planning processes;

b. Joint environmental research and studies;

c. Joint public hearings (except where otherwise provided by statute); and

d. Joint environmental documents.

21. PROPOSALS FOR REGULATIONS

Where the proposed action is the promulgation of a rule or regulation, procedures, and documentation pursuant to other statutory or Executive Order requirements may satisfy one or more requirements of this subchapter. When a procedure or document satisfies one or more requirements of this subchapter, an OA may substitute it for the corresponding requirements in this subchapter and need not carry out duplicative procedures or documentation. Agencies will identify which corresponding requirements in this subchapter are satisfied and consult first with OST, then with CEQ, when necessary to confirm such determinations.

22. UNIQUE IDENTIFICATION NUMBERS

For all environmental documents, the lead agency will provide a unique identification number for tracking purposes, which an OA will reference on all associated environmental documents prepared for the proposed agency action and in any database or tracking system for such documents. DOT will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

23. EMERGENCIES

Emergency circumstances may require immediate actions that preclude following standard NEPA procedures. Immediate emergency actions necessary to protect the lives and safety of the public or protect valuable resources should never be delayed in order to comply with NEPA. When time permits, OAs should prepare environmental documentation. Alternative arrangements for NEPA compliance are permitted for emergency actions. *See Fixing America's Surface Transportation Act*, Pub. L. 114-94, sec. 1432, as applicable. Where emergency circumstances make it necessary to take an action with

reasonably foreseeable significant environmental impacts without observing the provisions of these procedures, OAs will consult with the CEQ on alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C), Pub. L. 114-94, sec. 1432.

a. Notify Office of Environment. OAs should notify the Office of Environment of the emergency. Where time allows, OAs should provide an opportunity for the Office of Environment to review any alternative arrangements in coordination with CEQ. The alternative arrangements should be limited to actions necessary to control the immediate impacts of the emergency.

b. Non-significant Impacts. When the expected environmental impacts of the proposed action are not considered significant and the action is not covered by a CE, to the extent practicable, the OA should prepare a concise and focused EA that complies with this Order, OA procedures, and NEPA.

c. Significant Impacts. Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental impacts without observing the provisions of these procedures, DOT will consult with the CEQ on alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

24. INTERNATIONAL ACTIONS

a. Executive Order 12114. Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, applies to major Federal actions having significant environmental impacts outside of the United States and its Territories and possessions. See E.O. 12114, sec. 2-3(a)–(d)). If an EIS is required under E.O. 12114, section 2-4(a)(i), the OA must prepare it in compliance with this Order and the OA procedures.

b. Coordination. If an OA anticipates communication with a foreign government concerning agreements and other arrangements related to environmental studies or documentation, the OA must coordinate such communication with the U.S. Department of State, in consultation with the Office of Environment and the Office of the Assistant Secretary for Aviation and International Affairs. See E.O. 12114, sec. 3-2.

25. PROCEDURES FOR APPLICANT-PREPARED ENVIRONMENTAL DOCUMENTS

a. Procedures for Applicants. In accordance with NEPA § 107(f), 42 U.S.C. § 4336a(f), OAs must establish procedures allowing applicants, or contractors hired by applicants, to prepare environmental documents under the OA's supervision, where applicable. For this reason, OAs may have specific instructions for applicants within their NEPA implementing procedures either located as a subpart of this Order, FAA's Order 1050.1, or 23 CFR Part 771.

b. Independent Evaluation. In these instances, the OA must independently evaluate the environmental document and will take responsibility for its contents.

c. Assistance. The OA will assist applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. The OA may also provide appropriate guidance and assist in environmental document preparation, to the extent that the OA's resources and policy priorities permit. The OA will work with the applicant to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet the purpose and need.

d. Schedule. The OA will work with the applicant to develop a schedule for preparation of the environmental document. Major changes to the schedule or related matters will be documented through written correspondence.

e. Additional Information. The OA may request from an applicant environmental information for use by the OA in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor while preparing the draft environmental document, including any correspondence with the OA or with third parties.

26. DEFINITIONS

Terms used in these implementing procedures have the meanings provided in NEPA § 111, 42 U.S.C. § 4336e. OAs may substitute alternative statutory definitions applicable to the OA in their own procedures. In addition:

a. NEPA means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, et seq.).

b. Applicant means an individual; a State, Tribal or local government; a corporation, company, or any other party seeking an approval, financial assistance, special permit, license, waiver, certification, or other permission from an Operating Administration (OA).

c. Authorization means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law to implement a proposed action.

d. Connected action means a Federal action within the authority of DOT that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:
   (1) Automatically triggers a separate Federal action, which independently would require the preparation of additional environmental documents;
   (2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
   (3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

e. Environmental impacts mean changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

f. Environmental review process means the integrated process for compliance with NEPA and any other applicable environmental statutes, regulations, or Executive Orders, including those that require a permit, approval, consultation, or authorization to proceed with an action.

g. Extraordinary circumstances mean factors or circumstances that indicate a normally categorically excluded action may have a significant impact. Examples of extraordinary circumstances include potential substantial impacts on sensitive environmental resources, and potential substantial impacts on historic properties or cultural resources.

h. Human environment means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of "environmental impacts" in paragraph (e) of this section.)

i. Impacts include ecological (such as the impacts on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the impacts on employment), social, or health impacts. Impacts appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

   A "but-for" causal relationship is insufficient to make an agency responsible for a particular impact under NEPA. Impacts should generally not be considered if they are remote in time,

geographically remote, or the product of a lengthy causal chain. Impacts do not include those impacts that the agency has no ability to prevent due to the limits of its regulatory authority, that would occur regardless of the proposed action, or that would need to be initiated by a third party.

j. Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

k. Level of NEPA review means the appropriate type of analysis required for a particular action (i.e., a CE, an EA, or an EIS).

l. Mitigation means measures that avoid, minimize, or compensate for environmental impacts caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those impacts. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

   (1) Avoiding the impact altogether by not taking a certain action or parts of an action.

   (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

   (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

   (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

   (5) Compensating for the impact by replacing or providing substitute resources or environments.

m. NEPA process means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).

n. Notice of intent means a public notice that an agency will prepare and consider an environmental document.

o. Operating Administration (OA) means any agency established within the Department or, for the purposes of this Order, an office within the Office of the Secretary of Transportation (OST).

p. Plain language means language that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.

q. Publish and publication mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

r. Related action means an action undertaken by an agency, that bears a relationship to other actions undertaken by other agencies relevant to NEPA. This includes permitting actions, or some other type of authorization action, required by statute that relate to one overarching project.

s. Reasonable alternatives mean a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

t. Reasonably foreseeable means an impact sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

u. Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.

v. States means the 50 States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, U.S. Virgin Islands, and Guam.

27. SEVERABILITY

The sections of this chapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is DOT's intention that the validity of the remaining parts will not be affected. The remaining sections or portions therein shall continue in effect.

28. SUBPART A. GREAT LAKES ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the Great Lakes St. Lawerence Seaway Development Corporation (GLS) and all GLS actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by GLS.

a. Applicability. GLS is required to conduct a NEPA review for proposed major federal actions and has no additional specific requirements from Section 3 of this Order.

b. Roles and Responsibilities. In administering the NEPA process to GLS actions, the following responsibilities apply:

(1) Chief, Office of Engineering. The term "Chief Engineer" means the Chief, Office of Engineering, GLS or designee.

(a) If a proposed major program or action may require a NEPA compliance review, the responsible GLS office shall report it to the Chief Engineer for review at the time of initial technical studies.

(b) The Chief Engineer reviews and determines if a program or action is one which (1) normally requires an EIS or (2) normally does not require an EIS or a CE. If the action is not covered by either of the foregoing, the Chief Engineer shall prepare an environmental assessment (EA) within 30 days of receipt of the document.

(c) The Chief Engineer is responsible for the preparation and processing of draft EISs. Professional services for this preparation may be obtained from other Federal, State, or local agencies, universities, or consulting firms; however, the Chief Engineer must review and evaluate the documents.

(2) GLS Chief Counsel. The GLS Chief Counsel or designee shall review all GLS EISs and EAs for legal sufficiency. The legal review should be completed within 30 days after receipt of the document. When the review is complete, the Chief Counsel will return the document to the Chief Engineer with approval for final processing.

(3) GLS Administrator. Final EISs may be approved by the GLS Administrator or designee. Concurrence of both the Assistant Secretary and the DOT General Counsel is required for actions which involve a 4(f) determination.

c. Determination of the Level of NEPA Review. GLS has identified the following levels of NEPA review. (See Section 6 of this Order).

(1) Environmental Assessment. If a decision has not been made to prepare an EIS and a proposed action cannot be categorically excluded under Section 28d, an EA shall be prepared. The EA will be the GLS's determination to prepare an EIS or to publish a finding of no significant impact (FONSI).

(2) Environmental Impact Statements. An EIS shall be prepared for any proposed major Federal action significantly affecting the environment. Listed below are types of GLS actions which normally require the preparation of an EIS:

(a) Construction projects (major) involving significant disturbances to earth, air, or water.

d. Categorical Exclusions. GLS may utilize its own agency CEs in addition to DOT's CEs listed in Appendix A or another agency's CEs using the procedures described in this section and Section 9, to categorically exclude a proposed action. GLS will apply the extraordinary circumstances listed in Section 9.c. of this Order.

GLS has identified 13 categories of actions that are not major Federal actions with a significant impact on the environment, and do not require either an EA or an EIS. In cases of extraordinary circumstances whereby any of the following items, which are normally excluded, that may have a significant impact on the environment, or cause substantial controversy, an EA or EIS will be prepared.

(1) Administrative procurements (e.g. general supplies) and contracts for personal services;

(2) Personnel actions (e.g. promotions, hirings);

(3) Project amendments (e.g. increases in costs) which do not significantly alter the environmental impact of the action;

(4) Issuance of vessel passage permits as a matter of routine Seaway procedures;

(5) Amendments to the Seaway Regulations;

(6) Reconstruction, repair and maintenance of existing navigation aids and construction of new fixed aids;

(7) De-icing equipment and measures at the locks and lock approaches;

(8) Modifications to the St. Lawrence Seaway tariff of tolls;

(9) Icebreaking: Icebreaking activity is limited to the intermediate pool and approximately three miles above Eisenhower Lock and one mile below Snell Lock, and one-half mile of the Grasse River between Snug Harbor and the St. Lawrence River.

(10) Maintenance dredging: In some areas, the river bottom has high spots caused by silting in from the banks, anchor dragging and/or river current. In these areas, maintenance dredging is required to maintain GLS vessel operational areas and the congressionally mandated 27 feet. waterway. No other dredging will be allowed under this category. Maintenance dredging and upland material deposits are performed under specific permit conditions approved by the New York State Department of Environmental Conservation and the U.S. Army, Corps of Engineers.

(11) Modifications to and maintenance of lock operating equipment, vessel traffic control equipment, buildings, grounds, floating plant, and existing facilities;

(12) Equipment purchases and operating expenses;

(13) Grants of leases, licenses, permits or easements for use of GLS-owned property.

e. Where the Public Can Access Information or Status Reports on Projects. As soon as GLS determines that an EIS is to be prepared, GLS shall solicit public comments through a NOI to prepare an EIS by any or all of the following means: conducting public hearings, making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a NOI in the Federal Register. GLS shall develop lists of interested parties at the Federal, State, Tribes and local levels. Public involvement and environmental issues raised in the public commenting process will be documented in the EIS. GLS shall determine whether any additional public involvement is appropriate to further aid GLS's decisionmaking process, including a public hearing, using the following factors: the magnitude of the costs, environmental impact, degree of interest evidenced by the public, the complexity of the issue and the extent to which public involvement. If a public hearing is to be held, GLS must make the draft EIS available to the public 30 days prior to the hearing.

Interested persons may obtain information on GLS environmental procedures on GLS's official website.

29. SUBPART B. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the Federal Motor Carrier Safety Administration (FMCSA) and all FMCSA actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by FMCSA.

a. Applicability. FMCSA is required to conduct a NEPA review for proposed major federal actions. FMCSA actions include projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by FMCSA; new or revised agency rules, regulations, plans, policies, or procedures; and agency legislative proposals. Where FMCSA has no discretion to withhold or condition an action if the action is in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the impacts of an action, that action is not subject to this Order. Actions do not include bringing judicial or administrative civil or criminal enforcement actions. Examples of judicial or administrative civil or criminal enforcement actions would be regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

(1) A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

(2) To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

b. Roles and Responsibilities. In administering the NEPA process to FMCSA actions, the following responsibilities apply:

(1) Administrator Federal Motor Carrier Safety Administration. Acts on matters relating to NEPA implementation and is responsible for providing NEPA capabilities.

(a) Establishes and maintains the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this Order. This capability can be provided through contract support, matrix (other modal) support, and permanent staff, with sufficient staff to ensure:

1. FMCSA cognizance of the analyses and decisions being made; and
2. Familiarity with the requirements of NEPA and the provisions of this Order by every person preparing, implementing, supervising, and managing projects involving NEPA analysis.

(b) Ensures environmental responsibility and awareness among personnel to most effectively implement the goals and policies of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, and notification through Project and Program managers to the Associate Administrator for Policy and Program Delivery, and training and education will NEPA goals be realized.

1. Approves all environmental analyses and documentation for Administration-initiated actions, unless delegated to another FMCSA responsible official or another Federal agency. The Administrator may enter into contracts with a State or private entity to conduct initial environmental analyses and documentation, but the Administrator must review and approve all such environmental analyses and documentation and remains responsible for its scope and contents. The Administrator delegates the following: with the exception of highly controversial EISs, approval authority to Field Operations Service Center Administrators for FMCSA Draft EISs, Final EISs, and Supplemental EISs for actions that originate within, and having impacts confined to, their respective area;
2. Authority for the appropriate FMCSA Administrator-level Program Office to approve highly controversial EIS; and
3. For all other Final EISs (non-controversial), only a notice of approval will be made to DOT by the responsible Administrator-level Program Office via the Administrator.

(c) The Administrator, or the Administrator's designee, has authority to decide whether or, at a minimum, how to proceed with every action the FMCSA undertakes. Thus, the Administrator (unless his/her authority is delegated) is the decisionmaker and the responsible FMCSA official. The Administrator makes the following delegations:

1. The NEPA Liaison will act as the senior decisionmaker and senior environmental advisor for NEPA compliance and NEPA implementation of all FMCSA actions. The Administrator also delegates the responsibility to the NEPA Liaison to ensure accountability for implementation of the policies set forth in this Order. For Headquarters- originated actions, the Administrator delegates the responsibility to the NEPA Liaison to determine whether to prepare an EA, EIS, a FONSI, or a decision withdrawing the proposal on the basis of its environmental impacts in consultation with the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation.
2. The Field or Division Administrators or their delegated Federal, State, or Division Program Managers, in consultation with their Field Environmental Quality Advisor

(FEQA) will hold authority to determine whether to prepare an EA, EIS, FONSI, or a decision withdrawing the proposal on the basis of its environmental impacts for actions that originate within, and have impacts confined to, their respective area. For Headquarters-originated actions, the NEPA Liaison makes this determination in consultation with the responsible FMCSA Program Manager.

(2) NEPA Liaison—Associate Administrator for Policy and Program Delivery (MC–P).

(a) Is the principal FMCSA environmental advisor and decisionmaker for the completion of the environmental analysis under NEPA, CEQ regulations, DOT and FMCSA Orders, and other environmental laws, statutes, and Executive Orders. The Regulatory Development Division (MC–PRR), in the Office of Policy, Plans and Regulation is the Program Office that will assist the NEPA Liaison in carrying out these duties.

(b) Is responsible for overseeing NEPA compliance and NEPA implementation of all FMCSA actions. The NEPA Liaison ensures accountability for implementation of the policies set forth in this Order and that all necessary NEPA analyses (CE, EA, and EIS) are completed before initiation of an FMCSA action.

(c) Reviews all FMCSA proposed projects and advises the responsible FMCSA official e.g., the FEQA or Project Manager on the appropriate level of environmental analysis and documentation needed for the proposal. For CEs, EAs and non-controversial EISs, the NEPA Liaison may direct the FEQAs or program staff to determine the appropriate level of environmental analysis and documentation needed for the proposal.

(d) Provides expert advice on NEPA- related matters to FMCSA Heads of Offices, Divisions, and Field Operations Service Center Units.

(e) Acts as the intra-agency and interagency liaison and coordinates NEPA-related matters on a national basis and is the principal contact for CEQ on all other FMCSA actions.

(f) Provides and periodically updates this FMCSA Order, program guidance and policies after consultation with the Chief Counsel, Heads of Offices, Divisions, and Field Operations Service Center Units. Updates must comply with requirements for public notice and CEQ review.

(g) Serves as FMCSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

(3) Heads of Headquarters Offices and Divisions.

(a) Coordinate with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responsibility.

(b) Serve as the responsible agency officials under NEPA and CEQ regulations for actions subject to their approval.

(c) Ensure accountability for implementation of the policies set forth in this Order.

(d) In consultation with the NEPA Liaison, ensure that FMCSA staff responsible for the supporting function of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out FMCSA's responsibilities.

(e) Ensure completion of all environmental analysis and documentation for Headquarters Office- originated actions in consultation with environmental staff and the NEPA Liaison.

This responsibility includes ensuring that the appropriate environmental planning, analyses, and documentation are completed for the respective programs and actions.

(f) Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

(4) The Office of Administration (MC–M). At the current time, the General Services Administration (GSA) is responsible for all building acquisition and construction projects to meet the needs of the FMCSA. The GSA is currently responsible for, and is required to comply with, all statutory and regulatory requirements of NEPA for such projects. In the event the FMCSA is authorized by Congress or the GSA delegates authority for the purchase, lease, and/or acquisition of real property in the future, the FMCSA's Office of Administration will assume primary responsibility for all necessary environmental analyses and documentation needed for building acquisition and construction projects, in consultation with the FMCSA's Office of Chief Counsel. The FMCSA will coordinate such environmental analyses, as appropriate, with the interested general public, as well as other Federal, State, local, and Tribal government agencies.

(5) The Office of the Chief Counsel (MC-CC).

(a) Is responsible for legal interpretation of NEPA and related authorities and represents FMCSA in litigation under such authorities.

(b) Must approve the implementation of the procedures of FMCSA Environmental Orders in consultation with the NEPA Liaison, NEPA FEQAs, MC–PR, and MC–RIA (Office of Data Analysis and Information Systems that would be responsible for acquiring a contractor for environmental support), for actions originated by the Administrator.

(c) Is responsible for the review and approval of FMCSA and non-FMCSA environmental documents submitted for Associate Administrator level review.

(d) Is responsible for the review and approval of guidance and training concerning this Order, in consultation with the NEPA liaison and the Professional Development and Training division.

(6) FMCSA Program Staff.

(a) This includes all FMCSA employees responsible for the management and implementation of program actions, such as, promulgating regulations, project planning and development, project management, and research.

(b) Program staff are responsible for:

1. Developing and maintaining a thorough understanding of NEPA requirements and the requirement of related authorities, as these pertain to their program areas with the assistance of the NEPA Liaison and the FEQA.

2. Ensuring that NEPA and related authorities are complied with, as early as possible in the planning of any action within their program areas.

3. Coordinating their programs, activities, and projects with FEQAs and the NEPA liaison, as appropriate.

4. Implementing all mitigation and other commitments resulting from NEPA compliance for actions under their authority.

5. Initiating early consultations with Field Operations Service Center Units, the FEQAs, Heads of Offices and Divisions, the NEPA liaison, as appropriate if uncertain regarding the need for environmental analysis or documentation for any project. The Field Operations Service Center Administrator will promptly notify the Policy, Plans, and Regulations Office Director (MC–PR) and the NEPA Liaison if uncertainty for NEPA review persists.

6. Notifying the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

(7) Field Operations Service Center Administrators

(a) Are accountable for execution of FMCSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

(b) Serve as the responsible agency official with respect to the environmental impacts of actions under their jurisdiction.

(c) Maintain FEQA within their staffs, augmented as necessary through interagency agreements and contracts, to ensure field interdisciplinary competence in environmental matters.

(d) In consultation with the FMCSA NEPA Liaison, ensure that all field staff with responsibility for planning, approving, and implementing Commercial Vehicle Safety Plan grants, etc., receive training in how to carry out FMCSA's responsibilities under NEPA and related authorities.

(e) Comply with all environmental laws. What may appear to be a good idea initially may not be environmentally acceptable. It is, therefore, important that alternatives to a proposed action be available. Coordination of FMCSA environmental analyses and documents with Federal, State, local, and tribal officials may be necessary. Questions concerning environmental matters should be directed to the FEQA and appropriate Field Operations Service Center staff.

(f) Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

(8) Heads of Units, Divisions, and Offices

(a) Ensure that all environmental analyses and documentation for FMCSA actions (except building acquisition and construction actions) they initiate, or are directed by higher authority to initiate, are completed.

(b) Ensure that a FEQA, Environmental Project Manager, and Environmental Specialists are available within the Field Operations Service Center territory.

(c) Ensure that Field Operations Service Center Units and Field Division Offices are notified as soon as possible of any needed environmental analyses or documentation required for field proposed actions and projects.

(d) Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

(9) The Field Environmental Quality Advisor (FEQA)

(a) The FEQA is the center of expertise maintained at the Field Service Unit in which knowledge in NEPA-related environmental matters and other related authorities, such as the National Historic Preservation Act, the Clean Air Act, and the Endangered Species Act, is vital.

(b) The FEQA will be a collateral duty among others assigned to the employee.

(c) The FEQA will be located at the Field Service Unit where it can influence decision making early in FMCSA's planning or preparation for any project or action subject to review under NEPA and related authorities.

(d) The FEQA is responsible for participating in FMCSA planning and decision making, for advising the Administrator, the Office Heads, the Field Administrators, and other decisionmakers, and for providing training and technical assistance to all pertinent FMCSA employees and contractors.

(e) Maintains interdisciplinary expertise in environmental matters, through the employment of qualified staff and/or by interagency agreement or under contract.

(f) Reviews all documentary products of FMCSA NEPA analyses, and assists program staff in ensuring that such products, and the analyses they report, are adequate and defensible.

(g) Maintains records of FMCSA NEPA compliance activities.

(h) Routinely interacts with, and is assisted by, the NEPA Liaison.

(i) Maintains needed guidance material and recommends updates and/ or changes to this FMCSA Order, as appropriate. Updates must comply requirements for public notice and CEQ review.

(j) Develops and maintains an up-to- date checklist for use in determining whether an action requires an environmental assessment or impact statement.

(k) Notifies the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

(10) Field Operations Service Center Program Staff

(a) Ensure completion of all environmental analyses and documentation for FMCSA actions designated to them.

(b) Assist Headquarters Units, where appropriate, with their implementation of the procedures set forth in this Order.

(c) Coordinate these environmental analyses and documents with Federal, State, local, and tribal officials as necessary.

(d) Maintain close coordination with appropriate Field Division Office elements during the execution of these tasks. Questions concerning environmental matters should be directed to appropriate Field Operations Service Center Unit staff and the FEQA.

(e) Empower the FEQA to advise and assist in planning and decision making on actions that could affect the human environment, in a way and at a time in the planning and decisionmaking process that maximizes the effectiveness of the FEQA's advice and assistance.

(f) Ensure that all Field program staff involved in planning and decision making about actions that could affect the human environment are made aware of FMCSA's responsibilities under NEPA and related authorities, and other NEPA- or CEQ-related guidance, are held accountable for the quality of their actions and decisions and are required to coordinate effectively with the FEQA.

(g) Notify the Policy, Plans, and Regulations Office Director (MC–PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

f. NEPA and Agency Decisionmaking.

(1) The Federal Motor Carrier Safety Administration's primary mission is to prevent commercial motor vehicle- related fatalities and injuries. Administration activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle (CMV) drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies; tribal governments; the motor carrier industry; labor safety interest groups; and others.

e. Any environmental impacts that result from FMCSA's oversight of motor carrier operations would most likely be in areas affecting air quality, noise, and hazardous materials transportation. Categorical Exclusions.

FMCSA may utilize its own agency CEs listed below, in addition to DOT's CEs listed in Appendix A or another agency's CEs, using the procedures described in this section and DOT Order 5610.1D, Section 9, to categorically exclude a proposed action.

When the specific CE requires that a checklist be completed, an Environmental Checklist will be completed and used to substantiate the use of the CE. The checklist must be submitted with the proposal for the action. If a CE is not appropriate, the Environmental Checklist will be used for developing an EA or EIS. A written Categorical Exclusion Determination (CED) must be prepared when a CE will be relied on to promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the requirements of this Order may be developed by subordinate commands for specific types of actions. Those documents must be approved by the Administrator before they are adopted for use.

(1) Administration

(a) Preparation of guidance documents that implement decisions authorized by the applicable FMCSA's Office of Business Operations Directive or other Federal agency regulations, procedures, manuals, internal Orders, and other guidance documents not required to be published in the Federal Register under the Administrative Procedure Act, 5 U.S.C. § 552(a)(1).

(b) Routine intra-agency personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have environmental impacts, such as, hiring, recruiting, processing and paying of personnel, and recordkeeping.

(c) Routine procurement and contract activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance in accordance with Executive Orders 13101, 13148, and other applicable Executive Orders and Departmental policies regarding ''greening the government.''

(d) Decisions to set up or decommission equipment or temporarily discontinue use of facilities or equipment, such as:

1. Noise pollution monitors used in enforcement of the Noise Control Act of 1972.
2. Radioactive material detectors used in enforcement of the Hazardous Material Transportation Acts.
3. FMCSA-owned commercial motor vehicles used in the:
    A. Office of Enforcement and Program Delivery;
    B. Office of Research and Technology; or
    C. Commercial Vehicle platform of the Intelligent Vehicle Initiative.

This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

(e) Routine and permitted movement of agency personnel and equipment, and the routine movement, handling, and distribution of non-hazardous and hazardous materials and wastes incidental to the routine and permitted movement of personnel and equipment in accordance with applicable regulations. Examples would include moving personnel from the Boise, Idaho, Division Office to the Pierre, South Dakota, Division Office or moving the agency's Intelligent Transportation System/Commercial Vehicle Operation Technology Truck working display from McLean, Virginia, to an awareness training venue in Oak Ridge, Tennessee.

(f) Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes.

(g) Financial assistance or procurements for motor carrier activities that do not commit the FMCSA or its applicants to a particular course of action affecting the environment.

(h) Hearings, meetings, or public affairs activities held at locations developed for such activities.

(2) Purchase, Lease, and Acquisitions

Lease of space in buildings or towers for a firm-term of one year or less when the intended use is in conformity with current uses.

(3) Operations

Realignment of mobile assets, including motor vehicles, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new terminals or for repair and overhaul.

If the realignment would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to protected species or habitats before use of the CE can be approved.

(4) Data Gathering, Review of Environmental Tests, Studies, Analyses and Reports, and Research Activities

(a) Data gathering, information gathering, and studies that involve no detectable physical change to the environment.

(b) Research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the FMCSA's ability to manage its resources. Examples of these resources would include FMCSA's stored data, its assets, and its properties, including its Intelligent Transportation System/Commercial Vehicle Operation Technology Trucks and its Safety Trucks.

(c) Environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental impacts may be assessed.

(d) Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on FMCSA-contracted property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

(e) Planning and technical studies that do not contain recommendations for authorization or funding for future construction but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental impacts may be assessed and does not exclude consideration of environmental matters in the studies.

(f) Establishment of Global Positioning System (GPS), intelligent transportation systems (ITS), or essentially similar systems that use overlay of existing procedures.

(g) Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment.

(5) Training

(a) Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

(b) Training of an administrative or classroom nature. Examples would include training to inspect a commercial motor vehicle brake system or to learn more about NEPA and how to prepare and develop environmental analyses for EAs and EISs.

(6) Establishing the Following Types of Regulations

(a) Regulations addressing Civil Rights procedures and guidance.

(b) Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

(c) Regulations concerning internal agency functions or organization or personnel administration, such as, funding or delegating authority.

(d) Regulations concerning the training, qualifying, licensing, certifying, and managing of personnel.

(e) Regulations to handle the processing of applications for operating authority and certificates of registration.

(f) Regulations implementing the Motor Carrier Safety Assistance Program (MCSAP), that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs) for the following activities:

1. Driver/vehicle inspections;
2. Traffic enforcement;
3. Safety audits;[2]
4. Compliance reviews;[3]
5. Public education and awareness; and
6. Data collection; and provide reimbursement for:
   A. Personnel expenses;
   B. Equipment and travel expenses;
   C. Indirect expenses for:
      i. Facilities (not including fixed scales, real property, land or buildings) used to conduct inspections or house enforcement personnel. Examples of facilities would include a motor vehicle trailer for inspection personnel to take cover while doing paperwork during a roadside inspection;
      ii. Support staff;

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[2] A ''safety audit'' is an examination of motor carrier operations to provide educational and technical assistance on safety and the operational requirements of 49 CFR parts 100 through 178 and parts 350 through 399) and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls.

[3] A ''compliance review'' is an on-site examination of motor carrier operations (normally at the carrier's facility), such as driver's hours-of- service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accident involvement, hazardous materials, and other safety and transportation records to determine whether a motor carrier has systems, policies, programs, practices or procedures to ensure compliance with the applicable Federal safety regulations.

iii. Equipment to the extent they are measurable and recurring (e.g., rent and overhead and maintenance and minor improvements);

iv. Expenses related to data acquisition, storage, and analysis; and

v. Clerical and administrative expenses.

(g) Regulations implementing procedures to:

1. Promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs;

2. Provide guidelines for a continuous regulatory review of State laws and regulations; and

3. Establish deadlines for States to achieve compatibility with appropriate parts of the FMCSRs with respect to interstate commerce.

(h) Regulations implementing procedures to collect fees that will be charged for motor carrier registration and insurance for the following activities:

1. Application filings;

2. Records searches; and

3. Reviewing, copying, certifying and related services.

(i) Regulations implementing procedures for which motor carriers and brokers designate their agents (persons) for whom court process may be served, describing activities, such as:

1. The forms upon which the carrier can make the designations;

2. The eligible persons that can be agents, and how carriers shall make the designations in each State in which it is authorized to operate and for each State traversed during such operations, and

3. Where such designations must be made.

(j) Regulations implementing uniform Single-State registration procedures for motor carriers registered with the Secretary of Transportation.

(k) Regulations for all brokers[4] of transportation by motor vehicles that describe the following activities:

1. The duties and obligations of a broker;

2. The records and accounts a broker must keep;

3. The type of brokerage service the broker must perform; and

4. The charges and compensation a broker is entitled to receive.

(l) Regulations requiring every motor carrier to issue and keep a receipt or bill of lading (or record) for property tendered for transportation in interstate or foreign commerce containing such information as:

[4] A ‘‘broker’’ is a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. The broker has accepted the shipments and is legally bound to transport them.

1. What must be contained on the receipt; and
2. Who shall be given the original freight bill and who shall be given a copy, as well as how it can be transmitted to the payer.

(m) Regulations implementing procedures applicable to the operations of household good carriers engaged in the transportation of household goods[5], for the following activities:

1. The information that carriers must give to prospective shippers prior to holding themselves out to perform such service;
2. How carriers are to estimate the shipping costs which the shippers will be required to pay for these shipments;
3. How to determine the weight of the shipments prior to assessing any shipping charges;
4. How to accept shipments and provides carrier notification of delay;
5. The liability of carriers; and
6. How to file complaints.

(n) Regulations that apply to actions by motor carriers registered with the Secretary to transport property for the following:

1. The leasing of equipment (e.g., a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for- hire) with which to perform transportation regulated by the Secretary;
2. The leasing of equipment to motor private carriers or shippers;
3. The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary;
4. To provide written lease requirements for authorized carriers that do not own their transportation equipment; and
5. To set forth requirements for carriers to obtain exemptions for lease arrangements.

(o) Regulations that apply to the transportation by motor vehicle of C.O.D. shipments by all common carriers of property subject to 49 U.S.C. § 13702, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and for such transportation that is performed by freight forwarders and on freight forwarder bills of lading for the following activities:

1. Tariff filing requirements;
2. Extension of credit to shippers;
3. Presentation of freight bills; and
4. Computing time for shipments.

[5] ''Household goods'' means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the FMCSA may provide by regulation.

(p) Regulations that govern the processing of claims for overcharge, duplicate payment, or over-collection for the transportation of property in interstate commerce or foreign commerce by motor carriers for information concerning how to document and investigate claims, keep records, and dispose of claims.

(q) Regulations implementing preservation of records procedures for motor carriers and brokers, and household freight forwarders for the types of records that must be retained and the retention periods (e.g., until expiration or termination plus 3 years, 3 years, etc.).

(r) Regulations implementing controlled substances and alcohol use and testing procedures designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles and apply to every person and all employers of such persons who:

1. Operate a commercial motor vehicle (as defined in 49 CFR 382.107) in commerce in any State; and
2. Are required by 49 CFR part 383 to possess a commercial driver's license (CDL).
3. Examples of the topics covered include rules prescribing activities for:
    A. Pre-employment controlled substances test requirements;
    B. Random, post accident, reasonable suspicion, return to duty and follow-up alcohol and controlled substances testing procedures for employers and employees;
    C. Random testing rates;
    D. Requirements for drivers to report immediately to a specimen collection site; and
    E. An action required by employers if an employee has a positive test result, and recordkeeping.

(s) Regulations intended to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner and provide for:

1. A prohibition against a commercial motor vehicle driver having more than one commercial motor vehicle driver's license;
2. A requirement for drivers to notify their current employer and State of domicile of certain convictions;
3. A requirement for drivers to provide previous employment information when applying for employment as an operator of a commercial motor vehicle;
4. A prohibition against an employer allowing a person with a suspended license to operate a commercial motor vehicle;
5. Periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges; testing and licensing requirements for commercial motor vehicle operators;

6. A requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard; and

7. Requirements for the State-issued commercial license documentation.

(t) Regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by:

1. Including the minimum standards for the actions States must take to be in substantial compliance with each of the statutory requirements of 49 U.S.C. § 31311(a); and

2. Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license.

And establish procedures for:

1. Determining whether a State is in compliance with the rules of this part; and

2. The consequences of State noncompliance.

(u) Regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350– 399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

1. A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

2. To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

(v) Regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers of property and passengers operating motor vehicles in interstate, foreign, or intrastate commerce.

(w) Regulations to enable States to enter into cooperative agreements with the FMCSA to enforce the safety laws and regulations of a State and the agency concerning motor carrier transportation by filing a written acceptance of the terms.

(x) Regulations implementing procedures for the issuance, amendment, revision, and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for waivers, exemptions and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.).

(y) Regulations implementing:

1. Aiding or abetting prohibitions;

2. Motor carrier identification and registration reports, including Performance and Registration Information Systems Management program registrations;
3. Motor carrier and driver assistance with routine accident investigations;
4. Relief during regional and local emergencies, including tow trucks responding to emergencies;
5. Locations where motor carriers, drivers, brokers, and freight forwarders must store records;
6. Requirements about motor carriers, drivers, brokers, and freight forwarders copies of records; and
7. Prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record, including interstate motor carrier noise emission applications, certificates, reports, or records required by FMCSA.

(z) Regulations establishing:

1. The minimum qualifications for persons who drive CMVs as, for, or on behalf of motor carriers; and

2. The minimum duties of motor carriers with respect to the qualifications of their drivers.

(aa) Regulations requiring a motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with, or in control of a CMV to comply with when they inspect, repair, and provide maintenance for that vehicle.

(bb) Regulations concerning vehicle operation safety standards (e.g., regulations requiring: certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (e.g. fire extinguishers and flares).

(cc) Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

(dd) Regulations concerning rules of the road, traffic services, and marking of intelligent transportation systems.

(7) Recreational Activities and Events

(a) Approval of recreational activities or events at a location developed or created for that type of activity.

(b) Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

1. Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

2. Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local

government and for which the FMCSA determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

f. Extraordinary Circumstances. The listed extraordinary circumstances below and those in the DOT Order are addressed in the Environmental Checklist. FMCSA may determine that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant impacts and apply the CE. If a CE is not appropriate, an EA or an EIS must be prepared. With respect to the CEs listed in this part, extraordinary circumstances include, but are not limited to, when the proposed action:

(1) Has greater size or scope than is generally experienced for the category of action.

(2) Is reasonably likely to create controversy regarding the potential for significant environmental impacts.

(3) Has highly uncertain impacts on the environment that involve unique or unknown risks or are scientifically controversial.

(4) Is reasonably likely to establish a precedent (or makes decisions in principle) for future or subsequent actions that would have a future significant impact.

(5) Is reasonably likely to have significant impacts on public health, safety, or the environment.

(6) Is reasonably likely to be inconsistent with or cause a violation of any Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(7) Is reasonably likely to cause reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(8) Is reasonably likely to cause releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(9) Is reasonably likely to generate air emissions that would exceed de minimis levels or otherwise require a formal Clean Air Act conformity determination.

(10) Has reasonable potential for degradation of already existing poor environmental conditions. Also, reasonable initiation of a degrading influence, activity, or impact in areas not already significantly modified from their natural condition.

(11) Is reasonably likely to have an unresolved impact on environmentally sensitive resources unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.). Environmentally sensitive resources include:

(a) Proposed federally listed, threatened, or endangered species or their habitats.

(b) Properties listed or eligible for listing on the National Register of Historic Places.

(c) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, parkland, wetland, wild and scenic river, designated wilderness or wilderness study area, 100-year floodplain, sole source aquifer (potential sources of drinking water), ecologically critical area, or property requiring special consideration under 49 U.S.C. § 303(c). (Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the

Department of Transportation (DOT) Act, which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or any historic site).

(12) May cause a change in traffic patterns or an increase in traffic volumes (road and/or waterway) that could require rerouting of roads, waterways, or traffic.

g. Procedures for Applicant-Prepared Environmental documents.

(1) Applicants or proponents (e.g. a cooperating local government) may prepare environmental documents for a proposed action, but FMCSA will take an active guidance and evaluative role during EA/EIS preparation and will take final responsibility for the quality of the analysis and the resulting document pursuant to Section 25. Local governments, other applicants, or cooperating agencies may conduct studies on FMCSA's behalf, but FMCSA must oversee and approve the work. FMCSA staff will provide guidance to assist applicants in preparation of these documents.

(2) Documents Prepared by Contractors.

Contractors frequently prepare EAs and EISs. To obtain unbiased analyses, contractors must be selected in a manner that avoids, to the maximum extent possible, even the appearance of impropriety, including but not necessarily limited to, avoiding any conflicts of interest. Therefore, contractors must execute disclosure statements specifying that they have no financial or other interest in the outcome of the project or action. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also to avoid extensive, time-consuming, and costly analyses or revisions. FMCSA Action proponents and NEPA program managers must be continuously informed and involved. When selecting a contractor the following rules will apply:

(a) A contractor will be chosen solely by Federal agencies to avoid any conflict of interest.

(b) Agencies will prepare disclosure statements for execution by contractors specifying that the contractor has no financial or other interest in the outcome of the action.

(c) The responsible Federal official shall independently evaluate the EIS and take responsibility for its scope and contents.

(d) All contractor-prepared documents must indicate the contractor's level of involvement in the following ways:

1. If contractor involvement is minimal and only for a limited portion of the NEPA analysis process, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environment Project Manager.

2. If the contractor has a major involvement in the preparation of the environmental document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the "cover page" of the environmental document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for FMCSA and be signed by the contractor as the preparer, or that the documentation was prepared by both the contractor and FMCSA and be signed by the contractor and the FMCSA Environmental Project manager as preparers.

h. Where the Public Can Access Information or Status Reports on Projects.

(1) FMCSA will make diligent efforts to involve the public in preparing and implementing its NEPA procedures. FMCSA will provide public notice of NEPA-related hearings and hold or sponsor public hearings or meetings, if appropriate and in accordance with statutory requirements. Public involvement will be determined on a case-by-case basis. For actions that require rulemaking, the public involvement under NEPA will be coordinated with the rulemaking notice and comment whenever possible.

30. SUBPART C. MARITIME ADMINISTRATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the Maritime Administration (MARAD) and all MARAD actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by MARAD.

a. Applicability. MARAD is required to conduct a NEPA review for proposed major federal actions. Proposed major Federal actions subject to NEPA are not limited to actions directly carried out by MARAD, but also include actions approved, authorized, licensed, or funded by the Agency and carried out by other parties. For example, actions where MARAD provides financial assistance to non-federal entities under contracts, grants, or cooperative agreements, require NEPA analysis by MARAD prior to initiating the action.

b. Roles and Responsibilities. In administering the NEPA process to MARAD actions, the following responsibilities apply:

(1) Associate Administrator, Office of Environment and Compliance (or designee as appropriate):

(a) Act as principal liaison, with the Office of the Secretary of the Department of Transportation (OST), the Council on Environmental Quality (CEQ), the Environmental Protection Agency (EPA), other Federal agencies, Congress, state governments, and the public with respect to significant NEPA matters.

(b) Determine whether environmental impacts discussed in EAs may be significant, and sign FONSIs.

(c) Serve as the responsible agency official under NEPA and this Order for certifications under Sections 10 and 14.

(2) Director, Office of Environmental Compliance (or designee as appropriate):

(a) Advise and assist project applicant regarding the preparation and coordination of environmental documentation.

(b) Determine the appropriate NEPA level of review (CE, EA, EIS).

(c) Manage the environmental review process for all NEPA levels of review.

(d) Approve the completion of all EAs and EISs by project applicant.

(e) Prepare CE documentation, FONSIs, RODs.

(f) Sign CE documentation on behalf of the Agency.

(g) Determine, in instances where MARAD may exercise discretion over the appropriate level of public participation or dissemination of environmental documents, whether to

submit an environmental document for public notice and comment and the form of any such participation or dissemination.

(3) The Maritime Administration Chief Counsel (or designee as appropriate):

(a) Act as legal advisor to the Office of Environmental Compliance; and upon request, provide legal advice for compliance with NEPA to all decision-makers.

(b) Perform a legal sufficiency review of NOIs and NOAs, final EAs and FONSIs, draft and final EIS and RODs.

(c) NOIs, NOAs, FONSIs, RODs, draft and final EAs, draft and final EISs, and any other documentation considered part of the Administrative Record shall be reviewed by MARAD's Office of Chief Counsel for legal sufficiency prior to the document being shared with any member of the public.

(4) All Associate Administrators (AA), Independent Office Directors, USMMA, and Field Activity Heads:

(a) Advance and promote knowledge of NEPA and environmental requirements to their organizations.

(b) Notify the Office of Environmental Compliance regarding potential proposed actions that require NEPA review.

(c) Prepare necessary environmental documentation with guidance and assistance from the Office of Environmental Compliance.

(d) Work collaboratively with the Office of Environmental Compliance and ensure all environmental documentation is reviewed and signed by the Director, Office of Environmental Compliance or the Associate Administrator for Environment and Compliance.

(5) Project Applicants (e.g. MARAD, USMMA, Grantees, Deepwater Port Applicants, or contractors and agents acting on behalf, or for the benefit, of MARAD) should:

(a) Consult with the Office of Environmental Compliance, who has sole responsibility to determine the level of NEPA review appropriate for the proposed action.

(b) Work collaboratively with the Office of Environmental Compliance and ensure all environmental documentation is reviewed and signed by the Director, Office of Environmental Compliance or the Associate Administrator for Environment and Compliance, as appropriate.

(c) Comply with this Order if preparing environmental documents (e.g. EA or EIS) with MARAD supervision.

(d) Coordinate any required local notifications and coordinate with the Office of Environmental Compliance to oversee the process of necessary public meetings, hearings, or other public involvement to comply with the public participation requirements in this Order. The project applicant, with assistance from the Office of Environmental Compliance and the Office of Chief Counsel, will prepare the notifications and ensure that other stakeholders are notified, as necessary.

(e) Where MARAD seeks public comments on EAs or EISs, provide assistance with processing the comments, as appropriate.

c. Determination of the Level of NEPA Review. MARAD has identified the following levels of NEPA review. (See Section 6 of this Order).

(1) A determination of the NEPA level of review is made by the Office of Environmental Compliance once sufficient information has been provided to make the determination and federal funding has been awarded, thus starting the schedule and corresponding deadlines. MARAD, in consultation with the project applicant, will prepare a schedule of NEPA activities to complete the required NEPA review within one year or two years, as appropriate.

(2) An EIS will be prepared for any proposed major Federal action significantly affecting the environment. Listed below are types of proposed actions that normally require the preparation of an EIS:

(a) Deepwater Port license applications

(b) Large port infrastructure projects

(3) If a decision has not been made to prepare an EIS and a proposed action is not categorically excluded pursuant to section 30e, , an EA will be prepared.

(4) Draft and final EAs, draft and final EIS, NOIs, NOAs, FONSIs, RODs, and any other documentation considered part of the Administrative Record shall be reviewed by MARAD's Office of Chief Counsel for legal sufficiency prior to the document being shared with any member of the public.

d. NEPA and Agency Decision Making.

(1) The Office of Environmental Compliance will work with project applicants in an iterative process to aid efficient completion of the environmental documentation in accordance with the provisions of this Order and related authorities. Non-federal entities without an identified major federal action are not eligible for the NEPA review process. This decision is at the discretion of the Director, Office of Environmental Compliance.

(2) All necessary environmental documentation must be completed before a final decision is made to proceed with an action. Consistent with Section 7 of this Order, no action concerning the proposed action may be taken that would adversely impact existing environmental resources; significantly alter the existing conditions of the site in any way; or limit the choice of reasonable alternatives for the proposed action until the NEPA review process has been completed. In the case of financial assistance, funding shall not be expended by the project applicant unless it has first received written approval from MARAD.

(3) Long-Lead Time Purchases and Pre-NEPA Field Investigations.

(a) Project applicants may purchase construction materials or equipment with long lead times prior to the completion of NEPA, so long as the purchase of such equipment or materials does not limit the choice of reasonable alternatives. Long lead time equipment or materials may not be purchased without prior notification and approval from MARAD. Expending any funds associated with the proposed action without prior written approval from MARAD may result in the revocation of the recipient's Federal assistance. Long lead time items are those that require more than six months from time of order to the time of delivery. Associated factors could include the complexity of the item or market availability, unknown fabrication dates due to supply chain issues, or built to order items. Approvals will be made on individual elements or items based on the justification provided. The proposed construction schedule cannot be used as

justification to request purchasing a piece of equipment or construction materials prior to the completion of NEPA. The Office of Environmental Compliance, in conjunction with the appropriate MARAD program office and Office of Chief Counsel, has discretion in determining what constitutes a long-lead time item.

(b) MARAD recognizes that certain field surveys, studies, and/or investigations are necessary to collect data, inform an environmental document, and comply with regulatory permits. Pedestrian and desktop site surveys are permitted during the NEPA review and do not require MARAD approval. However, certain field surveys that require minimally invasive environmental disturbances to the natural and manmade environment are permitted only with prior notification to and approval from MARAD. Disturbances to the natural and manmade environment include, but are not limited to, any change to existing infrastructure, soil, vegetation, wetlands, waterbodies, water discharges, or air emissions within or related to the proposed action. As such, preliminary engineering and other analyses such as topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic and hydraulic analyses, utility engineering, traffic studies, and hazardous materials assessments may be authorized by MARAD after notice from the project applicant. The Office of Environmental Compliance, in conjunction with the appropriate MARAD program office and Office of Chief Counsel, has discretion in determining whether the surveys, studies, and/or investigations are allowable.

(c) Final design activities, project construction, and/or other elements associated with the proposed action that will adversely impact the environment or limit the choice of reasonable alternatives shall not proceed until the MARAD Office of Environmental Compliance deems the NEPA process complete.

e. Categorical Exclusions. MARAD may utilize its own agency CEs, in addition to DOT's CEs listed in Appendix A or another agency's CEs, using the procedures described in this section and DOT Order 5610.1D, Section 9, to categorically exclude a proposed action. MARAD has identified seven categories of action, which under normal circumstances do not result in reasonably foreseeable significant environmental impacts, and for which preparation of an EA or an EIS is therefore not necessary. CEs will be signed by the Director, Office of Environmental Compliance, or their designee.

(1) Administrative procurements (e.g., general supplies), contracts for personal services, personnel actions, project amendments which do not significantly alter the environmental impact of an action; and operating or maintenance subsidies, ship financing guarantees, deferred tax programs, etc., not resulting in a change in the effect on the environment.

(2) Research studies and activities, including those at the Computer-Aided Operations Research Facility, which do not involve the direct construction of facilities.

(3) Internal orders and procedures not required to be published in the Federal Register promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 of or do not have a potential to cause a significant impact on the environment; routine enforcement of statutes, rules, and safety and environmental standards and requirements, e.g., enforcement of statutes and rules regarding transfer of certain U.S.-flag vessels to any person not a citizen of the United states (sections 9, 31 when operative, and 41, Shipping Act, 1916, as amended) and enforcement of requirements for admission to the United States Merchant Marine Academy (section

1303, Merchant Marine Act, 1936, as amended and 46 CFR Part 310, Subpart C); and hearings , meetings, and public affairs activities.

(4) Reconstruction, modification, modernization, replacement, repair, and maintenance (including emergency replacement, repair, or maintenance) of equipment, facilities, or structures which do not change substantially the existing character of the equipment/facility/structure.

(5) Purchase, installation, or replacement of operating or maintenance equipment to be located within a Maritime Administration facility and with no significant physical impacts off the site.

(6) Acquisition of land in which the property will not be modified, its use will not be changed J and displacements will not occur.

(7) Project or program actions for which applicable environmental documentation has been prepared previously and environmental circumstances have not subsequently changed.

(8) Excessing and disposing of Maritime Administration personal or real property to the General Services Administration or otherwise; use of space in Maritime Administration-owned buildings or buildings which are constructed for or controlled by the General Services Administration; lease of existing buildings; lease of space for a term of one year or less; and renewal of existing leases that do not involve significant changes in use of property.

(9) Demolition and removal of buildings and other structures; water, sewage, electrical, gas, or other utility extensions of temporary duration; new gardening or landscaping, or the maintenance of existing landscape, filling of earth into previously excavated land with material compatible where the surface is restored and excavated material is protected against was and runoffs; grading on land with a slope of less than 10 percent; removal of obstructions on Maritime Administration property; and erosion control actions with no o ff-Maritime Administration property impact.

(10) Construction on Maritime Administration installations of small (30,000 square feet or less) structures such as storage buildings, garages, small parking areas, foot or bicycle paths; installation of signs, fences, and security lighting; minor expansion of facilities which require no additional land; and where expansion is due to remodeling of space in current quarters or existing buildings.

f. Extraordinary Circumstances. With respect to the CEs listed above, extraordinary circumstances include, but are not limited to, the following:

(1) The proposed action is greater in scope or size than normally encompassed for actions in the category.

(2) The proposed action is controversial or likely to create controversy on environmental grounds.

(3) The proposed action increases in traffic congestion or traffic volumes on any mode of transportation.

(4) The proposed action includes in-water work.

(5) The proposed action is inconsistent with any applicable Federal, State, Tribal, or local law, requirement, or administrative determination relating to the protection of the environment.

MARAD may determine that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant impacts and apply the CE.

g. Reliance on Existing Environmental Documents.

(1) Reevaluation. After a FONSI or ROD is signed, the environmental commitments, environmental setting and circumstances, or project design may change. In such a case, a reevaluation of the environmental document may be necessary. Alternatively, the project applicant may request or amend the scope of the proposed action, in which case a reevaluation may be necessary.

(a) During a reevaluation, MARAD will evaluate the existing environmental document to determine whether it remains adequate, accurate, and valid, or whether a new or supplemental NEPA analysis is needed. Such reevaluation shall be in writing.

(b) For the simplest and least environmentally intrusive projects (e.g., CEs), reevaluations should succinctly verify whether the scope of the project remains essentially the same, address any changes to the project and resulting impacts to natural, cultural, or social resources, and determine whether the prior environmental document remains valid.

(c) For where an EA or EIS was originally prepared, additional analysis may be required to support a conclusion that there are no new significant impacts and that the prior environmental document remains valid for the requested action or next phase of the project. These additional analyses may be incorporated by reference into the reevaluation documentation or the supplemental document, if one is appropriate.

(d) Reevaluation of an EA or EIS shall occur if more than five (5) years have passed since the date the environmental document was issued and the proposed action has not yet begun, additional federal approvals are required, or MARAD's Office of Environmental Compliance determines that a re-evaluation is warranted.

(e) Reevaluations may also apply to tiered or programmatic environmental documents. When MARAD relies on tiered or programmatic environmental documents, the subsequent environmental document should reevaluate the higher-level documents on which they rely.

(f) During a reevaluation MARAD will coordinate with other agencies, as appropriate. The Office of Environmental Compliance should identify the applicable cooperating and participating agencies to the original environmental document to determine who should be consulted during the reevaluation process.

(g) When a reevaluation indicates supplemental review is warranted due to significant, or potentially significant, new impacts, a supplemental EA or EIS will be prepared.

h. Procedures for Applicant-Prepared Environmental documents.

(1) MARAD is responsible for the accuracy, scope, and content of all environmental documents, and must independently evaluate and ensure that they are prepared with professional and scientific integrity, using reliable data and resources.

(2) A project applicant/grantee may prepare or MARAD may delegate the preparation of an environmental document (EA or EIS) and other supporting environmental documentation for a proposed action to grantees, deepwater port applicants, contractors, or agents acting

on behalf, or for the benefit, of MARAD. Project applicants may prepare Environmental documentation contemporaneously with a funding or deepwater port application.

(a) Project applicant should consult with the Office of Environmental Compliance, who has sole responsibility to determine the appropriate NEPA level of review.

(b) Prior to entering into a contract for the preparation of an environmental document, MARAD will review proof of a proposed contractor's qualifications and expertise in the preparation of environmental documentation to avoid delays in implementing the proposed action. No contractor may be retained prior to approval from the Office of Environmental Compliance.

(c) MARAD will require an approved contractor to execute a disclosure statement, consistent with Section 7e, specifying any financial or other interest if applicable, or stating it has no financial or other interests in the outcome of the proposed action.

(d) Environmental documents prepared by project applicants or third-party contractors should consist of a technically complete document, including attachments and/or appendices that do not have any outstanding information or known data gaps. Draft environmental documents should be submitted to the Office of Environmental Compliance in Word format, consistent with the provisions outlined in Section 10. Revised draft environmental documents (all subsequent reviews after the initial review) should be submitted to MARAD in Word format with track changes. Comments from MARAD should not be deleted by the project applicant; MARAD will resolve if the response to the comment is sufficient. MARAD will advise when it is appropriate for the project applicant to submit a final copy of the environmental document. The final environmental document should be submitted in pdf format. All documents must be in compliance with Section 508 of the Rehabilitation Act of 1973.

(e) The scope of work and schedule must be approved by the Office of Environmental Compliance. The information should be of sufficient detail for MARAD to determine the NEPA level of review. Design of the proposed action should not be less than 30%.

(f) When preparing a schedule for completion of NEPA review:

1. The Office of Environmental Compliance will coordinate with the project applicant to obtain and review all the necessary information to determine if an EA or EIS is the required level of NEPA review (e.g. the application, project scope, desktop reviews, permits, previous environmental analyses, and a site visit).
2. The Office of Environmental Compliance will provide a generic schedule template for the project applicant to complete.
3. The NEPA completion schedule should include dates for completion of important milestones: Agency consultations, reviews, permits, authorizations, start and end dates. See Sections 10 and 14 for deadlines.
4. The Office of Environmental Compliance will review and approve the schedule.

(g) Project applicants should work collaboratively with the Office of Environmental Compliance and ensure all environmental documentation is streamlined to the maximum extent practicable.

(h) MARAD will evaluate, in a single review, environmental impact statement/proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, consistent with 42 U.S.C. § 4336a(b). MARAD will make the determination of independent utility for projects with potential connected actions, as applicable consistent with section 6b above.

i. Where the Public Can Access Information or Status Reports on Projects. MARAD will publish final EAs, FONSIs, final EISs, and RODs on MARAD's webpage and/or the project applicant/grantee webpage. Interested persons may obtain information on MARAD environmental procedures and on the status of environmental analysis conducted by MARAD from the Office of Environmental Compliance, U.S Maritime Administration, 1200 New Jersey Ave. SE Washington, DC 20590. Email: MARAD.NEPA.comments@dot.gov.

31. SUBPART D. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the National Highway Traffic Safety Administration (NHTSA) and all NHTSA actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by NHTSA.

a. Applicability. NHTSA is required to conduct a NEPA review for proposed major federal actions and has no additional specific requirements from section 3 of this Order.

b. Roles and Responsibilities. In administering the National Environmental Policy Act (NEPA) process to NHTSA actions, the following responsibilities apply:

(1) NHTSA Administrator. The NHTSA Administrator is the designated senior agency official responsible for the overall review of agency NEPA compliance, including resolving implementation issues.

(2) Associate Administrators. Each Associate Administrator, in consultation with the Deputy Chief Counsel, is responsible for determining, in accordance with this Order and this subpart, whether the projects and activities under their jurisdiction require an environmental review and for preparing the required reviews.

(3) Deputy Chief Counsel. The Deputy Chief Counsel serves as the designee to the NHTSA Administrator in carrying out their responsibilities for administering NEPA.

c. Determining the Appropriate Level of NEPA Review. NHTSA has identified the following levels of NEPA review. (See Section 6 of this Order).

(1) The Associate Administrator, or their designated representative, must conduct a preliminary analysis of any proposed action to determine the appropriate level of NEPA review, in accordance with the NEPA statute, DOT Order 5610.1D Section 6, and this subpart.

(2) NHTSA actions which normally require an EA may include, but are not limited to, rulemaking actions for which no applicable categorical exclusion has been established; and for which the action is not likely to have significant impacts, or for which the significance of the impacts is unknown.

(3) NHTSA actions which normally require an EIS may include, but are not limited to, rulemaking actions which are likely to have significant impacts on the quality of the human environment.

d. NEPA and Agency Decisionmaking.

(1) NHTSA should coordinate with appropriate Federal, State, Tribal, or local agencies, as well as any interested persons and organizations, when their involvement is reasonably foreseeable during the early stages of environmental review, to assist in identifying areas of significance and concern.

(2) While work on a required programmatic environmental review is in progress and the action is not covered by an existing programmatic review, NHTSA must not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

(a) Is justified independently of the program;

(b) Is itself accompanied by an adequate environmental review; and

(c) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(3) NHTSA must integrate the environmental review into the decision-making process by requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes, so that the environmental document is used in the decision-making process. NHTSA must include all relevant environmental documents, comments, and responses as part of the record in rulemaking proceedings.

(4) Rulemaking Proceedings. When preparing environmental documents for regulatory actions, NHTSA should combine public notice and comment processes under NEPA with those required by the rulemaking process wherever possible. Absent special circumstances, NHTSA must allow 30 days to comment on public documents. NHTSA may consider longer comment periods as appropriate. When simultaneously requesting public comment on regulatory action and its associated environmental document, and if a comment period is extended for the rulemaking process, NHTSA must also extend the comment period for the NEPA process and provide public notice accordingly. NHTSA must consider public comments and address them in final EAs and EISs.

(5) Use of Contractors. NHTSA must exercise care in selecting contractors and in reviewing their work to ensure complete and objective consideration of all relevant project impacts and alternatives. Where NHTSA authorizes a contractor to prepare an environmental document under its supervision, NHTSA must review and approve the entire environmental document and take responsibility for its accuracy, scope, and contents.

(a) Contractors may prepare background or preliminary material and assist in preparing environmental documents for which NHTSA takes responsibility.

(b) Contractors may not prepare a FONSI or ROD. NHTSA is solely responsible for preparing these environmental documents.

e. Categorical Exclusions. NHTSA may utilize DOT's CEs listed in Appendix A or another agency's CEs, using the procedures described in this section and DOT Order 5610.1D, Section 9, to categorically exclude a proposed action.

(1) When applying a CE to a proposed action, NHTSA must document the following, at a minimum:

(a) A description of the proposed action.

(b) The applicable CE reference and an explanation of its applicability to the proposed action.

(c) An analysis of the potential for extraordinary circumstances to occur in which a normally excluded action may have a significant impact.

(2) NHTSA must include the name of the preparer in the CE documentation and obtain approval from the Associate Administrator before submitting it with the proposal for the action.

(3) In addition to the procedures identified in this section, when NHTSA applies a CE to a rulemaking action, NHTSA must include the following in the rulemaking text or the rulemaking docket:

(a) The applicable CE reference and an explanation of its applicability to the proposed action.

(b) A summary of NHTSA's conclusions on the potential for extraordinary circumstances to occur.

(4) For any action that is normally categorically excluded, NHTSA must evaluate the action to determine if the extraordinary circumstances listed in Section 9.c. of this Order may apply.

(5) NHTSA may determine that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant impacts and apply the CE. NHTSA may consider whether mitigating circumstances or other conditions are sufficient to avoid significant impacts and therefore categorically exclude the proposed action.

f. Environmental Assessments. NHTSA may include a regulatory EA in the regulatory notices and analyses section of the Advanced Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, supplemental Notice of Proposed Rulemaking, Direct Final Rule, or Interim Final Rule, or as a stand-alone document in the Regulations.gov docket for the rulemaking action.

g. Reliance on Existing Environmental Documents. NHTSA may rely on existing environmental documents as outlined in Section 18.

(1) Reevaluations and Supplemental Environmental Documents. NHTSA must reevaluate and prepare supplements to either draft or final EISs if a major Federal action remains to occur, and NHTSA either makes substantial changes to the proposed action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. NHTSA should prepare, publish, and file a supplement to an EA or EIS (exclusive of scoping) as a draft and final EA or EIS, as is appropriate to the stage of the environmental document involved.

h. Where the Public Can Access Information or Status Reports on the NEPA Process.

(1) Website. The Deputy Chief Counsel is responsible for making available environmental documents, relevant notices, and other relevant information on NHTSA's website for use by agencies and interested persons. Interested persons may obtain information regarding the status of environmental documents and other elements of the NEPA process by contacting nhtsa.nepa_mailing@dot.gov.

(2) EIS Publication. NHTSA must publish an EIS for public review as three individual files: (1) Summary; (2) EIS Document (chapters); (3) EIS Appendices (if applicable). The three files

comprising the EIS should be posted to the NHTSA website, the appropriate docket, and e-NEPA, along with the public comment period end date.

32. SUBPART E. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

This subpart, DOT Order 5610.1D, and other applicable laws, regulations, and Executive Orders apply to all elements of the Pipeline Hazardous Materials Safety Administration (PHMSA) and all PHMSA actions, including but not limited to, new or revised agency rules and regulations, as well as projects and programs that are entirely or partly financed, assisted, conducted, regulated, or approved by PHMSA.

a. Applicability. PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials. To do this, the agency establishes national policy, sets, and enforces standards, educates, and conducts research to prevent incidents. Based on this mission, PHMSA's major Federal actions that are subject to NEPA review generally fall into three categories: regulatory actions, special permits, and natural gas distribution grant actions:

   (1) Regulatory Actions. PHMSA promulgates regulations to improve the safety of transportation of hazardous materials in all modes, including the Hazardous Materials Regulations (49 CFR parts 171–180) and the Pipeline Safety Regulations (49 CFR parts 190– 199). PHMSA does not site, permit, or authorize transportation infrastructure or the transportation of hazardous materials. PHMSA's regulatory standards are intended to reduce the likelihood of release of hazardous materials into the human environment during ongoing transportation of hazardous materials.

   (2) Special Permits. A Special Permit sets forth alternative requirements, or variances, to the requirements in the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199).PHMSA may issue such variances if the applicant demonstrates an equivalent level of safety will be achieved or, if a required safety level does not exist, the alternative requirements are consistent with the public interest.

   (3) Natural Gas Distribution Grants. PHMSA awards grants under programs including the Natural Gas Distribution Infrastructure Safety and Modernization grant program. This program assists municipalities or community-owned utilities (not including for-profit entities) in the repair, rehabilitation, or replacement of their natural gas distribution pipeline systems or portions thereof or in the acquisition of equipment to (1) reduce incidents and fatalities and (2) avoid economic losses.

   (4) Other PHMSA actions subject to NEPA review may include administrative actions, such as administrative procurements or personnel actions.

b. Roles And Responsibilities. In administering the National Environmental Policy Act (NEPA) process to PHMSA's actions, the following responsibilities apply:

   (1) Pipeline and Hazardous Materials Safety Administration (PHMSA) Administrator. The Administrator or designee is responsible for ensuring Agency compliance with NEPA pursuant to delegated authority under DOT regulation 49 CFR 1.81(a)(5).

      (a) The Administrator or designee must review and approve all final EIS and RODs.

      (b) The Administrator or designee must appoint an Agency Environmental Coordinator within the Environmental Analysis and Compliance Division (EACD) to manage day-to-day NEPA functions, including approval of any CE determination, EA, FONSI, or DEIS. The

Agency Environmental Coordinator, or a designee, must lead and review development of all CEs, EAs, FONSIs, EISs and RODs.

(2) Agency Environmental Coordinator. The Agency Environmental Coordinator must implement the provisions of NEPA on behalf of the Administrator or designee. This includes serving as an initial point of contact for interested parties to request information or status reports on environmental documents and other elements of the NEPA process. PHMSA must post the name and contact information of this individual on PHMSA's website.

(a) The Agency Environmental Coordinator, or a designee, must lead and review development of all CEs, EAs, FONSIs, EISs and RODs.

(b) The Agency Environmental Coordinator must implement a training program to ensure all PHMSA personnel engaged in programs and projects that may include a federal action subject to NEPA are familiar and comply with this Order.

(c) The Administrator delegates authority to the Agency Environmental Coordinator to designate a Lead Environmental Protection Specialist and a Federal Preservation Officer.

(3) Lead Environmental Protection Specialist. The Lead Environmental Protection Specialist or appropriate representative must coordinate NEPA activities for grant programs and is authorized to approve EAs, FONSIs, and CE determinations for these programs, following consultation with the Program Offices and PHMSA Office of Chief Counsel, and final authorization from the Agency Environmental Coordinator.

(4) Federal Preservation Officer. The Federal Preservation Officer is authorized to act as the PHMSA agency official, under 36 CFR 800, consult on the behalf of PHMSA, sign PHMSA correspondence, and identify Program Alternatives for the purpose of compliance with section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation.

(5) PHMSA Office of Chief Counsel. The PHMSA Office of Chief Counsel will review all EAs, FONSIs, Draft EISs, Final EISs, RODs, and analyses under Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. § 303). At its discretion, the Office of Chief Counsel may review any other environmental document, including CE determinations, to ensure legal compliance and assess legal risk.

c. Categorical Exclusions. PHMSA may utilize its own agency CE, in addition to DOT's CEs listed in Appendix A or another agency's CEs, using the procedures described in this section and DOT Order 5610.1, Section 9, to categorically exclude a proposed action. Approved CEs will be posted on the PHMSA website at www.phmsa.dot.gov/planning-and-analytics/environmental-analysis-and-compliance/implementing-procedures

(1) Equipment acquisition (including purchase or lease) of handheld and mobile methane detection equipment and associated vehicles.

(2) Granting, renewing, or denying a special permit related to waiving class location or odorization requirements, following the procedures set forth in 49 CFR 190.341, including the identification of any enforceable conditions, imposed pursuant to 49 CFR 190.341(d)(2), that are required to prevent and address pipeline safety and environmental risk.

(3) Rulemaking actions by the Office of Hazardous Materials Safety, other than deregulatory rulemaking actions, within one of the following categories:

(a) Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;

(b) Regulations designating, defining, or classifying regulated materials (hazardous materials, hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173);

(c) Regulations imposing requirements on transportation of regulated materials, including shipping papers, marking, labeling, placarding, emergency response information, training, and safety and security plans;

(d) Regulations concerning stowage and segregation of regulated materials in transportation, including rail car, portable tank, and cargo tank placement; loading, unloading, transportation, and storage of regulated materials by mode (rail, aircraft, vessel, and highway); revising standards for bulk and non- bulk packages (cylinders, portable tanks, cargo tanks, radioactive packages, intermediate bulk containers, drums, jerricans, boxes, and composite packagings, etc.); or incident reporting or tracking of regulated movements;

(e) Editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and

(f) Training, testing, and qualification of regulated materials personnel.

(4) Rulemaking actions by the Office of Pipeline Safety, other than deregulatory rulemaking actions, within one of the following categories:

(a) Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature;

(b) Regulations concerning corrosion control; training, testing, and qualification of operator personnel; or emergency response;

(c) Editorial or technical revisions and clarifications to correct editorial errors and improve clarity; and

(d) Revisions to civil penalty amounts that may be imposed for violations of certain DOT regulations.

(5) Repair, rehabilitation, or replacement of natural gas distribution pipelines and associated equipment within existing rights-of-way or easements. Associated actions include but are not limited to replacement of service lines, meters, metering stations, valves, taps, abandonment in place or abandonment by removal, minor excavation, replacement of pavement of existing roadway and/or sidewalks, and relocation within existing rights-of-way or easements. Actions will follow the applicable safety standards and requirements described at 49 CFR part 192.

d. Extraordinary Circumstances.

Extraordinary circumstances are factors or circumstances that indicate that a normally categorically excluded action may have a significant environmental impact. If an extraordinary circumstance exists, the Agency Environmental Coordinator, or designated representative, must consult the PHMSA Office of Chief Counsel and Program Offices to confirm whether the use of a

CE is appropriate. PHMSA may determine that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant impacts and apply the CE. If the Agency Environmental Coordinator or designated representative determines that use of a CE is inappropriate, the level of NEPA review should typically be an EA or EIS subject to the final determination of the Administrator. PHMSA will apply the extraordinary circumstances listed in Section 9.c. of this Order. Additional extraordinary circumstances PHMSA should consider include, but are not limited to:

(1) The proposed action may increase the likelihood of a reasonably foreseeable release under the Hazardous Materials Regulations (49 CFR parts 171–180) or Pipeline Safety Regulations (49 CFR parts 190–199).

(2) The proposed action may have an adverse impact on Floodplains, as defined in Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, and DOT Order 5650.2. PHMSA's compliance with these Orders will inform its extraordinary circumstances analysis.

e. Procedures for Applicant-Prepared Environmental documents. PHMSA is responsible for the accuracy, scope, and content of all environmental documents, and must ensure they are prepared with professional and scientific integrity, using reliable data and resources. In accordance with section 107(f) of NEPA, applicants, including applicant-directed contractors, may prepare EAs and EISs under PHMSA's supervision, subject to the following procedures:

(1) If an applicant chooses to use a contractor to prepare an environmental document, PHMSA must ensure that all costs of using a contractor will be borne by the applicant. Furthermore, PHMSA must ensure a disclosure statement is prepared for the contractor's execution specifying that the contractor has no financial or other interest in the outcome of the action.

(2) PHMSA must participate in and supervise the document's preparation. PHMSA must assist contractors and applicants by providing guidance and outlining the types of information required for the preparation of the environmental document. Additionally, PHMSA must collaborate with the contractor to ensure the analysis is focused on areas where there is a higher potential for significant impacts.

(3) PHMSA must review and approve the statement of purpose and need and the alternatives that will be considered in the environmental document at an early time, before the applicant (or the applicant's contractor) prepares the rest of the environmental document.

(4) PHMSA must independently evaluate the environmental document and take responsibility for its accuracy, scope, and contents. PHMSA may choose in its discretion to accept, edit, revise, or independently author sections of the document or the whole document.

(5) PHMSA must include a statement in any environmental document prepared by an applicant or contractor stating that PHMSA has independently evaluated the document for its accuracy, scope, and contents. The environmental document must include the names and qualifications of individuals responsible for preparing and reviewing the document, including those individuals from PHMSA responsible for conducting the Agency's independent evaluation.

(6) PHMSA must independently prepare FONSIs and RODs without the support of an applicant or their contractor.

(7) PHMSA must ensure that the applicant preserves and includes in a decision file all factual, scientific, or technical information used, developed, or considered by the applicant in the course of preparing the draft environmental document, including any correspondence with PHMSA or with third parties.

f. Where the Public Can Access Information or Status Reports on Projects. Interested persons may find information on projects and agency initiatives at PHMSA's Newsroom, located on the PHMSA website at https://www.phmsa.dot.gov/newsroom.

(1) Regulatory Actions. PHMSA must notify the public of the availability of Draft EAs and DEISs for regulatory actions subject to public notice and comment, to solicit public comment. PHMSA may publish the Draft EA in the "Regulatory Notices and Analyses" section of a Notice of Proposed Rulemaking or supplemental Notice of Proposed Rulemaking, or as a standalone document in the docket for the rulemaking action, found at www.regulations.gov (in which case PHMSA must include a citation to the docket in the "Regulatory Notices and Analyses" section).

(2) Special Permits. Special permits and associated environmental documents are posted in the Federal Register and available at www.regulations.gov. Copies these documents are also posted on the PHMSA website at https://www.phmsa.dot.gov/guidance. A special permit, or regulatory waiver, is an order by which PHMSA waives compliance with one or more of the requirements in the hazardous material regulations (49 C.F.R. Parts 171-180) or pipeline safety regulations (49 C.F.R. Parts 190-199), subject to conditions set forth in the permit.

(3) Natural Gas Distribution Grants. For site-specific construction projects, such as natural gas distribution grants, PHMSA provides public access to CEs, EAs, and DEISs on PHMSA's website at https://www.phmsa.dot.gov/about-phmsa/working-phmsa/grants/pipeline/phmsa-tier-2-site-specific-environmental-assessment. PHMSA must solicit public comment on Draft EAs and DEISs. PHMSA will confirm that grantees must also make these documents available in a location that is locally accessible to where the proposed action is located.

Appendix A – List of Department of Transportation Categorical Exclusions

The following CEs are for DOT actions. OAs may utilize these CEs for their projects. When an OA uses these CEs, they may do so without following the cross-modal CE sharing process. When using these CEs, the OA must evaluate the extraordinary circumstances outlined in Section 9.

1. Administrative procurements (e.g., general supplies) and contracts for personnel services.
2. Personnel actions (e.g., promotions, hirings).
3. Training, technical assistance, and educational and informational programs and activities.
4. Project amendments (e.g., increases in costs) which do not significantly alter the environmental impact of an action.
5. Operating or maintenance subsidies when the subsidy will not result in a change in the effect on the environment.
6. The following actions relating to economic regulation of airlines:
    a. Actions implementing the essential air service program;
    b. Enforcement proceedings;
    c. Actions approving a carrier agreement; acquisition of control, merger, consolidation, or interlocking relationship;
    d. Finding a carrier fit under Section 410 of the Federal Aviation Act of 1958;
    e. Approving or setting carrier fares or rates;
    f. Route awards involving turboprop aircraft having a capacity of 60 seats or less and a maximum payload capacity of 18,000 pounds or less;
    g. Route awards that do not involve supersonic service and will not result in the increase in commercial aircraft operations of one or more percent;
    h. Determinations on termination of airline employees;
    i. Actions relating to consumer protection, including regulations;
    j. Authorizing carriers to serve airports already receiving the type of service authorized;
    k. Granting temporary or emergency authority;
    l. Negotiating bilateral agreements;
    m. Registration of an air taxi operator pursuant to the Department's Regulations (14 CFR Part 298); and
    n. Granting of charter authority to a U.S. or foreign air carrier under sections 401, 402 or 416 of the Federal Aviation Action or the Department's Economic Regulations.

7/1/25

Sean P. Duffy
Secretary of Transportation

Date