

American Public Transportation Association
March 2026 Legal Affairs Seminar
CLE Materials for “DOT Alumni Perspectives” Panel

1. *FTA Master Agreement*, U.S. Dep’t of Transp. (Nov. 26, 2025).
2. *FTA Certifications and Assurances, Fiscal Year 2025*, U.S. Dep’t of Transp. (2025).
3. *Office of the Secretary of Transportation’s NEPA Order 5610.ID*, U.S. Dep’t of Transp. (July 1, 2025).
4. Revision of National Environmental Policy Act Regulations, 90 Fed. Reg. 29426 (July 3, 2025).
5. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168 (2025).
6. DBE and ACDBE Implementation Modifications Interim Final Rule, 90 Fed. Reg. 47969 (Oct. 3, 2025).
7. *Official FAQs on the DBE and ACDBE Implementation Modifications Interim Final Rule*, U.S. Dep’t. of Transp. (last updated Dec. 1, 2025).
8. Rescinding Portions of Department of Justice Title VI Regulations, 90 Fed. Reg. 57141 (Dec. 10, 2025).
9. *Civil Rights Fraud Initiative Memorandum*, U.S. Dep’t. of Just. (May 19, 2025).
10. *Streamlining the Review of Deregulatory Actions Memorandum*, Exec. Off. of the President (Oct. 21, 2025).
11. *Grant Agreement Template Under the Fiscal Year 2025 Build Program*, U.S. Dep’t. of Transp. (revised Nov. 4, 2025).
12. Public Transportation Agency Safety Plans, 49 C.F.R. pt. 673 (2024).

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT

**For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53 and Title 23, United States Code (Highways), as amended by
the Infrastructure Investment and Jobs Act of 2021 (IIJA), the Fixing America’s Surface
Transportation (FAST) Act, the Moving Ahead for Progress in the 21st Century Act
(MAP-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy
for Users (SAFETEA-LU), the SAFETEA-LU Technical Corrections Act of 2008, or other
federal laws that FTA administers.**

**FTA MA(34)
November 26, 2025**

<http://www.transit.dot.gov>

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**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT

PREFACE

Statutory Authorities

This is the official Federal Transit Administration (FTA) Master Agreement that applies to each Underlying Agreement (Grant Agreement, Cooperative Agreement, Loan Agreement, Loan Guarantee Agreement, or Line of Credit Agreement) for a specific Award authorized by:

- (a) Federal transit laws, 49 U.S.C. chapter 53, as amended, including the following:
 - (1) The Infrastructure Investment and Jobs Act of 2021 (IIJA), Public Law No. 117-58, November 15, 2021, and other authorizing legislation that may be enacted;
 - (2) The Fixing America’s Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015;
 - (3) The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law No. 112- 141, July 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law No. 114-41, July 31, 2015; and
 - (4) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law No. 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No 110-244, June 6, 2008.
- (b) Continuing Resolutions or Other Appropriations Resolutions or Acts funding the Department of Transportation during Fiscal Year 2025.
- (c) Title 23, United States Code (Highways).
- (d) Other federal legislation that FTA administers, as FTA so determines.

Purpose of this Master Agreement

This FTA Master Agreement contains the standard terms and conditions that apply to the Underlying Agreement with the Recipient, which Underlying Agreement may take the form of an:

- (a) FTA Grant Agreement, including an FTA Grant Agreement for an award of federal assistance under the Tribal Transit Program;
- (b) FTA Cooperative Agreement; or
- (c) Transportation Infrastructure Finance Innovation Act (TIFIA) or Railroad Rehabilitation and Improvement Financing (RRIF) Loan, Loan Guarantee, Line of Credit, Master Credit Agreement for a Project overseen by FTA, or State Infrastructure Bank (SIB) Cooperative Agreement.

THEREFORE, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

GENERALLY APPLICABLE PROVISIONS

Section 1. Terms of this Master Agreement and Compliance.

- (a) The Recipient must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- (b) To assure compliance with federal laws, regulations, and requirements, the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- (c) FTA may take enforcement action if the Recipient or a Third Party Participant violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- (d) FTA and the Recipient agree that not every provision of this Master Agreement will apply to every Recipient or Underlying Agreement.
 - (1) FTA has divided this Master Agreement into the “Preface,” “Generally Applicable Provisions,” and “Special Provisions for Specific Programs.”
 - (2) This Master Agreement has an Appendix A illustrating the specific provisions of this Master Agreement that apply to the Tribal Transit Programs.
 - (3) Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of Award, the federal law authorizing federal assistance for the Award, the federal law, regulations, or requirements governing how the Award must be implemented, the federal guidance pertaining to the Award, and the Recipient’s legal status as a “state,” “state instrumentality,” a “local government,” a federally recognized Indian Tribe (Indian Tribe), a “private nonprofit entity,” a “private for-profit entity,” or an individual.
- (e) As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the specific FTA Recipient, its Third Party Participants, or to any Project and related activities encompassed in the Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (f) Each provision of this Master Agreement must be interpreted in context with all other provisions of this Master Agreement and the Underlying Agreement. If a single provision is read apart from the rest of this Master Agreement or the Underlying Agreement, that provision might not convey the extent of the Recipient's responsibility to comply with the requirements of this Master Agreement and the Underlying Agreement.
- (g) This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or Amendment to this Master Agreement or the Underlying Agreement.

Section 2. Definitions.

- (a) *List of Definitions.* In addition to the definitions provided in 49 U.S.C. § 5302, as amended, or in previous legislation if circumstances may require, the Recipient agrees that the following definitions apply:
 - (1) *Application* means the request for federal assistance submitted that is signed and dated by the Applicant or an official authorized to act on the behalf of the Applicant, and includes all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Applicant, and has been reviewed by FTA staff and addresses FTA's comments and concerns. An application for federal assistance in the form of a Grant or Cooperative Agreement must be submitted in FTA's Transit Award Management System (TrAMS).
 - (2) *Approval*, unless FTA determines otherwise in writing, means a written statement of an authorized federal official transmitted electronically or in typewritten hard copy expressly permitting the Recipient to take or omit an action in connection with its Underlying Agreement, and signed by a federal official authorized to permit the Recipient to take or omit an action that may not be taken or omitted without the Federal Government's permission. Approval does not mean permission to take or omit a similar action other than the specific action for which approval was given and does not include an oral permission or interpretation, which has no legal force, authority, or effect. For purposes of this Master Agreement, the definition of "approval" also applies to "concurrence" and "waiver."
 - (3) *Associated Transit Improvement* means, with respect to a Project or an area to be served by a Project, an activity that is designed to enhance transit service or use and that is physically or functionally related to transit facilities.

- (4) *Award* means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance. The Award also includes the requirements of all documents, terms, and conditions incorporated by reference and made part of the Underlying Agreement, which may be a Grant or Cooperative Agreement.
- (5) *Award Budget* [formerly, *Approved Project Budget*] means the budget for all the Projects encompassed by the FTA Award. In contrast, *Project Budget* means the budget allocated for a single Project contained within an Award that FTA or a pass-through entity approves during the federal award process or in subsequent amendments to the FTA Award. It may include the federal and non-federal share or only the federal share, as determined by FTA or the pass-through entity. For legal and other purposes, FTA reserves the right to consider information other than that displayed electronically or on paper in the “Award Budget” to determine the scope of the Award, eligible Project activities, and other terms used in connection with the Award.
- (6) *Common Rules* means any one or more of the following:
- (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200;
 - (ii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18; and
 - (iii) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.
- (7) *Concurrence* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (8) *Cooperative Agreement* means an instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6305, the Federal Government takes an active role and retains substantial control. An FTA Cooperative Agreement consists of three parts:

- (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Cooperative Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent Federal Transit Administration Master Agreement, which applies to this Cooperative Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Cooperative Agreement by the Recipient.
- (9) *Designated Recipient* means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a Capital Project and for financing and directly providing public transportation.
- (10) *Disability* has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102.
- (11) *Federal Assistance* means a type of federal funding that the Recipient receives through the Underlying Agreement.
- (12) *Federal Award Identification Number* has the same meaning as “Project No.” in previous Grant Agreements and Cooperative Agreements with FTA.
- (13) *Federal Government* means the United States of America and any of its executive departments or agencies.
- (14) *Federal Guidance* includes any federal document or publication signed by an authorized federal official providing official instructions or advice about a federal program that is not defined as a “federal requirement” and applies to

entities other than the Federal Government. Federal Guidance also may apply to the Federal Government, and may take the form of a:

- (i) Federal directive;
- (ii) Federal circular;
- (iii) Federal order;
- (iv) Federal published policy;
- (v) Federal administrative practice;
- (vi) Federal guideline;
- (vii) Federal guidance document;
- (viii) Letter signed by an authorized federal official; or
- (ix) Similar document.

(15) *Federal Requirement* means:

- (i) An applicable federal law, regulation, or executive order;
- (ii) An applicable provision of the Underlying Agreement, including any Special Condition, Requirement, Provision, or Condition of Award;
- (iii) This Master Agreement;
- (iv) A later Master Agreement after FTA and the Recipient have entered into the Underlying Agreement; or
- (v) Another applicable federal mandate.

(16) *Federal Transit Administration (FTA)* is an operating administration of the Department of Transportation (U.S. DOT). Any reference to the “Urban Mass Transportation Administration” (also referred to as “UMTA”) refers to the “Federal Transit Administration” or “FTA” when appearing in any records of the United States.

(17) *Federal Transit Administrator* is the head of the Federal Transit Administration.

(18) *Federally Recognized Indian Tribe* means an Indian tribe that is federally recognized by the Bureau of Indian Affairs of the U.S. Department of the

Interior in accordance with the provisions of the Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. § 5130.

- (19) *Fiscal Year*, as used in this Master Agreement, means “federal fiscal year,” which begins on October 1 of each calendar year and ends on September 30 of the next calendar year.
- (20) *Governor* means the governor of a state, the mayor of the District of Columbia, or the chief executive officer of a territory of the United States and includes the designee thereof.
- (21) *Grant Agreement* means a legal instrument that the Federal Government uses to award federal assistance to the Recipient to support each specific Project and related activities described in the Underlying Agreement in which, consistent with 31 U.S.C. § 6304, the Federal Government does not take an active role and does not retain substantial control. An FTA Grant Agreement consists of three parts:
 - (i) The FTA Award, consisting of the amount of federal assistance FTA is providing to support each specific Project and related activities, and a description of each Project as set forth in the Application submitted to FTA in TrAMS or on paper if permitted;
 - (ii) The Terms and Conditions incorporated by reference and made part of the Grant Agreement consisting of the following documents, irrespective of whether electronic or in typewritten hard copy, including:
 - (A) The most recent “Federal Transit Administration Master Agreement, which applies to this Grant Agreement;
 - (B) The current Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA; and
 - (C) Any Award notification containing special conditions or requirements if issued; and
 - (iii) The Execution of the Grant Agreement by the Recipient.
- (22) *Indian Tribe* means the Recipient or Subrecipient that receives “Tribal Transit Program” assistance authorized by 49 U.S.C. § 5311(c)(1) to support its Underlying Agreement.

- (23) *Internal Controls* means a process, implemented by a Recipient or Subrecipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) effectiveness and efficiency of operations, (b) reliability of reporting for internal and external use, and (c) compliance with applicable laws, regulations, and requirements.
- (24) *Local Government Authority* includes (a) a political subdivision of a state; (b) an authority of at least one state or political subdivision of a state; (c) an Indian tribe; and (d) a public corporation, board, or commission established under the laws of a state.
- (25) *Low-Income Individual*, for purposes of 49 U.S.C. § 5311(j)(1)(A)(iii), means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2), including any revision required under that section, for a family of the size involved.
- (26) *Master Credit Agreement* means a conditional agreement to extend one or more loans to a Recipient under the Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998, as amended, 23 U.S.C. §§ 601 – 609, or the Railroad Rehabilitation and Improvement Financing (RRIF) program, 45 U.S.C. §§ 821 – 823, and also means the type of Underlying Agreement used for the TIFIA or RRIF loans.
- (27) *Non-Federal Funds* or *Non-Federal Share* includes the following sources of funding or in-kind property or services used to match the federal assistance awarded for the Grant or Cooperative Agreement:
- (i) Local funds;
 - (ii) Local in-kind property or services;
 - (iii) State funds;
 - (iv) State in-kind property or services;
 - (v) Other federal funds for which the federal statute authorizing a program specifically provides that federal funds made available for that program can be applied to the cost sharing requirements of other federal programs.
- (28) *Non-Tribal Service Provider*, for purposes of 49 U.S.C. § 5311(j)(2), means a non-tribal provider of public transportation that connects residents of tribal

lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.

- (29) *Project* means the public transportation improvement activities eligible for federal assistance in an application to FTA and/or in an FTA Award.
- (30) *Public Transportation*, has the same meaning as “transit” or “mass transportation,” and, consistent with the definition at 49 U.S.C. § 5302, means regular, continuing shared- ride surface transportation services that are open to the general public, or open to a segment of the general public defined by age, disability, or low income, but does not include:
- (i) Intercity passenger rail transportation provided by Amtrak or a successor thereof as described in 49 U.S.C. chapter 243;
 - (ii) Intercity bus service;
 - (iii) Charter service;
 - (iv) School bus service;
 - (v) Sightseeing service;
 - (vi) Courtesy shuttle service for patrons of one or more specific establishments; or
 - (vii) Intra-terminal or intra-facility shuttle services.
- (31) *Recipient* or *Direct Recipient* means a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term “Recipient” does not include a Subrecipient.
- (32) *Scope of Work* means the purpose of the Grant Agreement or Cooperative Agreement and the activities and approaches required to carry out a Project. The scope of work consists of various components, including the Award Budget, beneficiaries, locations, and other aspects identified in the approved application. FTA reserves the right to consider other information in determining the scope of the Project or the “scope of work of a Grant Agreement or Cooperative Agreement” when “scope” is used for other purposes. See the latest edition of the FTA Master Agreement.
- (33) *Split Letter* (sometimes referred to as a suballocation letter or government subapportionment letter) means a letter in which a Designated Recipient of Urbanized Area Formula Grant Program funding authorized by 49 U.S.C.

§ 5307, a Designated Recipient of Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities authorized by 49 U.S.C. § 5310, a Designated Recipient of the State of Good Repair Formula Grants, 49 U.S.C. § 5337, agrees to a reassignment or reallocation of that federal assistance to one or more direct Recipients.

- (34) *Subagreement* or *Subgrant* means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient's or Subrecipient's Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third party contract, third party subcontract, or lease.
- (35) *Subrecipient* or *Subgrantee* means any entity or person that receives federal assistance provided by an FTA Recipient instead of FTA directly, but does not include a Third Party Contractor, Third Party Subcontractor, or Lessee.
- (36) *Third Party Agreement* includes agreements or arrangements supported in whole or in part with federal assistance awarded to a Recipient by FTA, including a subagreement with a subrecipient, a third party contract, a third party subcontract, a lease, or similar arrangement or agreement as FTA may recognize.
- (37) *Third Party Contract* means a legal instrument by which a Recipient or Subrecipient purchases property or services needed to carry out the Grant Agreement or Cooperative Agreement. This does not include an instrument describing a transaction that meets the definition of a federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.
- (38) *Third Party Participant* means each participant in the Recipient's Project, except for FTA and the Recipient, whose work under the Project is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. A Third Party Participant may be a Subrecipient, Third Party Contractor, Third Party Subcontractor, Lessee, or Similar Participant in the Recipient's Project (for example, a partner in a joint development venture).
- (39) *Third Party Subcontract* means a subcontract entered into by the Third Party Contractor with a Third Party Subcontractor, or a Third Party Subcontractor with another Third Party Subcontractor at any tier, and is supported in whole or in part with the federal assistance originally derived from FTA, or non-federal share dedicated to the Recipient's Underlying Agreement.

- (40) *Underlying Agreement* means a specific Grant Agreement, Cooperative Agreement, or, with respect to TIFIA or RRIF assistance, a specific Loan Agreement, Line of Credit Agreement, or Loan Guarantee Agreement that incorporates the terms of this Master Agreement, in each case including any amendments thereto, supported with federal assistance appropriated or made available under the authorized program.
- (41) *Unique Entity Identifier* has two meanings:
- (i) A Recipient's or a Subrecipient's unique entity identifier for purposes of the "System of Award Management" (SAM), which currently is the DUNS Number; but
 - (ii) For FTA purposes, FTA assigns a separate Recipient/Vendor ID as a "unique entity identifier," which is a four-digit number and is displayed on the Grant Agreement and the Cooperative Agreement following the heading "Recipient ID."
- (42) *Waiver* has the same meaning as the definition of Approval in this section of this Master Agreement.
- (b) *Application of Definitions.* The Recipient also agrees that the definitions in section 2(a) above apply throughout this Master Agreement.

Section 3. Implementation.

- (a) *Effective Date.* The Effective Date of Recipient's Underlying Agreement is the date when the authorized FTA official signs the Underlying Agreement.
- (b) *Description of Each Project.* The "Description of Each Project" in the "Executive Summary" of the "FTA Award" section of the Recipient's Underlying Agreement often provides only a brief description of each Project and related activities to be undertaken by the Recipient; therefore, the Recipient agrees to perform the work described in the terms of its Underlying Agreement, including all the documents and information incorporated by reference and made part of that Underlying Agreement.
- (c) *Prompt Implementation.* After receiving notice that the FTA official signed the Underlying Agreement, the Recipient agrees to undertake promptly each Project and related activities described in the Underlying Agreement.
- (d) *Completion Dates.* The Recipient agrees to complete each Project within the time periods specified in the Underlying Agreement and all activities must be completed by the Award's end date, unless FTA agrees in writing to extend the end date. Unless FTA determines otherwise in writing, interim milestone dates and other completion

dates applicable to the Award are good faith estimates and are not intended to be firm contractual requirements. However, FTA and the Recipient agree that milestone dates and other completion dates for Full Funding Grant Agreements, Small Starts Grant Agreements or other specific agreements in which FTA expressly states that the milestone dates or other completion dates for the Underlying Agreement are firm dates that may be enforced.

- (e) *The Recipient's Capacity.* To carry out its Underlying Agreement, the Recipient agrees to maintain:
- (1) Sufficient legal, financial, technical, and managerial capacity, and adequate functional capacity to:
 - (i) Plan, manage, and complete its responsibilities outlined in the Underlying Agreement;
 - (ii) Use the Project property;
 - (iii) Carry out the safety and security aspects of the Underlying Agreement;
 - (iv) Comply with the terms and conditions of the Underlying Agreement, the Recipient's annual Certifications and Assurances to FTA, and applicable federal laws, regulations, and requirements; and
 - (v) Follow applicable federal guidance, except as the Federal Government determines otherwise in writing.
 - (2) Strong internal controls to assure that it is managing its Award in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement including, but not limited to:
 - (i) Amendments or revisions to its Award Budget;
 - (ii) Salaries and wages of the Recipient's and Subrecipient's personnel;
 - (iii) Protection of personally identifiable information and other sensitive information; and
 - (iv) Other matters that must be in compliance with federal laws, regulations, requirements, and the terms and conditions of the Underlying Agreement.
- (f) *U.S. DOT Administrative Requirements.* The Recipient agrees to comply with the following U.S. DOT regulations (Common Rules) to the extent applicable:

- (1) *Requirements Applicable On or After December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official on or after December 26, 2014 as follows:
- (i) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, and which applies to an Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement with a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization; and
 - (ii) Except as FTA determines otherwise in writing, U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, apply to a private for-profit entity; notably, the Cost Principles of Part 31 of the Federal Acquisition Regulation, which permits the payment of profits or fees for work under procurement contracts, generally will not apply to private for-profit entities.
- (2) *Requirements Applicable Before December 26, 2014.* The following requirements apply to the Award, the accompanying Underlying Agreement, and any Amendments thereto signed by an authorized FTA official before December 26, 2014, as follows:
- (i) For a state, local government, or Indian tribal government, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” former 49 CFR Part 18;
 - (ii) For an institution of higher education or a nonprofit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education; Hospitals, and Other Non-Profit Organizations,” former 49 CFR Part 19; or
 - (iii) For a private for-profit organization, U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with

Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” former 49 CFR Part 19.

- (g) *Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with all applicable federal requirements and follow applicable federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient’s Underlying Agreement or this Master Agreement. At the time the FTA official awards federal assistance to the Recipient in support of the Underlying Agreement, the federal requirements and guidance that apply then may be modified from time to time, and will apply to the Recipient or the accompanying Underlying Agreement, except as FTA determines otherwise in writing.
- (h) *The Recipient’s Responsibility to Comply with Federal Requirements.* Irrespective of involvement by any other entity in the Underlying Agreement:
 - (1) *General.* The Recipient agrees to comply with all federal requirements that apply to itself and the Underlying Agreement.
 - (2) *Primary Responsibility for Compliance.*
 - (i) The Recipient, as the Direct Recipient of federal assistance, agrees that it is ultimately responsible for full compliance with federal requirements related to itself, its Award, the accompanying Underlying Agreement, and any Amendments thereto, even though:
 - (A) A Third Party Participant provides property or services to support a Project or related activities implementing the Award, the accompanying Underlying Agreement, any Amendments thereto; or
 - (B) Another entity or person is involved with the Award, the accompanying Underlying Agreement, or any Amendments thereto.
 - (ii) FTA and the Recipient agree that if FTA makes an Award to a Recipient other than the Designated Recipient as defined under 49 U.S.C. § 5302, the Designated Recipient is not a party to the Award or the Underlying Agreement and is not responsible for compliance with federal requirements related to the Underlying Agreement. However, if FTA makes an Award to a Designated Recipient, then that Designated Recipient is responsible for compliance with federal requirements related to its Underlying Agreement. FTA and the Recipient further agree to the terms of the

Designated Recipient's Split Letter, Suballocation Letter, or Government Subapportionment Letter attached in TrAMS, including the amounts allocated by the Designated Recipient to each Direct Recipient, and the commitment to comply with the associated transit improvement requirement as stated in that letter.

- (iii) Apart from other oversight and reviews FTA may conduct, the Recipient agrees that FTA is expressly authorized to conduct oversight of the Recipient's and its Subrecipients' compliance with federal requirements for safety and security, procurement (including Buy America requirements), management, and finance.
- (i) *The Recipient's Responsibility to Extend Federal Requirements to Third Party Participants.* In certain circumstances, the Recipient's compliance with specific federal requirements depends on compliance by its Third Party Participant(s) with those federal requirements, and therefore:
- (1) *General.* The Recipient agrees to ensure that its Third Party Participant(s) will comply with applicable federal requirements, and follow applicable federal guidance.
 - (2) *The Recipient as a "Pass-Through" Entity.* If the Recipient is providing a subaward to a Subrecipient to carry out all or part of its Award, the Recipient agrees to obtain the agreement of each Subrecipient to comply with U.S. DOT's administrative requirements, as set forth above.
 - (3) *Performance of the Recipient's Responsibilities.* If a Third Party Participant is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to ensure that the Third Party Participant will carry out the Recipient's responsibilities in compliance with federal requirements, and provide enough information to each Third Party Participant so that it understands that it will be expected to follow federal guidance.
 - (4) *Risk.* As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Recipient agrees to evaluate the risk involved before awarding a subagreement to any entity.
 - (5) *Third Party Agreements.* To comply with federal requirements, the Recipient agrees to enter into a written Third Party Agreement with each Third Party Participant in its Underlying Agreement and must include all appropriate provisions stating the Third Party Participant's responsibilities to assure the Recipient's capability to comply with applicable federal requirements and

guidance and specifying the responsibilities that the Third Party Participant will fulfill on the Recipient's behalf.

- (6) *Notice to Third Party Participants.* The Recipient agrees to include notice in each Third Party Agreement that:
 - (i) Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
 - (ii) Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

- (j) *Changed Circumstances.* The Recipient agrees that changed circumstances may occur that may impact the Recipient's ability to comply with the terms and conditions of the Underlying Agreement.

- (1) *Types of Changes.* Certain circumstances can cause significant changes in performance of a Project or related activities or adversely affect the Recipient's ability to carry out its Underlying Agreement, such as:
 - (i) A change in federal requirements or guidance;
 - (ii) A change in state, territorial, local, or tribal requirements;
 - (iii) A change in the Recipient's circumstances, including:
 - (A) Its legal, financial, technical, or managerial capacity;
 - (B) Its continuing control of Project property; or
 - (C) Another similar situation; and
 - (iv) Any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the Recipient's principal, official, employee, agent, or a Third Party Participant, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against the Recipient or any

Third Party Participant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

- (2) *Notice.* In the circumstances described above, the Recipient agrees to provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient operates public transportation or implements the Underlying Agreement;
 - (ii) FTA Headquarters Manager that administers the Underlying Agreement; or
 - (iii) FTA Chief Counsel.

- (k) *Conflict Between Federal Requirements and State, Territorial, Local, or Tribal Requirements.* FTA and the Recipient understand that a federal requirement may conflict with a state, territorial, local, or tribal requirement, and agree that the Recipient must comply with each applicable federal requirement that pre-empts the conflicting state, territorial, local, or tribal requirement.
 - (1) *Compliance with State, Territorial, Local or Tribal Requirements.* Unless otherwise pre-empted by a federal requirement, FTA and the Recipient agree that:
 - (i) FTA expects the Recipient to comply with applicable state, territorial, local, and tribal requirements; and
 - (ii) FTA does not require the Recipient to take any action involving the Underlying Agreement that would violate a state, territorial, local, or tribal requirement that conflicts with a federal requirement.

 - (2) *When a Conflict Arises.* When a federal requirement conflicts with a state, territorial, local, or tribal requirement:
 - (i) The Recipient must notify FTA immediately in writing if compliance with the federal requirement would violate a state, territorial, local, or tribal requirement, or require the Recipient to violate a state, territorial, local, or tribal requirement.

 - (ii) The Recipient must make appropriate arrangements with FTA to proceed with its responsibilities as set forth in the Underlying Agreement, or terminate the Underlying Agreement expeditiously, if necessary.

- (1) *No Federal Government Commitment or Liability to Third Parties.* Except as the Federal Government expressly consents in writing, the Recipient agrees that:
 - (1) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
 - (2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

Section 4. Ethics, Political Activity, Disqualification, and Certain Criminal Activity.

- (a) *Standards of Conduct.* At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:
 - (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:
 - (i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;
 - (ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and
 - (iii) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4(a)(1)(i) and (ii) of this Master Agreement;
 - (2) Prohibit those individuals listed above in section 4(a)(1) from:
 - (i) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and

- (ii) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4(a)(1) and the Recipient's or Subrecipient's Third Party Participants.
- (b) *Bonus or Commission.* The Recipient affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Underlying Agreement.
- (c) *Lobbying Restrictions.* The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
 - (1) *Laws, Regulations, Requirements, and Guidance.* This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
 - (2) *Exception.* If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.
- (d) *Political Activity.* The Recipient agrees to comply with:
 - (1) The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental

employment activities are supported in whole or in part with federal assistance;

- (2) U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR Part 151; and
- (3) 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - (i) The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
 - (ii) Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

(e) *False or Fraudulent Statements or Claims.*

- (1) *Civil Fraud.* The Recipient acknowledges and agrees that:
 - (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31.
 - (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) *Criminal Fraud.* The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in

connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

(f) *Trafficking in Persons.*

- (1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:
 - (i) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
 - (ii) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.
- (2) *Definitions.* The Recipient agrees that for purposes of this section 4(f):
 - (i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient’s Underlying Agreement.
 - (ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
 - (iv) *Severe forms of trafficking in persons* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

- (v) *Commercial sex act* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
 - (vi) *Coercion* has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (3) *Provisions Applicable to All Recipients.* The Recipient agrees to, and assures that its Subrecipients will:
- (i) *Provide Information.* Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and
 - (ii) *Subagreement Provision.* Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)(iii) of this Master Agreement:

XXX agrees that it and its employees that participate in the Recipient's Award, may not:

Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,

Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or

Use forced labor in the performance of the Recipient's Award or subagreements thereunder.
- (4) *Provisions Applicable to a Private Entity Recipient.* If the Recipient is a private entity, it agrees that:
- (i) *Prohibitions.* It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
 - (A) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect;
 - (B) Procure a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or
 - (C) Use forced labor in the performance of the Recipient's Underlying Agreement or subagreements.

- (ii) *Termination of Federal Assistance.* Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:
 - (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or
 - (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee’s conduct is either:
 - a. Associated with the performance of the Recipient’s Underlying Agreement; or
 - b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
 - i. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; or
 - ii. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.
- (5) *Provisions Applicable to a Recipient That is Not a Private Entity.* A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:
- (i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in

the performance of the Recipient's Underlying Agreement or subagreements thereunder; or

- (ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200.

- (6) *Remedies Other Than Termination of Federal Assistance.* The Recipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

- (g) *Federal Tax Liability and Recent Felony Convictions.*

- (1) *Transactions Prohibited.*

- (i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—
 - (A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
 - (B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

- (ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.
- (2) *Flow-Down.* The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.
- (h) *Debarment and Suspension.* The Recipient agrees to the following:
 - (1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.
 - (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200;
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.
 - (3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.
 - (4) It will ensure that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
 - (5) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;

- (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
- (iii) FTA Chief Counsel.

Section 5. Federal Assistance.

- (a) *Total Federal Assistance Awarded and Obligated.* The Recipient agrees that FTA’s responsibility to provide federal assistance for its Underlying Agreement is up to the amount shown in the Underlying Agreement, as modified by any Amendments thereto, which is equal to the smallest of: (1) the maximum amount permitted by federal law or regulation, or (2) the “Total FTA Amount Awarded and Obligated,” as stated in the Underlying Agreement. FTA’s responsibility to provide federal assistance is limited to the amounts listed in the most recent Award Budget identified in the Underlying Agreement and may not exceed the federal share of the actual eligible expenses incurred for participation in the Award.
- (b) *Basis of Federal Assistance.* The Recipient agrees that the “Total FTA Amount Awarded and Obligated” stated in the Underlying Agreement and modified by any Amendments thereto is calculated based on the Net Project Cost or on another basis as set forth below:
 - (1) “*Net Project Cost.*” The Recipient agrees that if federal law or regulation requires an Underlying Agreement to be financed based on its “Net Project Cost,” as defined in 49 U.S.C. § 5302:
 - (i) FTA will provide federal assistance for a percentage of the portion of the “Total Award Budget” that the Recipient cannot reasonably finance from its revenues, which is the “Net Project Cost;”
 - (ii) FTA will use the amount of the “Total Award Budget” stated on the Underlying Agreement to calculate the “Total FTA Amount Awarded and Obligated;” and
 - (iii) In TrAMS, the amount stated as the “Total Award Budget” on the Underlying Agreement is actually the “Net Project Cost,” as defined in 49 U.S.C. § 5302.
 - (2) *Other Basis for FTA Participation.* The Recipient agrees that if federal law or FTA permits an Underlying Agreement to be financed on a basis other than its “Net Project Cost,” as defined in 49 U.S.C. § 5302, or under previous authorizing legislation:

- (i) FTA will provide federal assistance for all or part of the cost of the Underlying Agreement that is eligible for federal assistance;
 - (ii) In some instances, FTA has discretion to determine the amount of federal assistance to provide for each specific Project or related activities; and
 - (iii) FTA will use the amount stated in the Underlying Agreement as the “Total Award Budget” to calculate the “Total FTA Amount Awarded and Obligated.”
- (c) *Award Budget.* The Recipient agrees to prepare an Award Budget that, after FTA has provided its approval, will be incorporated by reference and made part of the Underlying Agreement.
- (1) *Restrictions.* The Recipient agrees that it will not incur costs eligible for FTA participation under the Award or withdraw federal assistance for eligible costs incurred unless those costs are consistent with the Award Budget.
 - (2) *Amendments to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient agrees that it must obtain prior FTA approval in writing before amending its Award Budget or transferring federal assistance for the Award if the transfer is not expressly authorized by federal law, regulation, or guidance. An Award of additional federal assistance will require an amended Award Budget.
 - (3) *Revisions to the Award Budget.* To the extent specified in applicable FTA program management guidance, the Recipient may revise the Award Budget without prior FTA written approval. The Recipient agrees that all other Award Budget revisions will require prior FTA approval in writing.
 - (4) *Unexpended Federal Assistance.* The Recipient agrees to inform FTA promptly if it believes it will have unexpended federal assistance after the period of performance for the Award ends.

Section 6. Non-Federal Share.

- (a) *Amount.* The Recipient agrees to provide the amount of non-federal share specified in the Underlying Agreement. Except to the extent that FTA has provided its written consent permitting the Recipient to defer payment of the non-federal share required by the Underlying Agreement, the Recipient agrees to provide its proportionate amount of the non-federal share no later than the time it draws down the federal share to pay eligible costs.

- (b) *Duty to Obtain.* The Recipient agrees to complete all proceedings necessary to provide the non-federal share and to notify FTA of any changed circumstances adversely affecting its ability to pay the non-federal share, including a description of the actions it has taken or will take to ensure adequate resources to provide the non-federal share, and a re-affirmation of its commitment to provide the non-federal share.
- (c) *Permissible Sources.* The Recipient agrees that the following are permissible sources of the non-federal share for the Award:
 - (1) Undistributed cash surpluses;
 - (2) A replacement or depreciation cash fund or reserve; and
 - (3) New capital.
- (d) *Restricted Sources.* Because sources of non-federal share differ among FTA's public transportation assistance programs, FTA will specify in an FTA circular or otherwise whether the following sources may be used as the non-federal share for a specific Award under that program:
 - (1) Program income generated by a Project or related activities supported by a prior Grant or Cooperative Agreement, which is a form of undistributed cash surplus;
 - (2) Advertising revenues;
 - (3) Concession revenues;
 - (4) Revenues from a service agreement from a state or local social service agency or a private social service organization;
 - (5) Third party in-kind contributions;
 - (6) Proceeds from the issuance of revenue bonds pursuant 49 U.S.C. § 5323(e);
 - (7) Transportation development credits (formerly toll revenue credits) pursuant to 23 U.S.C. § 120(i);
 - (8) Revenue from Value Capture pursuant to 49 U.S.C. § 5323(s);
 - (9) Federal assistance made available for the Federal Lands Highway Program authorized under 23 U.S.C. § 204; or

- (10) Federal assistance derived from other federal programs whose enabling laws permit their funds to be used as the non-federal share.
- (e) *Prohibited Sources.* Except as permitted by federal laws, regulations, requirements, or guidance, or approved in writing by FTA, the Recipient agrees that it will not provide any non-federal share for the Underlying Agreement derived from:
- (1) Farebox revenues from providing public transportation services using facilities and equipment acquired with federal assistance for the Award;
 - (2) Program income derived from the use of facilities or equipment acquired with federal assistance for the Award, except if expressly permitted by federal laws, regulations, requirements, or FTA guidance; or
 - (3) Other federal funds not authorized for use as non-federal share by federal law, regulation, requirements, or guidance.
- (f) *Reductions or Refunds.*
- (1) *Reductions.* The Recipient agrees that if it reduces the non-federal share of eligible costs required for the Award, then at the same time it must reduce the proportionate amount of federal assistance for the Award.
 - (2) *Refunds.* The Recipient agrees that if it accepts a refund of the non-federal share of eligible costs provided through the Underlying Agreement, then at the same time it must provide the Federal Government an amount of that refund proportionate to the federal contribution.

Section 7. Payments to the Recipient.

- (a) *Conditions for Accessing Federal Assistance.* To seek or obtain federal assistance for the costs of implementing the Award, the Recipient agrees that:
- (1) It must execute the Underlying Agreement and any Amendments thereto;
 - (2) It must receive and file a properly signed document seeking payment for the expense, such as a voucher or other appropriate record, and a properly detailed description of the relationship of the expense to the Award;
 - (3) It must identify all sources of federal assistance from which the payment is derived;
 - (4) It must provide FTA with all financial and progress reports required to date; and

- (5) If the Recipient must provide a non-federal share, unless FTA has stated otherwise in writing that the Recipient may defer the non-federal share:
 - (i) The Recipient will not request or obtain more federal assistance than justified by the eligible non-federal share it has provided;
 - (ii) The Recipient will not cause the proportion of federal assistance available for the Award at any time to exceed the percentage of federal assistance authorized and documented in the Underlying Agreement; and
 - (iii) When combined with federal payments, the Recipient will be able to demonstrate that the non-federal share will be adequate to cover all eligible costs incurred in support of the Award.

- (b) *Eligible Costs.* Except as the Federal Government determines otherwise in writing, the Recipient agrees, and will obtain the agreement of each Subrecipient, to seek and obtain federal assistance only for the eligible costs of the Award that are:
 - (1) Consistent with the Description of Each Project, the Award Budget, this Master Agreement, and the Underlying Agreement and any Amendments thereto;
 - (2) Necessary to carry out the Award;
 - (3) Reasonable for the property or services acquired for use in the Project;
 - (4) The actual net costs, which consist of the price paid minus reductions of the costs incurred, such as any refunds, rebates, or other items of value, but excluding program income;
 - (5) Incurred for work performed after the Effective Date of the:
 - (i) Award;
 - (ii) Pre-award authority that FTA has provided; or
 - (iii) Letter of No Prejudice;
 - (6) Satisfactorily documented;
 - (7) Consistent with federally approved accounting principles and procedures, including requirements for indirect costs, consistent with the applicable U.S. DOT Common Rules; and

- (8) Consistent with applicable U.S. DOT Common Rules and other applicable federal law, regulations, requirements, and guidance.
- (c) *Ineligible Costs.* The Recipient agrees that, except as the Federal Government determines otherwise in writing, FTA will exclude ineligible costs incurred in connection with the Award or otherwise, such as:
- (1) A cost the Recipient has incurred before the Effective Date of the Award as documented in the Underlying Agreement or any Amendments thereto that is not accompanied by FTA's written approval, including, but not limited to, pre-award authority or a Letter of No Prejudice, and permitted by applicable federal law, regulation, guidance, or the Underlying Agreement or any Amendments thereto;
 - (2) A cost not included in the most recent Award Budget;
 - (3) A cost for property or services received in connection with any third party agreement lacking any FTA approval or concurrence in writing that is required;
 - (4) An ordinary governmental or operating cost not applicable to the Award, as prohibited by 49 U.S.C. § 5323(h)(1);
 - (5) A profit or fee for services provided by the Recipient or any of its Subrecipients in implementing the Award; or
 - (6) A cost that is ineligible for FTA participation as provided in applicable federal law, regulation, requirement, or guidance.
- (d) *Bond Interest and Other Financing Costs – Limited Eligibility.* The Recipient agrees that bond interest and other financing costs are allowable costs to the extent permitted by applicable federal law, regulation, requirement, or guidance. FTA's share of interest and financing costs that implement the Award will be limited to an amount that does not exceed the most favorable financing terms reasonably available at the time of borrowing, except as the Federal Government determines otherwise in writing.
- (e) *Payment Procedures Based on the Type of Federal Assistance Awarded.* The Recipient agrees that:
- (1) All payments in connection with the Award will be made through electronic methods.
 - (2) Payment procedures for a Recipient differ based upon the type of federal assistance that is awarded.

- (3) FTA determines which electronic system it will use to make payments to the Recipient as follows:
- (i) For Grants and other types of federal assistance, FTA will use the Electronic Clearinghouse Operation Web System (ECHO-Web), Automated Clearing House (ACH) payment method, except as provided below in sections 7(e)(3)(ii) and (iii) of this Master Agreement;
 - (ii) For Cooperative Agreements, FTA will use the DELPHI eInvoicing System or DELPHI Mark View System if the Recipient is granted a waiver (see the following section 7(g) of this Master Agreement for more information about payments for cooperative agreements and section 7(g) of this Master Agreement for information about accessing and using the DELPHI eInvoicing System); and
 - (iii) For Grants requiring more detailed review of supporting documentation before receiving federal assistance and as determined by the FTA Manager for the Underlying Agreement, FTA will use the DELPHI eInvoicing System (see the following section 7(g) of this Master Agreement for more information about accessing and using the DELPHI eInvoicing System).
- (f) *Payment Procedures Using ECHO.* The Recipient agrees that if payment is made through ECHO-Web using an ECHO Control Number, it will comply with the “FTA ECHO-Web User Manual,” April 2016, and it will withdraw federal assistance only to pay the eligible costs of implementing the Award.
- (1) *Major Withdrawals.* When a single withdrawal will exceed \$50,000,000, the Recipient agrees to notify the appropriate FTA Regional or Program Office at least three (3) days before the withdrawal is anticipated.
 - (2) *Immediate Use.* The Recipient agrees that it will not withdraw federal assistance until needed for immediate payment of those expenses and will use that federal assistance to pay for expenses that implement the Award no later than three (3) days after receipt, except as an authorized official of the Federal Government permits otherwise in writing.
 - (3) *Limits.* The Recipient agrees that it will not withdraw more than the sum of federal assistance the Federal Government has awarded or the current available balance for its Award, the accompanying Underlying Agreement, and any Amendments thereto, whichever is less.

- (4) *Control.* The Recipient agrees to provide for the control and accountability of all federal assistance for its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (5) *Reporting.* Unless an authorized FTA official determines otherwise in writing, the Recipient agrees to report its cash payments and balances promptly.
- (6) *Penalties.* If the Recipient fails to comply with this section of this Master Agreement, it agrees that it may incur or be subjected to penalties, including, but not limited to, the following:
 - (i) *Access to ECHO-Web.* The Federal Government may revoke or suspend the Recipient's ECHO Control Number and access to the ECHO-Web if the Federal Government determines that:
 - (A) Fraud, waste, mismanagement, or abuse exists in the Recipient's use and application of federal assistance;
 - (B) The Recipient has failed to use federal assistance it withdrew to pay costs incurred that implement the Underlying Agreement within three (3) days of withdrawing that federal assistance;
 - (C) The Recipient has failed to return withdrawn but unspent federal assistance to the Federal Government within a reasonable time;
 - (D) The Recipient has failed to establish procedures to minimize the time between advances of federal assistance and payments of costs incurred that implement the Underlying Agreement;
 - (E) The Recipient has been awarded Federal assistance through a Cooperative Agreement with FTA and will use the eInvoicing or DELPHI Mark View System as its payment method instead of the ECHO-Web System (see section 7(g)); or
 - (F) For Grants requiring a more detailed review of supporting documentation before receiving federal assistance, and as determined by the FTA Manager for the Award, the Recipient will use eInvoicing (see section 7(g)).
 - (ii) *Interest.* The Recipient agrees to pay interest to the Federal Government on any federal assistance withdrawn prematurely,

irrespective of whether the federal assistance has been deposited in an interest-bearing account.

- (A) *A State or State Instrumentality.* If the Recipient is a state or state instrumentality, it agrees to pay interest calculated as provided in section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Department of Treasury (U.S. Treasury) regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.
 - (B) *Other than a State or State Instrumentality.* If the Recipient is not a state or state instrumentality, it agrees to pay prejudgment common law interest determined by the Federal Government, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury and U.S. DOJ) regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i). The Federal Government may determine the amount of interest due, based on the amount of interest the Recipient demonstrates it earned on its premature withdrawals of federal assistance, the amount of interest based on the “Treasury tax and loan account” rate prescribed under 31 U.S.C. § 3717 for debts owed to the United States, or an amount of interest as the Federal Government otherwise determines.
- (7) *ECHO System.* If the Recipient is authorized to receive payments provided through ECHO-Web, FTA does not generally review the drawdown when made; however, FTA may review the drawdown at a later time, and subject that drawdown to an audit under a financial oversight review, a triennial review, or another audit.
- (g) *Payment Procedures for a Cooperative Agreement.* A Recipient of federal assistance through a Cooperative Agreement must use the DELPHI eInvoicing System to obtain federal payments for costs incurred that implement the Underlying Agreement, unless a waiver is granted.
- (1) *Standard Procedures.* To make and receive payments through the DELPHI eInvoicing System, the procedures below must be followed:
 - (i) *Access to the DELPHI eInvoicing System.* To access the DELPHI eInvoicing System, the Recipient:

- (A) Must have internet access to register and submit payment requests through the DELPHI eInvoicing System;
 - (B) Should contact its FTA Manager for the Underlying Agreement to obtain the required DELPHI User access form and approval;
 - (C) Must complete the required form that the FAA, Enterprise Service Center's (ESC) Help Desk uses to verify the Recipient's identity, and present it to a Notary Public for verification;
 - (D) Return that form, completed and notarized, to:
DOT Enterprise Services Center
FAA Accounts Payable, AMZ-100
PO Box 25710
Oklahoma City, OK 73125;
and
 - (E) Should contact its FTA Manager for the Underlying Agreement with any changes to its system profile information.
- (ii) *Payment Requests.* The Recipient must submit each payment request electronically through the DELPHI eInvoicing System, unless a waiver is granted; use of the DELPHI eInvoicing System requires the FTA Manager for the Underlying Agreement to review all supporting documentation before authorizing payment.
 - (iii) *Additional Information.* The U.S. DOT DELPHI eInvoicing System website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html> displays additional information, including the access form and training materials a Recipient may need.
 - (iv) *Federal Responsibilities.* When FTA so requests, the Federal Aviation Administration (FAA) will make payments to FTA Recipients electronically. On behalf of FTA, FAA/ESC must process payment requests to a Recipient of federal assistance documented in its Cooperative Agreement with FTA, and will deposit that federal assistance with the Recipient's financial institution (Note: FTA no longer issues paper checks).
- (2) *Waiver Requests.* On a case-by-case basis, U.S. DOT Financial Management officials may waive the requirement for a Recipient to register and use the DELPHI eInvoicing System.

(i) *The Recipient's Responsibilities.* If the Recipient seeks a waiver from the requirement to use the DELPHI eInvoicing System:

(A) It must notify U.S. DOT and FTA by downloading the waiver request form, which can be obtained on the U.S. DOT eInvoicing website at <http://www.dot.gov/cfo/delphi-einvoicing-system.html>, and notifying its FTA Manager for the Underlying Agreement that it has requested a waiver from using the DELPHI eInvoicing System;

(B) It must send its waiver request to the Director of the Office of Financial Management, U.S. Department of Transportation, Office of the Secretary (OST), Office of Financial Management, B-30, 1200 New Jersey Avenue SE, Washington DC 20590-0001
DOTElectronicInvoicing@dot.gov; and

(C) If it obtains a waiver from the use of the DELPHI eInvoicing System, then payment will be made using the DELPHI Mark View System, and the Recipient should submit all invoices and any supporting documentation directly to:

a. FTAINVOICES@FAA.GOV (Note: no more than 10 MB of data can be transmitted at one time. For invoices greater than 10MB, split into multiple emails and notate in the subject Email 1 of 4, 2 of 4, etc.); or

b. DOT/FAA (FTA Account)
6500 South MacArthur Blvd.
AMZ-150, HQ Room 272
PO Box 26904
Oklahoma City, OK 73125-69041

(ii) *Federal Responsibilities.* FTA and U.S. DOT have the following responsibilities:

(A) The Director, OST, Office of Financial Management, will confirm or deny the waiver request within approximately 30 days.

(B) If the request is granted, then payments will be made after receipt of the required FTA reporting forms, provided the Recipient has complied with the U.S. DOT Common Rules and this Master Agreement.

- (iii) *DELPHI eInvoicing System or DELPHI Mark View System.* If the Recipient receives payments provided through the DELPHI eInvoicing System or DELPHI Mark View System, the Recipient must submit a request for payment with adequate supporting documentation for FTA to determine that:
 - (A) It has complied and is complying with the Underlying Agreement;
 - (B) It has made and is making adequate progress toward completion of the Award; and
 - (C) It has satisfied FTA that the federal assistance requested is needed for the eligible purposes of the Award in that requisition period.
 - (iv) *Reimbursement.* After it has demonstrated satisfactory compliance with this section, FTA may reimburse the federal share of the Recipient's apparent allowable costs incurred or to be incurred in the requisition period if those apparent allowable costs are consistent with the Award Budget, and those apparent allowable costs do not exceed the maximum amount of federal assistance that may be paid through the federal fiscal year of that requisition.
- (h) *Safeguarding Federal Assistance.* The Recipient agrees to deposit all federal assistance it receives in a financial institution and in an insured account whenever possible, and understands that FTA encourages it to use financial institutions owned at least fifty (50) percent by minority group members.
- (i) *The Recipient's Duty to Pay Eligible Costs.* When accompanied by appropriate documentation, the Recipient agrees to pay the eligible costs incurred that implement the Award when due, using the available federal assistance provided for the Award and the non- federal share.
- (j) *Effect of Federal Payments.* The Recipient agrees that any federal payment made for a cost incurred that is supported by its Underlying Agreement does not constitute the Federal Government's final decision about the eligibility of the cost for payment with federal assistance provided through the Underlying Agreement, or a waiver of any violation of any federal law, regulation, requirement, guidance, the Underlying Agreement or this Master Agreement.
- (k) *Revocation of Federal Assistance.* The Federal Government may revoke the unexpended portion of federal assistance for the Award after the Award has been made and executed.

- (l) *Final Cost Determination.* The Recipient acknowledges that the Federal Government will not make a final determination about the eligibility of any cost until the audit of the Award and Underlying Agreement has been completed.
- (m) *Closeout.* The Recipient agrees that closeout of the Award will not alter:
 - (1) The Recipient's obligation to return any amounts it owes the Federal Government for later refunds, corrections, or other similar actions; and
 - (2) The Federal Government's right to disallow costs and recover federal assistance based on a later audit or other review.
- (n) *Notification.* If the Federal Government determines that the Recipient is not entitled to any portion of federal assistance paid, the Federal Government will notify the Recipient in writing.
- (o) *Recovery of Improper Payments.* Unless prohibited by federal law or regulation, the Federal Government may recover any federal assistance necessary to satisfy any outstanding monetary claims it may have against the Recipient.
- (p) *Program Income.* The Recipient agrees that it may use its program income derived from a Project receiving federal assistance through the Underlying Agreement as FTA permits. In determining the total amount of program income a Recipient has earned from its Project, those costs incident to earning program income that have not been charged to the Award may be deducted from the Recipient's gross income.
 - (1) *During the Period of Performance.* The Recipient may use program income earned during the period of performance of the Underlying Agreement as follows:
 - (i) The Recipient may retain the income for other capital or operating public transportation expenses. If the Recipient chooses not to use program income for current or future FTA Grants or Cooperative Agreements or for other purposes ineligible for federal participation, then the amount of program income used for purposes ineligible for federal participation will be deducted from the total allowable costs to determine the net allowable costs.
 - (ii) For each Public Transportation Innovation, Technical Assistance, Workforce Development Project or Enhanced Mobility of Seniors and Individuals with Disabilities project, or related activities, the Recipient may add program income to the Award.

- (iii) Depending on federal statutory or regulatory restrictions, the Recipient may use the program income for the non-federal share for a future public transportation Project that will receive federal assistance provided by FTA.
- (2) *After the Award Period.* Except as FTA determines otherwise in writing, the Recipient has no obligation to the Federal Government regarding the disposition of program income earned after the end of the period of performance of the Award (i.e., after the ending date of the final Federal Financial Report).
- (q) *Profits.* The Recipient and Subrecipient may earn or keep the profits it may derive as a result of an Award, but the Recipient agrees that any such profits must be used in a manner consistent with the provisions of this Master Agreement or applicable federal guidance.
- (r) *Excess Payments, Disallowed Costs, Refunds, Claims, Debts, Interest, Penalties, Administrative Charges, and Other Amounts Owed to the Federal Government.*
 - (1) *The Recipient's Responsibility to Pay.* The Recipient agrees that after receiving notice of specific amounts due, it will pay the amount it owes the Federal Government for:
 - (i) Excess federal payments for disallowed costs;
 - (ii) Refunds due and amounts recovered from third parties or other sources;
 - (iii) Federal claims or debts;
 - (iv) Interest assessed;
 - (v) Penalties;
 - (vi) Administrative charges; or
 - (vii) Other amounts it owes the Federal Government.
 - (2) *Amount of Interest Due.* The amount of interest to be assessed depends on the procedures used to pursue payment:
 - (i) *The Debt Collection Act.* When the Federal Government uses the procedures of the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701, et seq., to collect claims or debts owed by the Recipient for any reason authorized under that Act (including excess

payments and disallowed costs), the Recipient agrees that the amount of interest it will owe will be determined by the Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 CFR Part 900, specifically 31 C.F.R. § 901.9(a) – (g), or common law interest authorized by 31 C.F.R. § 901.9(i), as the Federal Government determines.

(ii) *Other Collection Processes.* When the Federal Government uses methods or procedures other than those described in 31 U.S.C. § 3701, et seq., to recover money(ies) the Recipient owes the Federal Government, the Recipient agrees that common law interest will be due as authorized by Joint U.S. Treasury and U.S. DOJ regulations, “Standards for the Administrative Collection of Claims,” 31 C.F.R. § 901.9(i), but interest for premature withdrawals of federal assistance by states or state instrumentalities will be calculated as required under Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b), and U.S. Treasury regulations, “Rules and Procedures for Efficient Federal-State Funds Transfers,” 31 CFR Part 205.

(s) *De-obligation of Federal Assistance.* The Recipient agrees that the Federal Government may de-obligate federal assistance the Recipient has not spent both before and after closeout of the Award.

Section 8. Records and Reports Related to the Award and the Underlying Agreement.

(a) *Records.* The Recipient agrees to maintain satisfactory records of each Project and activities related in whole or in part to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the extent FTA requires, including, but not limited to:

(1) *Financial Records.* Accurate financial records in its account for its Award, the accompanying Underlying Agreement, and any Amendments thereto, including, but not limited to, records of:

(i) *Assets Received that Implement the Award.* The amount of all assets it receives to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to all federal assistance or the value of any property the Federal Government provides that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, and all other funds and the value of any property or services it has received from sources other than the Federal Government provided for, accruing to,

or otherwise received on account of its Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (ii) *Costs Incurred that Implement the Award.* Information about the costs incurred to implement its Award, the accompanying Underlying Agreement, and any Amendments thereto, including all costs incurred for the eligible property or services, detailed descriptions of the type of property or services acquired, including, but not limited, to properly executed payrolls, time records, invoices, contracts, vouchers, and other appropriate records, and detailed justifications for those costs.
 - (iii) *Program Income.* All program income derived from the use of Project property, except income FTA determines to be exempt from federal program income record requirements.
- (2) *Other Records Needed for Reports Related to the Award.* Sufficient records as needed to prepare adequate reports related to the Award that it must submit to the Federal Government.
- (3) *Formats.* Formats for records must be satisfactory to FTA and include, but are not limited to, electronic records, including any emails related to the Award, records on paper, and records created in other formats.
- (4) *Availability of Records Related to the Award.* Accessibility for review and separation from other records not related to the Award to the extent feasible must be maintained.
- (b) *Reports.* The Recipient agrees to provide to FTA, and others if FTA so directs, all reports related in whole or in part required by applicable federal laws, regulations, requirements, the Underlying Agreement, or at FTA's express direction in the number and format as FTA specifies.
- (c) *Data on Assaults on Transit Workers and Bus Impact Fatalities.* The Recipient agrees to report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions—
 - (1) Any data on assaults on transit workers of the Recipient; and
 - (2) Any data on fatalities that result from an impact with a bus.
- (d) *National Transit Database.* For each fiscal year the Recipient receives or provides to any public transportation operator federal assistance appropriated or made available

for 49 U.S.C. § 5307 (including the Passenger Ferry Grant Program) or any provision of 49 U.S.C. § 5311 (including the Tribal Transit Program):

- (1) *Reporting Requirements.* The Recipient agrees to, and assures that it will require any person that receives benefits directly from its Award (including the public transportation operators participating in its Award), the accompanying Underlying Agreement, and any Amendments thereto:
 - (i) To facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD);
 - (ii) To conform to the NTD reporting system and the Uniform System of Accounts and Records;
 - (iii) To comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630;
 - (iv) To report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions—
 - (A) Any information relating to a transit asset inventory or condition assessment conducted by the Recipient; and
 - (B) Such other information as FTA may require; and
 - (v) To comply with any other applicable reporting regulations, and requirements, and
 - (vi) To follow FTA guidance.
 - (2) *Voluntary Compliance.* FTA encourages any Recipient that is not required to provide information for the NTD, to provide that information voluntarily.
- (e) *U.S. OMB Special Reporting Requirements.*
- (1) *Authority.* U.S. OMB has issued regulatory guidance in 2 C.F.R. § 25.220 instructing federal agencies to include special “award terms” as authorized under federal laws, including:
 - (i) The Federal Funding Accountability and Transparency Act of 2006 (FFATA), Public Law No. 109-282, September 26, 2006;

- (ii) Section 6202 of the Department of Defense Appropriations Act for Fiscal Year 2008, Public Law No. 110-252, June 30, 2008, which amended the FFATA; and
 - (iii) Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law No. 110-417, October 14, 2008, which further amended the FFATA.
- (2) *Universal Identifier and System for Award Management (SAM)*. The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Universal Identifier and System for Award Management (SAM),” 2 CFR Part 25, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB:
- (i) *Requirements for the System for Award Management (SAM)*. Unless exempted from SAM as provided in 2 C.F.R. § 25.110, the Recipient agrees to:
 - (A) Maintain the currency of its information in SAM until the later of the date it submits its final financial report required under this Master Agreement, or the date it receives its final federal payment for the Underlying Agreement; and
 - (B) Review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information, another provision of an applicable federal or federally assisted agreement, or an applicable federal law or regulation, or U.S. OMB regulatory guidance.
 - (ii) *Requirement for a Unique Entity Identifier [Currently, the Data Universal Numbering System (DUNS) Number for SAM]*. If the Award includes federal assistance intended to support subawards, the Recipient agrees to notify each potential Subrecipient and other entity participating in the Award that:
 - (A) The potential Subrecipient or entity must provide its unique entity identifier for SAM [currently, its DUNS number] to the Recipient;
 - (B) The Recipient may not make any subaward to any potential Subrecipient or entity unless that Subrecipient or entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient; and

- (C) No Subrecipient or entity, as described below in section 8(d)(4) of this Master Agreement, may receive a subaward provided through the Underlying Agreement, unless that entity has provided its unique entity identifier for SAM [currently, its DUNS number] to the Recipient.
- (3) *Reporting Subawards and Executive Compensation.* The Recipient agrees to comply with the award terms in U.S. OMB regulatory guidance, “Reporting Subaward and Executive Compensation Information,” 2 CFR Part 170, appendix A, which FTA has included in this Master Agreement at the direction of U.S. OMB.
- (4) *Reporting of First-Tier Subawards.* The Recipient agrees that when it takes an action that obligates \$25,000 or more in federal assistance for a subaward, it must report each such action as provided below, but it need not report an obligation of \$25,000 or more in federal assistance, if the Recipient is exempt from U.S. OMB’s Special Reporting Requirements as provided below.
 - (i) *Where and when to report.* The Recipient agrees to report each obligating action described below to <http://www.fsrc.gov>, and the Recipient agrees to report subaward information no later than the end of the month after the month in which the obligation was made, (*for example, if the obligation was made on October 1, 2015, the obligation must be reported by no later than November 1, 2015*).
 - (ii) *What to report.* The Recipient agrees to report the requisite information about each obligating action required by the submission instructions posted at <http://www.usaspending.gov>.
 - (iii) *Reporting Total Compensation of the Recipient’s Executives.* The Recipient agrees to report the total compensation for each of its five highest compensated executives for the preceding completed fiscal year if:
 - (A) The total federal assistance authorized to date for the Underlying Agreement is \$25,000 or more; and
 - (B) In its preceding fiscal year, the Recipient:
 - a. Received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);

- b. Received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- c. The public does not have access to information about the compensation of the Recipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(C) The Recipient agrees to report executive total compensation described above as part of Recipient's registration profile at <http://www.sam.gov>, and by the end of the month after the month in which the Underlying Agreement is executed and annually thereafter.

(D) Reporting of Total Compensation of the Subrecipient's Executives. Unless exempt as provided below, the Recipient agrees to report the names and total compensation of each of its first-tier Subrecipient's five highest compensated executives for the Subrecipient's preceding completed fiscal year if:

- a. It received 80 percent or more of its annual gross revenues from federal assistance subject to the Transparency Act, as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts); and
- b. It received \$25,000,000 or more in annual gross revenues from federal assistance subject to the Transparency Act as defined in 2 C.F.R. § 170.320 (and subawards) and/or federal procurement contracts (and subcontracts);

c. The public does not have access to information about the compensation of the Subrecipient's executives through periodic reports filed under Section 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or Section 6104 of the Internal Revenue Code of 1986, 26 U.S.C. § 6104 (to determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(E) The Recipient agrees to report the Subrecipient's executives' total compensation described above to FTA and elsewhere as may be determined by the Federal Government, and by the end of the month following the month during which the Recipient makes the subaward (for example, if a subaward is obligated on any date during the month of October of a given year, i.e., between October 1 and 31, the Recipient must report any required compensation information about the Subrecipient by November 30 of that year).

(F) Any Recipient that had gross income under \$300,000 from all sources in the previous tax year is exempt from those federal requirements to report subawards, and the total compensation of the five highest compensated executives of any Subrecipient.

(5) *Recipient Integrity and Performance Matters.* U.S. OMB regulatory guidance, "Recipient Integrity and Performance Matters," 2 CFR Part 200, appendix XII, contains mandatory provisions that may affect the Recipient's reporting requirements.

(f) *Closeout.* The Recipient agrees that closeout of its Award does not alter the record-keeping and reporting requirements of this section of this Master Agreement.

Section 9. Record Retention and Access to Sites of Performance.

(a) *Types of Records.* The Recipient agrees to retain, and will require its Third Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- (b) *Retention Period.* The Recipient agrees to comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Underlying Agreement, and any Amendments thereto must be retained from the day the Underlying Agreement was signed by the authorized FTA official through the course of the Award, the accompanying Underlying Agreement, and any Amendments thereto until three years after the Recipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) *Access to Recipient and Third Party Participant Records.* The Recipient agrees, and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information, including such records and information the Recipient or its Third Party Participants may regard as confidential or proprietary, related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and to the Recipient and each of its Subrecipients;
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations; and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) *Access to the Sites of Performance.* The Recipient agrees to permit, and to require its Third Party Participants to permit, FTA to have access to the sites of performance of its Award, the accompanying Underlying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with the U.S. DOT Common Rules.
- (e) *Closeout.* Closeout of the Award does not alter the record retention or access requirements of this section of this Master Agreement.

Section 10. Completion, Audit, Settlement, and Closeout.

- (a) *Completion.* Within one hundred twenty (120) calendar days after completion or termination of the Award, the Recipient agrees to submit; and within ninety (90) calendar days after completion or termination of the Award (or an earlier date as

agreed upon by the pass-through entity and subrecipient), the subrecipient agrees to submit to the pass-through entity:

- (1) Its final Federal Financial Report, either electronically or on Federal Financial Report Standard Form 425 (SF-425);
 - (2) A certification of expenses incurred that implement its Award, the accompanying Underlying Agreement, and any Amendments thereto; and
 - (3) The necessary audit reports of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (b) *Audit of the Recipient.* Except as the Federal Government determines otherwise in writing, the Recipient agrees that:
- (1) *Audits Required.* It must obtain the following audits:
 - (i) *Annual "Single Audit."* A financial and compliance audit consistent with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq., and applicable U.S. DOT "Single Audit" requirements of 2 CFR Part 1201, which incorporate by reference 2 CFR Part 200, for each Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement; and
 - (ii) *Other Audits.* Other audits the Federal Government may require.
 - (2) *Auditing Standards.* It must comply with the "Audit Requirements" of 2 CFR Part 200, subpart F, and conform to U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards" in the conduct of audits of its Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - (3) *Costs of Audits.* The audit costs for the administration and management of the Award, the accompanying Underlying Agreement, and any Amendments to any Underlying Agreement are allowable to the extent authorized by the cost principles of 49 CFR Part 1201, which incorporate by reference 2 CFR Part 200.
- (c) *Amounts Owed to the Federal Government.* The Recipient agrees to return to the Federal Government any excess federal payments it receives for disallowed costs, and the Federal Government's proportionate part of any amounts it recovers from third parties or other sources, including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.

- (d) *Closeout.* The Recipient agrees that closeout of the Award occurs when FTA notifies the Recipient that the Award is closed, and approves the final federal payment, or acknowledges receipt of the proper refund. Closeout of the Award does not alter the Recipient's audit responsibilities and does not invalidate any continuing requirements of applicable federal law, regulations, or requirements, this Master Agreement or the Underlying Agreement.

Section 11. Right of the Federal Government to Terminate.

- (a) *Justification.* After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - (1) The Recipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- (b) *Financial Implications.* In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) *Expiration of the Period of Performance.* Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.

- (d) *Uniform Administrative Requirements.* These termination rights are in addition to and in no way limit the Federal Government’s rights to terminate described in 2 CFR § 200.340.

Section 12. Civil Rights.

- (a) *Civil Rights Requirements.* The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.
- (b) *Nondiscrimination in Federal Public Transportation Programs.* The Recipient agrees to, and assures that it and each Third Party Participant will:
 - (1) Prohibit discrimination based on race, color, religion, national origin, sex (including sexual orientation), disability, or age.
 - (2) Prohibit the:
 - (i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
 - (ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
 - (iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
 - (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
 - (ii) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

- (c) *Nondiscrimination – Title VI of the Civil Rights Act.* The Recipient agrees to, and assures that each Third Party Participant will:
- (1) Prohibit discrimination based on race, color, or national origin,
 - (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.;
 - (ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21, including any amendments thereto; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
 - (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.
- (d) *Equal Employment Opportunity.*
- (1) *Federal Requirements and Guidance.* The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;
 - (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
 - (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;

- (iv) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and
 - (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.
- (2) *Indian Tribes.* The Recipient agrees to, and assures that each Third Party Participant will recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”.
- (e) *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows:
- (1) *Statutory and Regulatory Requirements.* The Recipient agrees to comply with:
 - (i) Section 11101(e) of IIIA;
 - (ii) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, including any amendments thereto; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
 - (2) *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:
 - (i) *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Part 26, including any amendments thereto; and
 - (ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a transit vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract using the Transit Vehicle Award Reporting Form on FTA’s website. The Recipient must also submit additional

notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.

- (3) *Assurance.* As required by 49 C.F.R. § 26.13(a):
- (i) *Recipient Assurance.* The Recipient agrees and assures that:
 - (A) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - (C) Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - (ii) *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
 - (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted

subagreements, third party contracts, and third party subcontracts, as applicable;

- (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(ii) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
- (D) The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.

(4) *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.

(f) *Nondiscrimination on the Basis of Sex.* The Recipient agrees to comply with federal prohibitions against discrimination based on sex, including:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq.;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25; and
- (3) Federal transit law, specifically 49 U.S.C. § 5332.

(g) *Nondiscrimination on the Basis of Age.* The Recipient agrees to comply with federal prohibitions against discrimination based on age, including:

- (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age;
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625;
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., which prohibits discrimination against individuals based on age in the

administration of Programs, Projects, and related activities receiving federal assistance;

- (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90; and
 - (5) Federal transit law, specifically 49 U.S.C. § 5332.
- (h) *Nondiscrimination on the Basis of Disability*. The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:
- (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;

- (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
 - (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
 - (xi) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.
- (i) *Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections.* The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101, et seq.;

- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541, et seq.; and
 - (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (j) *Access to Services for Persons with Limited English Proficiency.* The Recipient agrees to provide meaningful access to public transportation services to persons with limited understanding of English to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq., and its implementing regulation at 28 CFR § 42.405(d), and applicable U.S. Department of Justice guidance.
 - (k) *Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination.
 - (l) *Remedies.* Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.
 - (m) *Federal Law and Public Policy Requirements.* The Recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
 - (n) *Federal Anti-Discrimination.*
 - (1) Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
 - (2) Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.

Section 13. Planning.

- (a) *Standard Planning Provisions.* The Recipient agrees to the following:

- (1) *Planning Requirements and Guidance.* To assure that its Underlying Agreement is consistent with the Planning requirements that apply, the Recipient agrees to:
 - (i) Comply with the Metropolitan planning requirements of 49 U.S.C. § 5303, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for Metropolitan Transportation Planning and Programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the metropolitan planning requirements of 49 U.S.C. § 5303;
 - (ii) Comply with the statewide and nonmetropolitan planning requirements of 49 U.S.C. § 5304, and joint FHWA and FTA regulations, “Planning and Assistance Standards” (for statewide transportation planning and programming), 23 CFR Part 450 and 49 CFR Part 613, to the extent those regulations are consistent with the state planning requirements of 49 U.S.C. § 5304; and
 - (iii) Follow any guidance FTA issues to implement requirements of 49 U.S.C. §§ 5303 and 5304.
 - (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient’s federally assisted transportation services; and
 - (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.
- (b) *Tribal Transit Program Planning Provisions.* The Indian Tribe agrees that:
- (1) *Planning Requirements.* The federal assistance it receives for its Tribal Transit Program will be consistent with its documents, including any formal plan provided to FTA in support of the development and basis of its Award of federal assistance under the Tribal Transit Program, and are or will be coordinated with transportation service funded by other federal sources to the maximum extent feasible.

- (2) *Participation of State or Local Governmental and Private Nonprofit Providers of Nonemergency Transportation.* The Recipient agrees to comply with 49 U.S.C. § 5323(k) by assuring that it will, as feasible:
 - (i) Provide the opportunity to participate and coordinate with the Recipient in the design and the delivery of federally assisted transportation services, and be included in planning for the Recipient’s federally assisted transportation services; and
 - (ii) Make that opportunity available to federally-assisted state or local governmental agencies and nonprofit organizations that receive federal assistance for nonemergency transportation, but do not receive federal assistance for nonemergency transportation from U.S. DOT.

Section 14. Private Enterprise.

- (a) *Protections.* The Recipient agrees to protect the interests of private enterprise affected by federal public transportation programs by:
 - (1) Encouraging private enterprise to participate in the planning of public transportation and programs that provide public transportation, to the extent permitted under 49 U.S.C. § 5306; and
 - (2) Providing just compensation for the Project property it acquires, including the franchises of private providers of public transportation, as required under 49 U.S.C. § 5323(a)(1)(C).
- (b) *Infrastructure Investment.* The Recipient agrees to follow the infrastructure investment recommendations of:
 - (1) Executive Order No. 12803, “Infrastructure Privatization,” April 30, 1992, 31 U.S.C. § 501 note (57 Fed. Reg. 19,036); and
 - (2) Executive Order No. 12893, “Principles for Federal Infrastructure Investments,” January 26, 1994, 31 U.S.C. § 501 note (59 Fed. Reg. 4233).
- (c) *Joint Development.* If joint development is involved, the Recipient agrees to follow the latest edition of FTA Circular 7050.1, “Federal Transit Administration Guidance on Joint Development.”

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:

- (a) *Buy America.* The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 CFR Part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (b) *Build America, Buy America Act.* Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget’s “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.
- (c) *Cargo Preference–Use of United States-Flag Vessels.* At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (d) *Fly America.* The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.
- (e) *Uniform Administrative Requirements.* Compliance with FTA’s “Buy America Requirements,” 49 CFR Part 661, and “Buy America Preferences for Infrastructure Projects,” 2 CFR Part 184, as described in this Master Agreement shall be deemed to satisfy 2 CFR § 200.322, “Domestic Preferences for Procurements.”
- (f) *Limitation on Certain Rolling Stock Procurements.* The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

Section 16. Procurement.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees:

- (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, “Third Party Contracting Guidance,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (b) *Full and Open Competition.* The Recipient agrees to conduct all its third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a), and as determined by FTA.
- (c) *Exclusionary or Discriminatory Specifications.* The Recipient agrees that it will not use any federal assistance under 49 U.S.C. chapter 53 for any procurement based on exclusionary or discriminatory specifications, as provided in 49 U.S.C. § 5325(h), unless authorized by other applicable federal laws, regulations, or requirements.
- (d) *Required Clauses in Third Party Contracts.* In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:
- (1) *Simplified Acquisition Threshold.* Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)
 - (2) *Termination.* All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
 - (3) *Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148).* When required by federal program legislation, all prime construction contracts in excess of

\$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- (4) *Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708).* Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (5) *Rights to Inventions Made Under a Contract or Agreement.* If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (6) *Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (7) *Debarment and Suspension (Executive Orders 12549 and 12689).* A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
- (1) Complies with federal debarment and suspension requirements; and
 - (2) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
- (8) *Restrictions on Lobbying (31 U.S.C. § 1352).* Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. Each tier certifies to the tier above that it will not and has

not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- (9) *Solid Wastes.* A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (e) *Geographic Restrictions.* The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law (for example, Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58), regulation, requirement, or guidance.
- (f) *In-State Bus Dealer Restrictions.* The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).
- (g) *Organizational Conflict of Interest.* The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest.
- (h) *Project Labor Agreements.* As a condition of a third party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009 (74 Fed. Reg. 6985).
- (i) *Force Account.* The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

- (j) *FTA Technical Review.* The Recipient agrees that FTA may review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper administration of the Underlying Agreement.
- (k) *Relationship of the Award to Third Party Contract Approval.* The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non- competitive third party contract associated with the Award, unless FTA indicates otherwise in writing.
- (l) *National Intelligent Transportation Systems Architecture and Standards.* The Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.
- (m) *Rolling Stock.* The Recipient agrees that any procurement for rolling stock will comply with 49 U.S.C. § 5325 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), and 49 U.S.C. § 5318(e) (Bus Testing Requirements), 49 U.S.C. § 5323(u) (limitation on certain rolling stock procurements), and their implementing regulations.
- (n) *Bonding.* The Recipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - (1) *Construction.* As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - (2) *Activities Not Involving Construction.* For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.
- (o) *Architectural Engineering and Related Services.* When procuring architectural engineering or related services supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53 or provided in any other law requiring the Award to be administered under 49 U.S.C. chapter 53, the Recipient agrees to comply and assures that each of its Subrecipients will comply with 49 U.S.C. § 5325(b).
- (p) *Design-Build Projects.* As provided in 49 U.S.C. § 5325(d), the Recipient may use a design- build procurement to carry out its Design-Build Project, provided that it

complies with applicable federal laws, regulations, and requirements, and follows federal guidance.

- (q) *Award to Other than the Lowest Bidder.* As permitted under 49 U.S.C. § 5325(c), the Recipient may award a third party contract to other than the lowest bidder, if that award furthers an objective (for example, improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53 and any implementing federal regulations, requirements, or guidance that FTA may issue.
- (r) *Award to Responsible Third Party Contractors.* The Recipient agrees to award third party contracts only to contractors able to carry out the procurement successfully, as provided in 49 U.S.C. § 5325(j), and before awarding a third party contract, it will consider the proposed contractor's integrity, compliance with public policy, past performance, and financial and technical resources.
- (s) *Access to Third Party Contract Records.* The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third Party Contractors at each tier to provide:
 - (1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
 - (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.
- (t) *Electronic and Information Technology.* The Recipient agrees that reports or information it provides to or on behalf of the Federal Government will use electronic or information technology that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194.
- (u) *Veterans Preference.* As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
 - (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and

- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
- (v) *Acquisition by Lease.* The Recipient agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with 49 U.S.C. chapter 53 and section 3019 of the FAST Act.
- (w) *Bid Protests.* The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Section 17. Patent Rights.

- (a) *General.* The Recipient agrees that:
 - (1) Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- (b) *Federal Rights.* The Recipient agrees that:
 - (1) Its rights and responsibilities and each Third Party Participant's rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government,

Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200, et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

- (c) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) *Definition of "Subject Data."* As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- (b) *General Federal Restrictions.* The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - (1) *Prohibitions.* The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) *Exceptions.* The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) *Federal Rights in Data and Copyrights.* The Recipient agrees that:
 - (1) *General.* It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and

- (2) *U.S. DOT Public Access Plan – Copyright License.* The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) *Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs.* In general, FTA’s purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third Party Participants. Therefore, the Recipient agrees that:
- (1) *Publicly Available Report.* When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - (2) *Other Reports.* It must provide other reports related to the Award that FTA may request.
 - (3) *Availability of Subject Data.* FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - (4) *Identification of Information.* It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
 - (5) *Incomplete.* If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
 - (6) *Exception.* This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient’s use, and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties.* Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent

applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income, and must be used in compliance with federal applicable requirements.

- (f) *Hold Harmless.* Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights.* Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) *Data Developed Without Federal Assistance or Support.* The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data.* The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - (2) The U.S. DOT Common Rules;
 - (3) The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB)

Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or

- (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

Section 19. Use of Real Property, Equipment, and Supplies.

- (a) *Federal Interest.* The Recipient agrees that the Federal Government retains a federal interest in all real property, equipment, and supplies acquired or improved for use in connection with a Project (Project property) until, and to the extent that, the Federal Government removes its federal interest.
- (b) *FTA Requirements and Guidance for Use of Project Property.* The Recipient agrees that:
 - (1) *Satisfactory Continuing Control.* It will maintain continuing control of the use of its Project property as satisfactory to FTA, which is defined as the legal assurance that Project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
 - (2) *Appropriate Use.* It will use its Project property for appropriate purposes (including joint development purposes as well as uses that provide program income to support public transportation) for the duration of the useful life of its Project property, which may extend beyond the duration of the Award, and consistent with other requirements FTA may impose.
 - (3) *Delay or Failure to Use Project Property.* The Federal Government may require it to return the entire amount of federal assistance spent on its Project property if, during the useful life of its Project property, it has unreasonably delayed using its Project property, or failed to use its Project property.
 - (4) *Notification.* It will notify FTA immediately when it uses any of its Project property in a manner substantially different from the representations in its Application or other documents submitted in support of the Award, or the requirements of the accompanying Underlying Agreement, or it withdraws any of its Project property from appropriate use.
 - (5) *FTA Guidance.* It will consult FTA guidance through its circulars or other written documents for ways in which FTA property requirements should be

implemented. FTA guidance will apply unless FTA determines otherwise in writing.

- (c) *General Federal Requirements.* The Recipient agrees to comply with the applicable U.S. DOT property management provisions as provided in the U.S. DOT Common Rules and this Master Agreement. The Recipient also agrees to follow FTA's reimbursement provisions pertaining to premature dispositions of certain equipment, as provided in this Master Agreement and FTA guidance.
- (d) *Maintenance.* As provided in federal laws, regulations, requirements, and guidance, the Recipient agrees to maintain its Project property in good operating order, and comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 CFR Parts 625 and 630.
- (e) *Property Records.* The Recipient agrees to keep satisfactory records of its use of its Project property, and, upon request, it will provide FTA the necessary information required to assure compliance with this Master Agreement.
- (f) *Incidental Use.*
 - (1) The Recipient agrees that any incidental use of Project property will not exceed what is permitted under applicable federal requirements and federal guidance.
 - (2) As provided in 49 U.S.C. § 5323(p), it may permit nontransit public entities and private entities to have incidental use of its federally assisted alternative fueling facilities and equipment, only if:
 - (i) The incidental use does not interfere with public transportation operations or violate the provisions of the Underlying Agreement and any Amendments thereto;
 - (ii) It fully recaptures all the costs related to the incidental use from any nontransit public entity or private entity that uses the alternative fueling facilities or equipment;
 - (iii) It uses revenues it receives from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
 - (iv) Private entities pay all applicable excise taxes on fuel.
- (g) *Reasonable Access for Private Intercity or Charter Transportation Operators.* The Recipient agrees to comply with 49 U.S.C. § 5323(r), and may not deny reasonable access for a private intercity or charter transportation operator to federally funded

public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the Recipient and the extent to which access would be detrimental to existing public transportation services must be considered.

- (h) *Encumbrance of Project Property.* Absent the express consent of the Federal Government in writing, the Recipient agrees to preserve the federal interest in its Project property, and to maintain satisfactory continuing control of its Project property as follows:
- (1) *Written Transactions.* The Recipient agrees that it will not execute any documents that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property including, but not limited to, lease, transfer of title, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangements, such as a cross-border or leveraged lease, or other types of innovative financing arrangements, or any restriction, constraint, or commitment that may apply to the Project property. Upon request, the Recipient will provide a copy of any document described above to FTA.
 - (2) *Oral Transactions.* The Recipient agrees it will not obligate itself in any way through an oral statement to any third party with respect to its Project property that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
 - (3) *Other Actions.* The Recipient agrees that it will not take any other action that would either adversely affect the federal interest in or impair its continuing control of the use of its Project property.
- (i) *Useful Life of Project Property.* The Recipient agrees that:
- (1) *Determining the Useful Life.* FTA may establish the useful life of Project property;
 - (2) *Required Use.* It will use its Project property continuously and appropriately throughout the useful life of that property;
 - (3) *Expired Useful Life.* When the useful life of its Project property has expired, it will comply with FTA's disposition requirements; and
 - (4) *Premature Withdrawal.* The Federal Government retains a federal interest in the fair market value of Project property or remaining useful life in Project property calculated based on straight line depreciation (including Project equipment acquired by a state). Therefore, if the Recipient withdraws that

property from public transportation use prematurely, it will notify FTA immediately when any of its Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

- (i) *Amount of Federal Interest.* The federal interest in the Recipient's or any of its Subrecipients' Project property will be determined based on the ratio of the federal assistance provided for that property to the actual cost of that property.
- (ii) *Financial Commitments to the Federal Government.* Except as otherwise approved in writing by the Federal Government, the Recipient agrees that if its Project property is prematurely withdrawn from appropriate use:
 - (A) It will return an amount equal to the remaining federal interest in the withdrawn property to the Federal Government; or
 - (B) With FTA approval, it will invest an amount equal to the remaining federal interest in the withdrawn property in other transit property eligible for federal assistance provided through the Underlying Agreement.
- (j) *Calculating the Value of Prematurely Withdrawn Project Property.* The Recipient agrees that the fair market value of Project property prematurely withdrawn from use in support of the Award (including the fair market value of project equipment acquired or improved by a state) will be calculated as follows:
 - (1) *Equipment and Supplies.* The fair market value of project equipment or supplies will be calculated by straight-line depreciation, based on the useful life of that equipment or supplies as established or approved by FTA. The fair market value of the Project equipment and supplies withdrawn from proper use will be based on the value of that property immediately before it was withdrawn from appropriate use irrespective of whether the Project property was withdrawn from use due to fire, casualty, or natural disaster, and irrespective of the extent of insurance coverage.
 - (2) *Real Property.* The Recipient agrees that the fair market value of Project real property shall be determined by:
 - (i) Competent appraisal based on an appropriate date as approved by FTA, consistent with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs," 49 CFR Part 24;

- (ii) Straight line depreciation of improvements to the Project real property coupled with the value of the land determined by FTA based on appraisal; or
 - (iii) Other applicable federal laws, regulations, and requirements.
- (3) *Exceptional Circumstances.* The Recipient agrees that the Federal Government may require another method of valuation to be used to determine the fair market value of Project real property withdrawn from service. In unusual circumstances, the Recipient may request permission to use another reasonable valuation method including, but not limited to accelerated depreciation, comparable sales, or established market values.
- (k) *Insurance Proceeds.* The Recipient agrees to use any insurance proceeds it receives for Project property that has been damaged or destroyed (including insurance proceeds for Project equipment acquired or improved by a state) as follows:
 - (1) *Replacement.* It may apply those insurance proceeds to the cost of replacing that damaged or destroyed property;
 - (2) *Another Purpose.* It may use those insurance proceeds for another authorized purpose, provided that it has obtained FTA's consent in writing; or
 - (3) *Return to the Federal Government.* It may return to the Federal Government an amount equal to the amount of the remaining federal interest in that property that has been damaged or destroyed.
- (l) *Misused or Damaged Project Property.* If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property that has been damaged to its original condition, or refund the value of the federal interest in its Project property (including the remaining federal interest in Project equipment acquired by a state), as the Federal Government may require.
- (m) *Disposition of Project Property.* The Recipient agrees that disposition of its Project property may be made as provided in FTA's enabling legislation, 49 U.S.C. § 5334(h), U.S. DOT Common Rules, and the most recent edition of FTA Circular 5010.1, to the extent consistent with applicable federal laws, regulations, requirements, and guidance. The Recipient understands and agrees that under certain circumstances, the Recipient must obtain disposition instructions from FTA before disposing of Project property, including real property, equipment including rolling stock, and supplies. Disposition performed under any authority is subject to 49 U.S.C. § 5334(h)(4)(B) ("Reimbursement").

- (n) *Responsibilities After Closeout.* The Recipient agrees that closeout of the Award will not change the Recipient's property management responsibilities for its Project property as provided in federal laws, regulations, requirements, and guidance effective now or at a later date, and this section of this Master Agreement.

Section 20. Transit Asset Management.

- (a) *Transit Asset Management Plan.* The Recipient agrees to develop a Transit Asset Management Plan that complies with federal transit laws, specifically 49 U.S.C. § 5326, FTA regulations, "Transit Asset Management," 49 CFR Part 625, and "National Transit Database," 49 CFR Part 630, and other applicable federal laws, regulations, and requirements.
- (b) *When Compliance is Required.* The Recipient agrees to, and assures that each Third Party Participant will, comply with FTA regulations, "Transit Asset Management; National Transit Database," 49 CFR Parts 625 and 630, and follow applicable federal guidance.

Section 21. Insurance.

- (a) *Flood Insurance.* The Recipient agrees and assures that its Third Party Participants will agree to comply with flood insurance laws and guidance as follows:
- (1) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.
 - (2) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.
 - (3) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.
- (b) *Other Insurance Requirements.* It will comply with the insurance requirements normally imposed by its state and local laws, regulations, and ordinances.

Section 22. Relocation and Real Property.

- (a) *Relocation Protections.* Irrespective of whether federal assistance is used to pay relocation costs required under federal laws, regulations, or requirements, the Recipient agrees to:
- (1) Provide fair and equitable treatment to displaced individuals and businesses that must be relocated as a result of any Project for which the FTA has provided federal assistance; and
 - (2) Comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24.
- (b) *Nondiscrimination in Housing.* The Recipient agrees that when it must provide housing for individuals as a result of relocation, it will comply with Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601, et seq., and facilitate and follow Executive Order No. 12892, “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” January 17, 1994, 42 U.S.C. § 3608 note, (59 Fed. Reg. 2939), except as the Federal Government determines otherwise in writing.
- (c) *Prohibition Against the Use of Lead-Based Paint.* The Recipient agrees that if it constructs or rehabilitates residential structures on behalf of individuals displaced by its any Project, it will not use lead-based paint, and it will comply with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and U.S. Housing and Urban Development regulations, “Lead-based Paint Poisoning Prevention in Certain Residential Structures,” 24 CFR Part 35.
- (d) *Real Property Acquisition Protections.* Irrespective of whether federal assistance is used to pay real property acquisition costs required to implement the Award, the Recipient agrees to provide fair and equitable treatment to owners of real property or interests in real property that must be acquired as a result of any Project, and comply with federal transit laws, specifically 49 U.S.C. § 5323(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq., and U.S. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24.

- (e) *Covenant Against Discrimination.* The Recipient agrees to include a covenant in the title of the real property acquired for use in any Project that assures nondiscrimination during the useful life of that real property.
- (f) *Recording the Title to Real Property.* The Recipient agrees to record the federal interest in the title to real property used in connection with any Project if FTA so requires.
- (g) *FTA Approval of Changes in Real Property Ownership.* Unless it receives permission or instructions from FTA, the Recipient agrees that it will not dispose of, modify the use of, or change the title to real property used in any Project, or any other interests in the site and facilities used in any Project.

Section 23. Construction.

- (a) *Construction Plans and Specifications.* The Recipient agrees to comply with all applicable statutes, regulations, and requirements, and follow FTA guidance in the development and implementation of construction plans and specifications, including drafting, review, and approval, for the Award.
- (b) *Seismic Safety.* The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, et seq., and U.S. DOT regulations, “Seismic Safety,” 49 CFR Part 41, specifically, 49 C.F.R. § 41.117.
- (c) *Supervision of Construction.* The Recipient agrees to maintain competent and adequate engineering supervision at the construction site of any Project to ensure that the completed work conforms to the approved plans and specifications.
- (d) *Construction Reports.* For any Project or related activities involving construction, the Recipient agrees to provide progress reports and other relevant information or data, as required by FTA or the state in which construction takes place.
- (e) *Major Capital Investment Projects.* If the Recipient’s Project involves a Major Federal Project, it agrees to comply with all applicable federal regulations, including FTA regulations, “Major Capital Investment Projects,” 49 CFR Part 611, and “Project Management Oversight,” 49 CFR Part 633, to the extent that they are consistent with applicable federal legislation, regulations, and requirements, and follow all applicable federal guidance.

Section 24. Employee Protections.

- (a) *Awards Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each

Project or related activities with federal assistance provided through the Underlying Agreement, including the:

- (1) Prevailing Wage Requirements of:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
 - (ii) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - (iii) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

- (2) Wage and Hour Requirements of:
 - (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

- (3) “Anti-Kickback” Prohibitions of:
 - (i) Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
 - (ii) Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
 - (iii) U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 CFR Part 3.

- (4) Construction Site Safety of:

- (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and
 - (ii) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 CFR Part 1904; “Occupational Safety and Health Standards,” 29 CFR Part 1910; and “Safety and Health Regulations for Construction,” 29 CFR Part 1926.
- (b) *Awards Not Involving Construction.* The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.
- (c) *Awards Involving Commerce.* The Recipient agrees to comply and assures that each Third Party Participant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, and as the Federal Government otherwise determines applicable.
- (d) *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - (1) *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.

- (2) *Special Warranty.* When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.
- (3) *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Recipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 25. Early Systems Work Agreement.

- (a) *Statutory Requirements.* If FTA enters into an Early System Work Agreement (ESWA) with the Recipient to advance the implementation of the Recipient’s Capital Project, the Recipient agrees that the provisions of 49 U.S.C. § 5309(k)(3) will apply to that ESWA, the Recipient, and FTA.
- (b) *ESWA Provisions.* Except to the extent that the Federal Government determines otherwise in writing, the Recipient understands and agrees that the following provisions apply to its ESWA, unless the ESWA contains specific requirements to the contrary:
 - (1) *Recipient Representations.* In view of the standards and commitments imposed on the Recipient by 49 U.S.C. § 5309(k)(3), the Recipient has provided sufficient representations and information to FTA so that FTA has reason to believe the following:
 - (i) FTA and the Recipient will enter into a Full Funding Grant Agreement for the Project; and
 - (ii) The terms of the ESWA will promote the ultimate completion of the Project more rapidly and at less cost.

- (2) *FTA Commitments.* By entering into an ESWA with the Recipient, FTA has agreed to provide for reimbursement of the preliminary costs of carrying out the Project, including:
 - (i) Land acquisition;
 - (ii) Timely procurement of system elements for which the specifications are decided; and
 - (iii) Other activities that FTA decides are appropriate to make efficient, long-term Project management easier.
- (3) *Time Period of the ESWA.* FTA reserves the right to determine the period of time in which the ESWA will remain in effect, even if that period extends beyond the time of the authorization of federal funding that will support the Project costs covered by the ESWA.
- (4) *Interest and Other Financing Costs.* Interest and other financing costs of carrying out the ESWA efficiently and within a reasonable time are eligible ESWA costs, provided that:
 - (i) The interest and financing costs claimed do not exceed the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing;
 - (ii) The Recipient has certified that it will show reasonable diligence in seeking the most favorable financing terms; and
 - (iii) The Recipient is able to show reasonable diligence in seeking the most favorable financing terms to support this ESWA.
- (5) *Contingent Commitment.* In providing funding for the ESWA:
 - (i) In its discretion, FTA may include a commitment, contingent on amounts made available under a later-enacted law, to obligate an additional amount from future available budget authority to support the costs of the Recipient's ESWA; and
 - (ii) If FTA does make a commitment to provide funding contingent on future amounts to be specified in law, that commitment is not an obligation of the Federal Government.
- (6) *Failure to Carry Out the Project.* If, for reasons within its control, the Recipient does not carry out the Project for which its ESWA was made available by FTA, the Recipient must:

- (i) Repay all Federal Grant funds awarded under the ESWA from all Federal funding sources for all Project activities, facilities, and equipment; and
- (ii) Pay reasonable interest and penalty charges:
 - (A) As established by FTA before or after FTA provided funding for the ESWA; or
 - (B) Allowable under law.

Section 26. Environmental Protections.

- (a) *General.* The Recipient agrees to, and assures that its Third Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- (b) *National Environmental Policy Act.* An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third Party Participants will:
 - (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
 - (i) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
 - (ii) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ’s implementing regulations 40 CFR Part 1500 – 1508;
 - (iii) Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622;
 - (iv) Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
 - (v) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
- (i) Joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319, Accelerated Decisionmaking in Environmental Reviews,” January 14, 2013;
 - (ii) Joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576, November 15, 2006; and
 - (iii) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (c) *Other Environmental Federal Laws.* The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order No. 11988, as amended, “Floodplain Management.”
- (d) *Corridor Preservation.* The Recipient agrees that:
- (1) It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
 - (2) It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- (e) *Use of Certain Public Lands.* The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Part 774, and referenced in 49 CFR Part 622.
- (f) *Historic Preservation.* The Recipient agrees to, and assures that its Third Party Participants will:

- (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
 - (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
 - (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
 - (4) Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 CFR Part 800.
 - (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (g) *Indian Sacred Sites.* The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- (h) *Mitigation of Adverse Environmental Effects.*
- (1) The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
 - (2) The Recipient agrees that:
 - (i) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
 - (ii) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments

thereto as soon as agreement with the Federal Government is reached;
and

(iii) Any mitigation measures agreed on will not be modified or
withdrawn without the written approval of the Federal Government.

(i) *Energy Conservation.* The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA and FTA regulations, “Management and Monitoring Systems,” 23 CFR Part 500, and FTA regulations, “Transportation Infrastructure Management,” 49 CFR Part 614.

Section 28. Charter Service.

(a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.

(b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:

(1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Recipient uses that federal assistance for FTA program purposes only; and

(2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C.

§ 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Recipient uses that federal assistance for FTA program purposes only.

- (c) *Violations.* If it or any Third Party Participant engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- (a) *Prohibitions.* The Recipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, "School Bus Operations," 49 CFR Part 605, and any other applicable federal "School Bus Operations" laws, regulations, requirements, or applicable federal guidance.
- (b) *Violations.* If a Recipient or any Third Party Participant has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Recipient or Third Party Participant from receiving federal transit assistance.

Section 30. Geographic Information and Related Spatial Data.

The Recipient agrees that each Project or related activity that implements the Award will conform to the Federal Geographic Data Committee's National Spatial Data Infrastructure if the Project or related activity directly or indirectly involves spatial data, or geographic information systems, and it will follow U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, and U.S. OMB Circular A-16 Supplemental Guidance, "Geospatial Line of Business," November 10, 2010.

Section 31. Federal "\$1 Coin" Requirements.

The Recipient agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

Section 32. Public Transportation Safety.

The Recipient agrees to comply with applicable federal laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329.

Section 33. Motor Carrier Safety.

- (a) *Financial Responsibility.* The Recipient agrees to comply and assures that its Third Party Participants will comply with the economic and insurance registration requirements of the:
- (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 CFR Part 387, if it is engaged in operations requiring compliance with 49 CFR Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and
 - (2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR Part 387, and reduce the amount of insurance the Recipient must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- (b) *U.S. FMCSA Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
- (1) The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR Parts 390 – 397, to the extent applicable; and
 - (2) The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR Part 383, and “State Compliance with Commercial Driver's License,” 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382, and implementing federal guidance, to the extent applicable.

Section 34. Safe Operation of Motor Vehicles.

- (a) *Seat Belt Use.* The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
 - (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.
- (b) *Distracted Driving, Including Text Messaging While Driving.* The Recipient agrees to comply with:
- (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
 - (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and
 - (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
 - (i) *Safety.* The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
 - (ii) *Recipient Size.* The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
 - (iii) *Extension of Provision.* The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Section 35. Substance Abuse.

- (a) *Drug-Free Workplace.* The Recipient agrees to:
- (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.;
 - (2) Comply with U.S. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32; and
 - (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- (b) *Alcohol Misuse and Prohibited Drug Use.*
- (1) *Requirements.* The Recipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40.
 - (2) *Remedies for Non-Compliance.* The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Section 36. Protection of Sensitive Security and Other Sensitive Information.

The Recipient agrees to comply with the following requirements for the protection of sensitive security information:

- (a) The Homeland Security Act, as amended, specifically 49 U.S.C. § 40119(b), and U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15;

- (b) The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), and U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520;
- (c) U.S. DOT Common Rules, which require the Recipient to implement, and to require its Subrecipients, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive; and
- (d) National Archives and Records Administration regulations, “Controlled Unclassified Information,” 32 CFR Part 2002.

Section 37. Special Notification Requirements for States.

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Section 38. Freedom of Information.

- (a) *Applicability.* The Recipient agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, applies to most information submitted to FTA and U.S. DOT, whether electronically or in typewritten hard copy.
- (b) *Records.* The Recipient agrees that all records it submits to FTA will become federal agency records and may be subject to release in response to a FOIA request unless FTA in its sole discretion determines that a valid exemption under FOIA or another statute applies. Unless FTA explicitly states otherwise in writing, FTA does not make any assurance that it will keep private any records submitted to FTA.

- (c) *Confidentiality.* President Obama’s “Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act,” dated January 21, 2009, directs federal agencies to adopt a presumption that information should generally be disclosed when requested, and therefore the Recipient agrees that:
- (1) Unless a federal law or regulation requires that a document or other information be withheld, FTA does not consent to withhold information, irrespective of its format, merely because it is accompanied by a “routine” confidentiality statement that may appear on:
 - (i) Information about the Award, the accompanying Underlying Agreement, and any Amendments thereto;
 - (ii) Information accompanying or supplementing the Award, the accompanying Underlying Agreement, and any Amendments thereto; or
 - (iii) Any other information FTA may obtain.
 - (2) As provided in federal laws, regulations, requirements, and guidance, FTA will review the information and documents that are the subject of each FOIA request to determine the extent to which FTA must or should exercise its discretion to withhold that information or those documents.
 - (3) Any genuinely confidential, privileged, or sensitive security information will be marked clearly and specifically as confidential or privileged, and justified as confidential or privileged under FOIA standards. The Recipient will mark all sensitive security information (SSI), as defined by 49 C.F.R. § 15.5, as set forth in 49 C.F.R. § 1520.13. The Recipient will not mark non-SSI material as SSI. Also refer to Section 36 of this Agreement, regarding the protection of SSI and other sensitive information.

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification

requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) *Additional Notice to U.S. DOT Inspector General.* The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- (c) *Federal Interest in Recovery.* The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its

Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

- (d) *Enforcement.* The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Section 40. Amendments to the Underlying Agreement.

- (a) *When Required.* An Amendment to the Underlying Agreement is required under the following circumstances:
 - (1) A change in the scope of work or an addition of federal assistance to an existing Award (regardless of whether the source of assistance is the same or different);
 - (2) A change to the scope of work that necessitates a change in the distribution of federal assistance across scope codes or activities; or
 - (3) The Award includes multiple sources of financial assistance and the action requires the addition of a new Scope to a Project.
- (b) *Process.* An amendment to the Underlying Agreement must be submitted and approved in TrAMS, and must meet the same application requirements as would apply to a request for a new Award.

Section 41. FTA's Transit Award Management System (TrAMS).

The Recipient agrees to submit its application for an Award, reports, documents, or other information required by federal law, regulations, or requirements, through FTA's Transit Award Management System (TrAMS). To submit its application, reports, documents, or information required to FTA, any signature submitted for use in TrAMS must comply with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001, et seq.

Section 42. Information Obtained through Internet Links.

Although this Master Agreement may include electronic links to federal laws, regulations, requirements, and guidance, FTA does not guarantee the accuracy of the information that may be accessed through such links. Accordingly, the Recipient understands and agrees that any information obtained through any electronic link within this Master Agreement does not represent an official version of a federal law, regulation, or requirement, and might be inaccurate. Therefore, any information that is obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal

Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 43. Severability.

The Recipient agrees that if any provision of the Underlying Agreement or any Amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

SPECIAL PROVISIONS FOR SPECIFIC PROGRAMS

Section 44. Special Provisions for All Public Transportation Innovation, Technical Assistance or Workforce Development Programs.

- (a) *Applicability.* The Recipient understands and agrees that this section of the Master Agreement applies to the following programs to which FTA provides federal assistance, including the following programs:
- (1) Programs authorized under 49 U.S.C. § 5312, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (2) Programs authorized under former 49 U.S.C. § 5313, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (3) Programs authorized under 49 U.S.C. § 5314, irrespective of the fiscal year for which the appropriations that supported the Underlying Agreement were authorized;
 - (4) Programs authorized by the repealed section 3045 of SAFETEA-LU;
 - (5) Programs authorized by the repealed section 3046 of SAFETEA-LU; and
 - (6) Other similar Programs for which FTA awards federal assistance under 49 U.S.C. §§ 5312 or 5314, as amended, or other similar research-type or technical assistance authorizing legislation.
- (b) *Provisions for Underlying Agreements for Public Transportation Innovation or Technical Assistance and Workforce Development Awards.* The Recipient agrees that the following provisions will apply to the Underlying Agreement for a Public Transportation Innovation or Technical Assistance and Workforce Development Project or related activities:
- (1) *Report.* The Recipient agrees that in addition to any other Report FTA may require, the Recipient will prepare and submit to FTA a Report of each Project and related activities that describes the subject (or subjects) investigated, the methods used, the results, and the conclusions reached, is satisfactory, sufficiently organized, well-written, and comprehensive.
 - (2) *Disclaimer.* The Report must contain the following disclaimer: “This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest

of information exchange. The United States government assumes no liability for the contents or use thereof. The United States government does not endorse products or manufacturers. Trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report.”

- (3) *Format.* The Report must comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194, and the specific publication elements and report style guide at http://www.fta.dot.gov/research/program_requirements. The Report must identify clearly and precisely any specific information or data that is confidential, privileged, or proprietary and is contained within any report or document.
- (4) *Publication.* Except for confidential, privileged, or proprietary information in the Report, FTA may publish the Report, and make it available for publication on the Internet or in any other venue.
- (5) *Identification of Federal Assistance.* The Recipient agrees that:
 - (i) It will display information on any product developed with federal assistance for 49 U.S.C. § 5312 for which the U.S. Department of Transportation, Federal Transit Administration provided federal assistance to support the development of the product that is tangible and is produced from, or is a result of, a Project, is a deliverable, and visible to the public, or is or will be made available to other research organizations, or public transportation providers, and consists of equipment, a prototype, hardware, construction, reports, data, software, internet pages, or any similar item.
 - (ii) The information required will be given using an appropriate sign, designation, or notice.
- (c) *Special Disposition Provision.* In addition to other disposition provisions, FTA may vest title in tangible personal property used in the conduct of basic or applied scientific research in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, provided the requirements of 31 U.S.C. § 6306 are met.
- (d) *Protection of Human Subjects.* The Recipient agrees to comply with the protections for human subjects involved in a Project or related activities supported with federal assistance through the Underlying Agreement, as required by the National Research

Act, as amended, 42 U.S.C. § 289, et seq., and U.S. DOT regulations, “Protection of Human Subjects,” 49 CFR Part 11.

- (e) *Protection of Animals.* The Recipient agrees to comply with the protections for animals involved in a Project or related activities, as required by the Animal Welfare Act, as amended, 7 U.S.C. § 2131, et seq., and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 CFR Parts 1, 2, 3, and 4.
- (f) *Export Control.* The Recipient understands and agrees that before exporting any information that is subject to federal export requirements, it must first obtain the necessary federal license(s), and comply with the federal export control regulations of the U.S. Department of Commerce, Bureau of Industry and Security, “Export Administration Regulations,” specifically, 15 CFR Parts 730, et seq., U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Defense.

Section 45. Special Provisions for the State Safety Oversight Grant Program.

In administering any State Safety Oversight Grant Program Award under 49 U.S.C. § 5329(e)(6), the Recipient agrees to comply with 49 U.S.C. § 5329(e)(6).

Section 46. Special Provisions for the State Infrastructure Bank (SIB) Program.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The State, as the Recipient, agrees to administer its Underlying Agreement to support its SIB consistent with federal laws, regulations, requirements, and guidance, including, but not limited to:
 - (1) Title 23, U.S.C. (Highways), specifically 23 U.S.C. § 610, to the extent required under the FAST Act, and other applicable federal legislation;
 - (2) Federal transit laws, specifically 49 U.S.C. § 5323(o), which requires compliance with 49 U.S.C. §§ 5307, 5309, and 5337 for Underlying Agreements to which MAP-21 and the FAST Act apply;
 - (3) Section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent this section has not been superseded by 23 U.S.C. § 610;
 - (4) Any federal law enacted or federal regulation or requirements promulgated at a later date applicable to the Underlying Agreement;
 - (5) All other applicable federal guidance that may be issued;

- (6) The terms and conditions of any U.S. DOL certification(s) of employee protective arrangements;
 - (7) The SIB Cooperative Agreement establishing the SIB in the state, signed by the Executive Director of the Build America Bureau, the Federal Transit Administrator, authorized state official(s) or their authorized designees, and if applicable, the administrator (or designee) for any other federal modal agency that the State wishes to include in its SIB; and
 - (8) The FTA Grant Agreement providing federal assistance for the Underlying Agreement in support of its SIB, except that any provision of this Master Agreement that would otherwise apply to a SIB Project does not apply to the Underlying Agreement if it conflicts with any other federal law or regulation applicable to a SIB, federal SIB Guidelines, the SIB Cooperative Agreement, or the Underlying Agreement, but the conflicting provision of this Master Agreement will prevail, however, if FTA expressly determines so in writing.
- (b) *Limitations on Accessing Federal Assistance in the Transit Account.* The Recipient understands that the total amount of federal assistance awarded under the Grant Agreement to be supported with SIB deposits may not be available for immediate withdrawal. The State and the Recipient agree to restrict the amount of federal assistance it withdraws from its SIB to an amount not exceeding the limits specified in its Grant Agreement in support of the SIB or the Award Budget for that Grant Agreement.

Section 47. Special Provisions for the TIFIA and RRIF Programs.

- (a) *Federal Laws, Regulations, Requirements, and Guidance.* The Recipient agrees to administer any Underlying Agreement for TIFIA or RRIF credit assistance as required by and in accordance with the terms of the Underlying Agreement.
- (b) *Default.* The Recipient agrees that FTA may declare the Recipient in violation of this Master Agreement if there has been an Event of Default according to an Underlying Agreement for TIFIA or RRIF assistance, and that Event of Default is not cured within 90 days.
- (c) *Order of Precedence.* Any provision of this Master Agreement that is applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance but that conflicts with the laws, regulations, and requirements applicable to the Recipient's Underlying Agreement for TIFIA or RRIF assistance, will not apply to the Recipient's TIFIA or RRIF Loan, Loan Guarantee, Line of Credit, or Master Credit Agreement, unless FTA determines otherwise in writing.

Section 48. Special Provisions for the Joint FTA–FRA Program.

- (a) *General Legal Requirements.* When both FTA and the U.S. Federal Railroad Administration (FRA) make federal assistance available for the same Underlying Agreement, the Recipient understands and agrees to administer the Underlying Agreement to achieve maximum compliance with FTA’s statutory and regulatory requirements, FRA’s statutory and regulatory requirements, and other federal statutory requirements.
- (b) Disadvantaged Business Enterprises.
 - (1) The Recipient acknowledges and understands that the statutory and regulatory provisions relating to disadvantaged business enterprises (DBE) differ significantly between FTA and FRA, including Section 1101(b) of the FAST Act (23 U.S.C. § 101 note) and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, both of which apply to FTA, but not to FRA.
 - (2) FRA is not authorized to use FTA’s DBE regulations, and consequently the Recipient agrees to comply with the statutory and regulatory DBE provisions that apply to federal assistance provided by FTA when using that federal assistance for purchases.
 - (3) The Recipient agrees to use the “contracting with small and minority firms, women’s business enterprise” provisions of the applicable U.S. DOT Common Rules.
- (c) *Buy America.* The Recipient agrees that statutory and regulatory Buy America provisions that apply to federal assistance authorized for FTA differ from those that apply to federal assistance authorized for FRA. Therefore, the Recipient agrees that:
 - (1) It must comply with FTA’s statutory and regulatory Buy America provisions to the extent that the purchases are for a Project or related activities that implement the Underlying Agreement;
 - (2) It must comply with FRA’s statutory and regulatory Buy America provisions, section 301(a) of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub L. 110-432, October 16, 2008, and 49 U.S.C. § 24405(a), to the extent that the purchases are required to comply with FRA Buy America requirements; and

- (3) If it uses federal assistance authorized for FTA and for FRA to finance a purchase, the Recipient agrees to comply with both FTA's and FRA's requirements.
- (d) *Force Account – Procurement.* The Recipient agrees that FTA deems section 16(j) of this Master Agreement to be satisfied for work that is performed by the railroad's force account employees if a Project or related activities are being conducted on the property of a railroad, and under the railroad's collective bargaining agreements with its employees, certain work to be performed for the Recipient must be performed by force account employees.
- (e) *Procurement of Rolling Stock.* The Recipient agrees that if FRA requires the Recipient to acquire any rolling stock for the Underlying Agreement from the Next Generation Corridor Equipment Pool Committee that has been established under section 305 of PRIIA, FTA deems section 15 of this Master Agreement to be satisfied.
- (f) *Use of Real Property, Equipment, and Supplies.* The Recipient agrees that application of section 19 of this Master Agreement is reserved.
- (g) *Davis-Bacon.* The Recipient agrees that, as provided in 49 U.S.C. § 24312, wages paid to railroad employees at rates provided in a collective bargaining agreement negotiated under the Railway Labor Act, 45 U.S.C. § 151, et seq., are deemed to comply with the requirements of the Davis-Bacon Act, 40 U.S.C. § 3141, et seq., and satisfy section 24 of this Master Agreement.
- (h) *Employee Protective Arrangements.* The Recipient agrees to pass down to a railroad employee subject to the Railway Labor Act, 45 U.S.C. § 151, et seq., protective arrangements as provided in a special Attachment to FTA's Grant Agreement or Cooperative Agreement with the Recipient, and not pass down employee protective arrangements as provided in section 24 of this Master Agreement.
- (i) *Motor Carrier Safety.* The Recipient agrees that railroad signal employees and their employers must comply with the hours of service requirements of 49 U.S.C. § 21104, see 49 U.S.C. § 21104(e), and FRA's hours of service regulation, specifically 49 CFR Part 228, and that section 33 of this Master Agreement does not apply to railroad signal employees concerning hours of service.
- (j) *Railroad Safety.* The Recipient agrees that a railroad subject to FRA's safety jurisdiction must comply with the federal railroad safety laws.

APPENDIX A
TRIBAL TRANSIT PROGRAM—APPLICABLE PROVISIONS

FTA recognizes that several provisions of this Master Agreement generally applicable to other programs do not apply to the Tribal Transit Programs or the Indian Tribes that are the Direct Recipients of federal assistance under those Programs. The following sections of this Master Agreement are not applicable to the Tribal Transit Programs:

Section 14(a)(1) and 14(b) – Private Enterprise

Section 22(e) – Relocation and Real Property

Section 27 – State Management and Monitoring Systems

Section 30 – Geographic Information and Related Spatial Data

Section 37 – Special Notification Requirement for States

However, this list is not intended to be comprehensive and FTA may determine that other provisions are not applicable depending upon the Underlying Agreement for the Tribal Transit or a Tribe having entered into a compact and funding agreement with the U.S. Department of Transportation pursuant to the Tribal Transportation Self-Governance Program (23 U.S.C. 207; 49 CFR Part 29).

Not every provision of every certification will apply to every applicant or award. If a provision of a certification does not apply to the applicant or its award, FTA will not enforce that provision.

Text in italic is not part of a certification and is of no legal effect. Its purpose is to provide explanation and context for the certification.

CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

The certifications in this subcategory appear as part of the applicant's registration or annual registration renewal in the System for Award Management (SAM.gov) and on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

- (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 CFR Part 21, including any amendments thereto;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 CFR Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
 - (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 CFR Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 CFR Part 24.
- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction sub-agreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 CFR Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.
- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from:
 - (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget’s standard form 424D “Assurances—Construction Programs” and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 CFR § 200.325, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, particularly 2 CFR §§ 200.317–200.327 “Procurement Standards;
- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Increased Micro-Purchase Threshold.

A recipient may establish a micro-purchase threshold that is higher than the Federal micro-purchase threshold. Pursuant to 2 CFR § 200.320(a)(1)(iv), the recipient may self-certify a micro-purchase threshold up to \$50,000. Pursuant to 2 CFR § 200.320(a)(1)(v), the recipient may set a micro-purchase threshold higher than \$50,000, but only with the approval of the recipient’s Federal cognizant agency for indirect costs. To determine an applicant’s cognizant agency for indirect costs, consult the definition of “cognizant agency for indirect costs” in 2 CFR § 200.1.

If the recipient uses a micro-purchase threshold that is higher than the Federal micro-purchase threshold, the recipient certifies:

- (a) The recipient’s micro-purchase threshold does not exceed \$50,000, or the recipient has approval from its Federal cognizant agency for indirect costs to use a higher micro-purchase threshold;
- (b) The recipient has a written justification for its micro-purchase threshold; and
- (c) The recipient has supporting documentation of any of the following:
 - (1) The recipient qualifies as a low-risk auditee, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit;
 - (2) The recipient has an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
 - (3) For public institutions, a higher threshold is consistent with State law.

1.5. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 CFR Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant's exclusion status. 2 CFR § 180.300. Additionally, each applicant must disclose any information required by 2 CFR § 180.335 about the applicant and the applicant's principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification; and
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

1.6. Lobbying.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 CFR § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 CFR Part 20.

1.6.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1.6.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement

shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1.7. Real Property Use

This certification responds to Recommendation #7 in the U.S. Department of Transportation's Office of Inspector General Report FS2024025 (May 20, 2024).

If the applicant will use assistance provided by the Federal Transit Administration to acquire or improve real property, the applicant certifies that it will comply with the requirements of 2 CFR § 200.311, including but not limited to, requirements to use the property for the purposes authorized in its award, and to seek disposition instructions from FTA when the property no longer is needed for any authorized purpose.

CATEGORY 2. PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

This certification is required of each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a Public Transportation Agency Safety Plan on behalf of a Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) pursuant to 49 CFR § 673.11(d).

This certification is required by 49 U.S.C. § 5307(c)(1)(L), 49 U.S.C. § 5329(d)(1), and 49 CFR § 673.13. This certification is a condition of receipt of Urbanized Area Formula Grants Program (49 U.S.C. § 5307) funding.

This certification does not apply to any applicant that only receives financial assistance from FTA under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs, unless it operates a rail fixed guideway public transportation system.

If the applicant is an operator, the applicant certifies that it has established a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673; including, specifically, that the board of directors (or equivalent entity) of the applicant has approved, or, in the case of an applicant that will apply for assistance under 49 U.S.C. § 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under 49 U.S.C. § 5329(d)(5), followed by the board of directors (or equivalent entity) of the applicant has approved, the Public Transportation Agency Safety Plan or any updates thereto; and, for each recipient serving an urbanized area with a population of fewer than 200,000, that the Public Transportation Agency Safety Plan has been developed in cooperation with frontline employee representatives.

If the applicant is a State that drafts and certifies a Public Transportation Agency Safety Plan on behalf of a public transportation operator, the applicant certifies that:

- (a) It has drafted and certified a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673 for each Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) in the State, unless the Small Public Transportation Provider provided notification to the State that it was opting out of the State-drafted plan and drafting its own Public Transportation Agency Safety Plan; and
- (b) Each Small Public Transportation Provider within the State that opts to use a State-drafted Public Transportation Agency Safety Plan has a plan that has been approved by the provider's Accountable Executive (as that term is defined at 49 CFR § 673.5), Board of Directors or Equivalent Authority (as that term is defined at 49 CFR § 673.5), and, if the Small Public Transportation Provider serves an urbanized area with a population of 200,000 or more, the safety committee of the Small Public Transportation Provider established under 49 U.S.C. § 5329(d)(5).

CATEGORY 3. TAX LIABILITY AND FELONY CONVICTIONS.

If the applicant is a business association (regardless of for-profit, not for-profit, or tax-exempt status), it must make this certification. Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. E.g., Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, div. B, tit. VII, §§ 744-745. U.S. DOT Order 4200.6 defines a "corporation" as "any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association", and applies the restriction to all tiers of subawards. As prescribed by U.S. DOT Order 4200.6, FTA requires each business association applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 4. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 CFR § 604.4.

The applicant agrees that it, and each of its subrecipients, and thirdparty contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR Part 604, the terms and conditions of which are incorporated herein by reference.

4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 CFR § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 CFR § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
 - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 CFR § 605.11, the applicant agrees as follows:
 - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.

- (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 5. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it is in compliance with 49 CFR Part 625.

CATEGORY 6. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.

6.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 CFR § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 CFR Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 CFR Part 663.

6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 CFR § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility established in accordance with 49 U.S.C. § 5318 (currently the Larson Transportation Institute's Bus Research and Testing Center at Pennsylvania State University) and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 7. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;
- (c) Will maintain equipment and facilities in accordance with the applicant’s transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);

- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
 - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 8. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5311(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected

intercity bus service providers, and the intercity bus service needs of the State are being met adequately.

- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

CATEGORY 9. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act’s Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

CATEGORY 10. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants), subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants), subsection (b) (bus and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.

Making this certification will incorporate by reference the applicable certifications in Category 7 or Category 8.

If the applicant will receive a competitive award under subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) related to zero emissions vehicles or related infrastructure, it must make the following certification. This certification is required by 49 U.S.C. § 5339(d).

The applicant will use 5 percent of grants related to zero emissions vehicles (as defined in 49 U.S.C. § 5339(c)(1)) or related infrastructure under 49 U.S.C. § 5339(b) or (c) to fund workforce development training as described in section 49 U.S.C. § 5314(b)(2) (including registered apprenticeships and other labor-management training programs) under the recipient's plan to address the impact of the transition to zero emission vehicles on the applicant's current workforce; or the applicant certifies a smaller percentage is necessary to carry out that plan.

CATEGORY 11. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 7, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 7 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 7, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;

- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 12. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA’s State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, the asset management certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4). The certification with regard to acquiring restricted rail rolling stock is required by 49 U.S.C. § 5323(u)(4). Note that this certification is not limited to the use of Federal funds.

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant’s most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 CFR Part 625.

If the applicant operates a rail fixed guideway service, the applicant certifies that, in the fiscal year for which an award is available to the applicant under the State of Good Repair Grants Program, 49 U.S.C. § 5337, the applicant will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a rail rolling stock manufacturer described in 49 U.S.C. § 5323(u)(1).

CATEGORY 13. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks (“SIB”) Program (23 U.S.C. § 610), it must make the certifications in Category 7 for the Urbanized Area Formula Grants Program, Category 9 for the Fixed Guideway Capital Investment Grants program, and Category 12 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 7, 9, and 12 by reference.

CATEGORY 14. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA's Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 CFR § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.

CATEGORY 15. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 CFR §§ 672.31 and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 CFR Part 672, "Public Transportation Safety Certification Training Program"; and
- (b) Compliant with the requirements of 49 CFR Part 674, "State Safety Oversight".

CATEGORY 16. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 CFR Part 37, it must make the following certification. This certification is required by 49 CFR § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;
- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;

- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 17. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 18. CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.

If the applicant operates a rail fixed guideway public transportation system, it must make this certification. This certification is required by 49 U.S.C. § 5323(v). For information about standards or practices that may apply to a rail fixed guideway public transportation system, visit <https://www.nist.gov/cyberframework> and <https://www.cisa.gov/>.

The applicant certifies that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks that complies with the requirements of 49 U.S.C. § 5323(v)(2).

CATEGORY 19. PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS FORMULA AND DISCRETIONARY PROGRAM (TRIBAL TRANSIT PROGRAMS).

Before FTA may provide Federal assistance for an Award financed under either the Public Transportation on Indian Reservations Formula or Discretionary Program authorized under 49 U.S.C. § 5311(c)(1), as amended by the FAST Act, (Tribal Transit Programs), the applicant

must select the Certifications in this Category, except as FTA determines otherwise in writing. Tribal Transit Program applicants may certify to this Category and Category 1 (Certifications and Assurances Required of Every Applicant) and need not make any other certification, to meet Tribal Transit Program certification requirements. If an applicant will apply for any program in addition to the Tribal Transit Program, additional certifications may be required.

FTA has established terms and conditions for Tribal Transit Program grants financed with Federal assistance appropriated or made available under 49 U.S.C. § 5311(c)(1). The applicant certifies that:

- (a) It has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award.
- (b) It has or will have satisfactory continuing control over the use of its equipment and facilities acquired or improved under its Award.
- (c) It will maintain its equipment and facilities acquired or improved under its Award, in accordance with its transit asset management plan and consistent with FTA regulations, “Transit Asset Management,” 49 CFR Part 625. Its Award will achieve maximum feasible coordination with transportation service financed by other federal sources.
- (d) With respect to its procurement system:
 - (1) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, for Awards made on or after December 26, 2014,
 - (2) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, specifically former 49 CFR § 18.36, for Awards made before December 26, 2014, or
 - (3) It will inform FTA promptly if its procurement system does not comply with either of those U.S. DOT regulations.
- (e) It will comply with the Certifications, Assurances, and Agreements in:
 - (1) Category 4.1 and 4.2 (Charter Service Agreement and School Bus Agreement),
 - (2) Category 5 (Transit Asset Management Plan),
 - (3) Category 6.1 and 6.2 (Rolling Stock Buy America Reviews and Bus Testing),
 - (4) Category 8 (Formula Grants for Rural Areas),
 - (5) Category 14 (Alcohol and Controlled Substances Testing), and
 - (6) Category 16 (Demand Responsive Service).

CATEGORY 20. EMERGENCY RELIEF PROGRAM.

An applicant to the Public Transportation Emergency Relief Program, 49 U.S.C. § 5324, must make the following certification. The certification is required by 49 U.S.C. § 5324(f) and must be made before the applicant can receive a grant under the Emergency Relief program.

The applicant certifies that the applicant has insurance required under State law for all structures related to the emergency relief program grant application.

FEDERAL FISCAL YEAR 2025 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: _____

The Applicant certifies to the applicable provisions of all categories: (*check here*) _____.

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Public Transportation Agency Safety Plans	_____
03 Tax Liability and Felony Convictions	_____
04 Private Sector Protections	_____
05 Transit Asset Management Plan	_____
06 Rolling Stock Buy America Reviews and Bus Testing	_____
07 Urbanized Area Formula Grants Program	_____
08 Formula Grants for Rural Areas	_____
09 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
10 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____
11 Enhanced Mobility of Seniors and Individuals with Disabilities Programs	_____

- 12 State of Good Repair Grants _____
- 13 Infrastructure Finance Programs _____
- 14 Alcohol and Controlled Substances Testing _____
- 15 Rail Safety Training and Oversight _____
- 16 Demand Responsive Service _____
- 17 Interest and Financing Costs _____
- 18 Cybersecurity Certification for Rail Rolling Stock and
Operations _____
- 19 Tribal Transit Programs _____
- 20 Emergency Relief Program _____

CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

AFFIRMATION OF APPLICANT

Name of the Applicant: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in the federal fiscal year, irrespective of whether the individual that acted on his or her Applicant’s behalf continues to represent it.

The Certifications and Assurances the Applicant selects apply to each Award for which it now seeks, or may seek in the future, of federal assistance to be awarded by FTA during the federal fiscal year.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____ Authorized Representative of Applicant

AFFIRMATION OF APPLICANT’S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above-named Applicant, I hereby affirm the Applicant has the authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature _____ Date: _____

Name _____ Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant’s Attorney pertaining to the Applicant’s legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney’s signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.



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 standards¹, 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 RESPONSIBILITIES

- 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 (FONSI)s 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. IJJA 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'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.

I. The Final EIS

- (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, Tribal, 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. Lawrence 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;

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 brokers⁴ 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 goods⁵, 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 FONSI.
 - (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, FONSI, 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 FONSI, draft and final EIS and RODs.
 - (c) NOIs, NOAs, FONSI, 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, FONSI, 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 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 wash 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 off-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, FONSI, final EIS, 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, FONSI, 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, FONSI, 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, FONSI, 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, FONSI, 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 FONISs 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 Act or the Department's Economic Regulations.



Sean P. Duffy
Secretary of Transportation

7/1/25

Date

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Railroad Administration

49 CFR Part 264

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2025–0007]

RIN 2125–AF80

RIN 2130–AD05

RIN 2132–AB51

Revision of National Environmental Policy Act Regulations

ACTION: Interim final rule.

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Department of Transportation (DOT).

SUMMARY: FHWA, FRA, and FTA are publishing this interim final rule (IFR) to modify the regulations implementing the National Environmental Policy Act (NEPA) that apply to all three agencies to be consistent with the removal of regulations previously issued by the Council on Environmental Quality (CEQ), the amendments to NEPA included in the section of the Fiscal Responsibility Act of 2023 known as the Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023, and amendments regarding efficient environmental reviews included in the Infrastructure Investment and Jobs Act of 2021. This rule will become effective immediately while the agencies seek comment on what further changes may be appropriate.

DATES: Effective on July 3, 2025. Comments must be received on or before August 4, 2025.

ADDRESSES: You may submit comments identified by the Docket Number FHWA–2025–0007 using any of the following methods:

E-Gov Web: <https://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: U.S. DOT Docket Management System: West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Submissions must include the agency name, docket number (FHWA–2025–0007), and Regulatory Identification Number (RIN) for this rulemaking (2125–AF80). If you submit your comments by mail, submit two copies. If you wish to receive confirmation that your comments have been received, include a self-addressed stamped postcard. Internet users may submit comments at <https://www.regulations.gov>.

Privacy Act: DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: For FHWA: Megan Cogburn, Office of Planning, Environment, and Realty, (202) 893–5850, or via email at Megan.Cogburn@dot.gov; Diane Mobley, Office of Chief Counsel, (202) 366–1366, or via email at Diane.Mobley@dot.gov; For FRA: Lana Lau, Office of Environmental Program Management, (202) 923–5314, or via email at Lana.Lau@dot.gov; Faris Mohammed, Office of Chief Counsel, (202) 763–3230, or via email at Faris.Mohammed@dot.gov; For FTA: Megan Blum, Office of Environmental Policy and Programs, (202) 809–4701, or via email at Megan.Blum@dot.gov; Mark Montgomery, Office of Chief Counsel, (505) 820–2061, or via email at mark.montgomery@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at www.regulations.gov using the docket number listed above. Electronic retrieval help and guidelines are also available at www.regulations.gov. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.FederalRegister.gov and the Government Publishing Office's website at www.GovInfo.gov.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

I. Background

FHWA, FRA, and FTA are publishing this interim final rule (IFR) modifying their implementing regulations (Part 771) for the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347, as amended (NEPA). The regulations at 23 CFR part 771 were promulgated to supplement the Council on Environmental Quality's (CEQ's) NEPA regulations. Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353; January 29, 2025), rescinded E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which was the authority CEQ had relied upon to issue its regulations. The CEQ's regulations have been repealed, effective April 11. *See Removal of National Environmental Policy Act Implementing Regulations* (90 FR 10610; Feb. 25, 2025).

As a result of the foregoing, the regulations at 23 CFR part 771, which implement NEPA for FHWA, FRA, and FTA, must be modified to remove cross-references to the defunct CEQ regulations. Prior to their removal, FHWA, FRA, and FTA followed the procedures contained in the CEQ implementing regulations for any topics not addressed by 23 CFR part 771. Now,

Part 771 needs to be revised to stand on its own.

In addition to removing cross-references to the CEQ regulations, this IFR revises 23 CFR part 771 to reflect amendments to NEPA included in the section of the Fiscal Responsibility Act (FR Act) of 2023 known as the BUILDER Act of 2023, Public Law 118–5, Div. C, Tit. III, § 321 (June 3, 2023) (NEPA Amendments), which streamlines the environmental review process for Federal agencies, and to reflect amendments to Title 23 of the U.S. Code, Sections 139 and 203(e), regarding efficient environmental reviews, included in the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021) (IIJA). Consistent with the NEPA Amendments, for instance, the phrase “reasonably foreseeable” has been inserted before the terms “impact” and “effect” throughout the regulation. Footnotes were removed to reduce redundant information that can be found elsewhere. FHWA, FRA, and FTA have supplementary guidance on environmental documents and procedures for their programs available on the internet through the DOT Guidance Portal at <https://transportation.gov/guidance> and <https://www.environment.fhwa.dot.gov>, <https://railroads.dot.gov>, and <https://www.transit.dot.gov>. Revisions to specific sections of the regulation are identified and discussed below, as appropriate. The agencies intend to pursue a future deregulatory rulemaking to further expedite the environmental review process.

II. Section-by-Section Analysis

§ 771.101 Purpose

This section of the regulation is revised to remove references to the CEQ regulations, as well as to modify references to authorities based on amendments to Title 23 of the U.S. Code in the IIJA. Reference to 23 U.S.C. 203(e) has been added to reflect IIJA amendments relating to NEPA implementation and the Federal Lands Transportation Program. Reference to 23 U.S.C. 325 is removed as the statute is repealed. Reference to 49 U.S.C. 5323(c) has also been added to clarify that the procedures set forth in 23 CFR part 771 comply with the statute.

§ 771.105 Policy

This section is revised to reflect changes in terminology introduced by the NEPA Amendments. Section 771.105(a) has been revised to state “a single environmental document” in place of “the environmental review

document.” Section 771.105(c) is revised to add “reasonably foreseeable” as the standard for evaluating the social, economic, and environmental impacts of a proposed transportation improvement.

§ 771.107 Definitions

This section incorporates new definitions for consistency with the NEPA Amendments and 23 U.S.C. 139. The definition “cooperating agency” has been added consistent with the definition provided in NEPA and requirements related to cooperating agencies found in 23 U.S.C. 139. Similarly, the definition “environmental document” has been added to the section as it is defined in NEPA, except that the definition of an environmental document includes a notice of intent and a record of decision (ROD), consistent with the definition of “environmental document” under 23 U.S.C. 139. A combined final environmental impact statement (EIS)/ROD document is not included in the definition but is treated as an environmental document since both the final EIS and the ROD are environmental documents. The definitions “finding of no significant impact (FONSI),” “major federal action,” and “special expertise” have also been added, consistent with definitions provided in NEPA. The definition for “major project,” as provided at 23 U.S.C. 139(a)(7), has been incorporated to distinguish between requirements in NEPA and 23 U.S.C. 139 throughout 23 CFR part 771.

This section also revises several existing definitions for consistency with the statutory definitions and requirements provided in NEPA and 23 U.S.C. 139. The definition for “applicant” has been revised to clarify that applicants may also be the “project sponsor” as the term is defined in the section. 23 U.S.C. 139(a)(10) defines “project sponsor” to mean “the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.” This revision harmonizes the definition of “project sponsor” in 23 U.S.C. 139 with the definition for “applicant” as defined in the section. The definition of “environmental studies” has been revised to clarify that investigations of environmental impacts relevant to the environmental review process assess the “reasonably foreseeable” impacts associated with the proposed actions. The definition for “lead agencies” has been revised for consistency with the statutory definition provided at 23 U.S.C. 139(a)(6) and in NEPA.

Revisions to this section also remove reference to 23 U.S.C. 325 in the definition for “Administration,” as the statute was repealed, as well as references to the CEQ regulations, and incorporate terminology and references to relevant statutory provisions in NEPA as appropriate.

§ 771.109 Applicability and Responsibilities

Consistent with the NEPA Amendments, this section clarifies that the requirements of 23 CFR part 771 apply only to major Federal actions. The section then identifies actions that are excluded from NEPA review because they are not major Federal actions. The actions identified in this section are those which FHWA, FRA, and FTA most commonly undertake, but are not the only actions that the agencies undertake that are not major Federal actions. This section is not intended to be exhaustive, and FHWA, FRA, and FTA are seeking comments on other actions that may not be major Federal actions.

Sections 771.109(a)(3) and (a)(4), as renumbered, have been revised to insert dates establishing the effective dates for the changes introduced by this IFR with respect to when a final agency action occurs or when an environmental document is accepted or initiated. The paragraph previously numbered (a)(4) has been removed as it is no longer relevant.

Revisions to language in §§ 771.109(c)(1) and (c)(2) are meant to clarify that it is ultimately the Federal lead agency that is responsible for managing the environmental review process and the contents of environmental documents, and any joint lead agency may prepare environmental review documents under the Federal lead agency’s supervision and subject to the Federal lead agency’s independent evaluation of such documents. Section 771.109(c)(1) has also been revised to replace “preparation” with “contents” for consistent terminology with NEPA.

Section 771.109(c)(6) has been removed to be consistent with the amendments to NEPA that allow all project sponsors, regardless of whether the project sponsor is a private entity, to prepare environmental documents under the supervision of the lead agency.

Revisions to § 771.109(c)(6), formerly subparagraph (c)(7), clarify the role of participating agencies in the environmental review process, as identified in 23 U.S.C. 139 and NEPA.

For FRA, § 771.109(e) is revised for consistency with the NEPA Amendments providing for an agency to

develop procedures for private entities to allow a project sponsor to prepare environmental documents.

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology and statutory references from NEPA as appropriate.

§ 771.111 Early Coordination, Public Involvement, and Project Development

Section 771.111(a)(2)(iii) was added to incorporate the passenger rail planning process FRA undertakes as part of the Corridor Identification and Development Program authorized under the IJA and codified at 49 U.S.C. 25101, or other Administration-approved planning efforts. Revisions to paragraph (g) clarify that tiering is a form of programmatic environmental document.

Section 771.111(i)(2) is revised to clarify the factors relevant to soliciting comments in a notice of intent, including “impacts and relevant information, studies, or analyses with respect to the proposed agency action,” see 42 U.S.C. 4336a(c).

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology and statutory references from NEPA as appropriate. Section 771.111(j) has also been revised to include updated contact information for FRA and FTA.

§ 771.113 Timing of Administration Activities When NEPA Applies

This section includes a minor revision to the title of the section to emphasize that the requirements that follow are only applicable if NEPA applies.

Paragraph (c) is revised to clarify that FRA may issue letters of intent prior to completion of the NEPA process for projects receiving funding under the Federal-State Partnership for Intercity Passenger Rail grant program pursuant to 49 U.S.C. 24911(g), which stipulates that the contingent commitment is not an obligation of the Federal government and is subject to the availability of appropriations for the grant program.

§ 771.115 Classes of Actions

This section is revised to incorporate updated terminology and language from the NEPA Amendments and removes language that previously reflected consistency with the CEQ regulations. The introductory paragraph is revised by clarifying that in making a class of action determination, the Administration may make use of any reliable data source, but is not required to undertake new scientific or technical research unless such research is essential to a reasoned choice among

alternatives, and the overall costs and time frame of obtaining it are not unreasonable. This revision reflects consistency with the language in Section 106(b)(3) of NEPA.

Sections 771.115(a)-(c) are revised to remove “Class I,” “Class II,” and “Class III” as used in the parentheses attached to each listed class of action. This terminology was derived from the CEQ regulations and is no longer applicable.

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology from NEPA as appropriate.

§ 771.116 FRA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.117 FHWA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.118 FTA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.119 Environmental Assessments

Sections 771.119(a)(2) and (a)(3) have been revised to reflect that the conflict of interest requirements previously stated in the section were derived from the CEQ regulations. The revisions remove the relevant conflict of interest requirements for FTA and FRA. Section 771.119(a)(2) is further modified to emphasize FTA’s best practice of seeking to reduce the size of documents related to a contractor’s scope of work for an EA.

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.121 Findings of No Significant Impact

This section includes minor revisions in § 771.121(a), clarifying that the Administration is responsible for issuing a written FONSI. The provision for relying upon another agency’s EA/

FONSI in § 771.121(c) is removed and consolidated into new § 771.141(a).

§ 771.123 Draft Environmental Impact Statements

This section includes minor technical revisions. Section 771.123(b)(1) is revised to clarify that the scoping process may begin prior to the publication of a notice of intent. Section 771.123(b)(2) is revised to make clear that the requirement that lead agencies must establish a coordination plan, including a schedule, within 90 days of the publication of the notice of intent is only applicable to projects subject to 23 U.S.C. 139. Section 771.123(c) is revised to clarify that a draft EIS may be prepared by the project sponsor in accordance with 23 U.S.C. 139. Section 771.123(d) is revised to remove reference to conflict of interest requirements previously derived from the CEQ regulations.

This section includes revisions to incorporate the passenger rail planning process FRA undertakes as part of the Corridor Identification and Development Program authorized under the IJA and codified at 49 U.S.C. 25101.

Revisions to this section also include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.124 Final Environmental Impact Statement/Record of Decision Document

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.125 Final Environmental Impact Statements

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations.

§ 771.127 Record of Decision

This section includes one revision removing a reference to the CEQ regulations.

§ 771.129 Re-Evaluations

This section is revised to add § 771.129(d) which clarifies that for tiered EAs and EISs, the Administration must re-evaluate the analysis in the first tier if the second tier occurs 5 or more years after the first tier document, to ensure reliance on the analysis remains valid. This addition is consistent with relevant requirements in Section 108 of NEPA.

§ 771.130 *Supplemental Environmental Impact Statements*

This section is revised to insert terminology from NEPA as appropriate.

§ 771.131 *Emergency Action Procedures*

This section includes a revision removing reference to the CEQ regulations.

§ 771.137 *International Actions*

This section is revised at § 771.137(a) to clarify that the subsequent requirements are only applicable in instances where the Administration determines that a major Federal action is proposed.

§ 771.138 *Timelines, Page Limits, and Certifications*

This section is added to 23 CFR part 771 for clarity and to harmonize requirements in NEPA and 23 U.S.C. 139. Section 771.138(a)(1) outlines the timeline for completing an EIS or combined final EIS/ROD in accordance with NEPA, but also distinguishes where a project is a major project subject to 23 U.S.C. 139. Similarly, § 771.138(a)(2) outlines the timelines for completing an EA in accordance with NEPA and distinguishes where a project is a major project subject to 23 U.S.C. 139. Section 771.138(a)(3) is added to reflect language permitting the lead agency to extend the deadline for EAs and EISs in Section 107 of NEPA.

Section 771.138(b)(1) outlines the page limit requirements for an EIS in accordance with NEPA, but also distinguishes where a project is a major project subject to 23 U.S.C. 139. Section 771.138(b)(2) provides the page limit requirements for EAs in accordance with NEPA and provides a different page limit requirement where the project is a major project subject to 23 U.S.C. 139.

Section 771.138(c) is added to reflect guidance from CEQ for the lead agency(ies) to certify that an EA, draft EIS, final EIS, or combined final EIS/ROD complies with the requirements of 23 CFR part 771 and applicable statutes. This section supports implementation of statutory requirements on timelines and page limits provided in NEPA.

§ 771.141 *Reliance and Adoption Efficiencies*

This section is added to 23 CFR part 771 for consistency with NEPA and 23 U.S.C. 139. Section 771.141(a)(1) is inserted to reflect language at 23 U.S.C. 139(c)(5). Section 771.141(a)(2) is inserted to address situations where an environmental document is not prepared in accordance with 23 U.S.C.

139, but the Administration determines that the proposed action is substantially the same as the action covered in the existing environmental document.

Section 771.141(a)(3) is added to clarify that the Administration may rely upon an existing CE determination made by another Federal agency if the Administration determines the proposed major Federal action is substantially the same as the action that another Federal agency determined is a CE. Section 771.141(a)(4) is added to reflect consistency with 23 U.S.C. 203(e)(4). Section 771.141(b) is added for consistency with the procedures for the adoption of another Federal agency's CEs as outlined in Section 109 of NEPA and 23 U.S.C. 139(q).

III. Basis For Issuing an Interim Final Rule

A. *Good Cause Exists for Proceeding With an Interim Final Rule*

For the reasons described in this section, FHWA, FRA, and FTA have determined that an interim final rule is the appropriate mechanism to update Part 771 to align with current law. This interim final rule satisfies the requirements of the Administrative Procedure Act (APA) under 5 U.S.C. 553(b)–(d). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. The agencies will consider these comments in deciding the next steps following this interim final rule.

Under the Administrative Procedure Act, the requirement for prior notice and opportunity for public comment does not apply when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest,” 5 U.S.C. 553(b)(B), and to make the rule effective immediately for good cause, 5 U.S.C. 553(d)(3). FHWA, FRA, and FTA find that, to the extent that prior notice and solicitation of public comment would otherwise be required, the technical nature of these changes and the need to expeditiously replace the agencies' existing rules satisfies the “good cause” exception in 5 U.S.C. 553(b)(B). The agencies find that notice and opportunity for public comment are unnecessary for this rulemaking because the CEQ regulations upon which DOT's regulations were based were rescinded. Therefore, the agencies have no discretion but to make technical changes to reflect the removal of regulations previously issued by CEQ, the amendments to NEPA included in the section of FR Act of 2023 known as the BUILDER Act of 2023, and the

amendments included in the Infrastructure Investment and Jobs Act of 2021.

Moreover, as discussed above, DOT's prior rules were promulgated as a supplement to the CEQ's NEPA regulations. 23 CFR 771.101. As such, the current version of Part 771 is supplementing a NEPA regulation that no longer exists. The agencies have continued to rely upon Part 771 to implement NEPA and 23 U.S.C. 139. This is not, however, tenable in the long term, and revisions to Part 771 are critical to provide clarity and certainty to the regulated public. Because of the need for speed and certainty, notice-and-comment, to the extent it was required at all, is unnecessary, impracticable, and contrary to the public interest.

For the same reasons stated in the present section, above, DOT finds that “good cause” exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This IFR will accordingly be effective immediately.

B. *Notice-and-Comment Rulemaking Is Not Required for Rules of Agency Procedure*

The agencies are revising their prior procedures and practices for implementing NEPA, a “purely procedural statute” which “simply prescribes the necessary process for an agency's environmental review of a project—a review that is, even in its most rigorous form, “only one input into an agency's decision and does not itself require any particular substantive outcome.” *Seven County*, 145 S. Ct. at 1507, 1511. “NEPA imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project,” and “is relevant only to the question of whether an agency's final decision—*i.e.*, that decision to authorize, fund, or otherwise carry out a particular proposed project or activity—“was reasonably explained.” *Id.* at 1511. As such, notice-and-comment procedures are not required because this revision falls within the Administrative Procedure Act (APA) exception for “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). These are procedural provisions, not ones that impose substantive environmental obligations or restrictions.

Moreover, even if (and to the extent that) the agencies' regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy under 5 U.S.C. 553(b)(A). An interpretative rule provides an interpretation of a statute,

rather than make discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority. General statements of policy provide notice of an agency's intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. Both of these types of agency action are expressly exempted from notice and comment by statute, 5 U.S.C. 553(b)(A).

Accordingly, although FHWA, FRA, and FTA are providing notice and an opportunity to comment on this interim final rule, these agencies have determined that notice and comment procedures are not required. The fact that FHWA, FRA, and FTA previously undertook notice and comment rulemaking in promulgating these regulations is immaterial. As the Supreme Court has held, where notice and comment procedures are not required, prior use of them in promulgating a rule does not bind the agency to use such procedures in making future changes. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015).

C. In an Abundance of Caution and for Reasons of Good Government, the Agencies Solicit Comment

As explained above, FHWA, FRA, and FTA believe comment is not required because good cause exists to forego it. Nevertheless, the agencies have elected to solicit comment, in an abundance of caution and for reasons of good government.

The agencies encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. The agencies will consider comments received on or before the closing date for comments. The agencies will consider late-filed comments to the extent practicable. This IFR may be amended based on comments received.

IV. Regulatory Analysis and Notices

Legal Authority for This Rulemaking

This IFR is published under the authority of the Secretary of Transportation delegated to the agencies pursuant to 49 CFR 1.81, 1.85, 1.89, and 1.91. Authority for these regulations is as follows: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 203, 315, 326, and 327; 49 U.S.C. 303 and 24201; 49 U.S.C. 5323(c) and 5323(q); 49 CFR 1.81, 1.85, 1.89, and 1.91; Public Law 109–59, 119 Stat. 1144, Sections 6002 and 6010; Public Law 112–141, 126 Stat.

405, Sections 1315, 1316, 1317, 1318, and 1319; and Public Law 114–94, 129 Stat. 1312, Sections 1304 and 1432.

Executive Order 12866, Executive Order 14192, and DOT Regulatory Policies and Procedures

This rule is a “significant regulatory action” under E.O. 12866, *Regulatory Planning and Review* (58 FR 51735 (Oct. 4, 1993)). Therefore, the Office of Management and Budget (OMB) has reviewed this rule under that E.O. Executive Order 12866 further directs agencies to assess all costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits. This final rule is considered an E.O. 14192 deregulatory action. The Agencies expect minor cost savings that cannot be quantified. The Agencies do not have specific data to assess the economic impact of this final rule because such data does not exist and would be difficult to develop. Commenters are requested to submit any information pertaining to potential economic impacts.

This final rule modifies 23 CFR part 771. The Agencies anticipate that the changes in this final rule would enable projects to move more expeditiously through the Federal environmental review process. It would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA while still ensuring that projects are built in an environmentally responsible manner and consistent with Federal law.

Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act, as amended (RFA), 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed previously, FHWA, FRA, and FTA have determined that prior notice and opportunity for public comment is unnecessary under the APA. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this IFR. See 5 U.S.C. 601(2), 603(a).

Environmental Analysis

NEPA does not require any Federal agency to conduct NEPA analysis for the development of agency procedures for the implementation of NEPA. The promulgation of this IFR is also

categorically excluded from the requirement to prepare an impact statement by 23 CFR 771.117(c)(20) and therefore FHWA, in coordination with FRA and FTA, has determined that no environmental analysis is needed.

Executive Order 13132, Federalism

FHWA, in coordination with FRA and FTA, analyzed this IFR in accordance with the principles and criteria contained in E.O. 13132, *Federalism*, which requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. The agencies have determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FHWA, in coordination with FRA and FTA, analyzed this IFR according to the principles and criteria in E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, and DOT Order 5301.1, *Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes*. FHWA, in coordination with FRA and FTA, has determined that this action will not significantly nor uniquely affect Tribal communities or Indian Tribal governments. In addition, this action does not impose compliance costs on Tribal governments and does not preempt Tribal law.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (2 U.S.C. 1531) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments in the aggregate of \$100 million or more (in 1996 dollars) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate. This action applies to Federal agencies and would not result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments

subject to the requirements of 2 U.S.C. 1531–1538.

Paperwork Reduction Act (PRA)

Under the PRA (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This action does not impose any new information collection burden that would require additional review or approval by OMB for the purposes of the PRA.

Executive Order 13211 (Energy Effects)

The agencies have analyzed this action under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The agencies have determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental impact statements; Grant programs-transportation; Highways and roads; Historical preservation; Public lands; Railroads; Recreation and recreation areas; Reporting and recordkeeping requirements.

49 CFR Part 264

Environmental impact statements; Railroads.

49 CFR Part 622

Environmental impact statements; Mass transportation.

Issued in Washington, DC, on June 26, 2025, under the authority delegated in 49 CFR 1.81, 1.85, 1.89, and 1.91.

Gloria M. Shepherd,

Executive Director, Federal Highway Administration.

Robert Andrew Feeley,

Acting Administrator, Federal Railroad Administration.

Tariq Bokhari,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Agencies revise Title 23, Code of Federal Regulations, part 771, and Title 49, Code of Federal Regulations, parts 264 and 622 to read as follows:

Title 23—Highways

- 1. Revise part 771 to read as follows:

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

- 771.101 Purpose.
- 771.103 [Reserved]
- 771.105 Policy.
- 771.107 Definitions.
- 771.109 Applicability and responsibilities.
- 771.111 Early coordination, public involvement, and project development.
- 771.113 Timing of Administration activities when NEPA applies.
- 771.115 Classes of actions.
- 771.116 FRA categorical exclusions.
- 771.117 FHWA categorical exclusions.
- 771.118 FTA categorical exclusions.
- 771.119 Environmental assessments.
- 771.121 Findings of no significant impact.
- 771.123 Draft environmental impact statements.
- 771.124 Final environmental impact statement/record of decision document.
- 771.125 Final environmental impact statements.
- 771.127 Record of decision.
- 771.129 Re-evaluations.
- 771.130 Supplemental environmental impact statements.
- 771.131 Emergency action procedures.
- 771.133 Compliance with other requirements.
- 771.137 International actions.
- 771.138 Timelines, Page Limits, and Certifications.
- 771.139 Limitations on actions.
- 771.141 Reliance and Adoption Efficiencies.

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 203(e), 315, 326, and 327; 49 U.S.C. 303 and 24201; 49 U.S.C. 5323(c) and 5323(q); 49 CFR 1.81, 1.85, 1.89, and 1.91; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Pub. L. 114–94, 129 Stat. 1312, Sections 1304 and 1432.

§ 771.101 Purpose.

This part prescribes the policies and procedures of the Federal Highway

Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA). Together these regulations set forth all FHWA, FRA, FTA, and U.S. Department of Transportation (DOT) requirements under NEPA for the processing of highway, public transportation, and railroad actions. This part also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 203(e), 326, and 327; 49 U.S.C. 303, 24201, 5323(c) and 5323(q); Public Law 112–141, 126 Stat. 405, section 1301 as applicable; and Public Law 114–94, 129 Stat. 1312, section 1304.

§ 771.103 [Reserved]

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the maximum extent practicable and consistent with Federal law, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in a single environmental document required by this part.

(b) Programmatic approaches be developed for compliance with environmental requirements (including the requirements found at 23 U.S.C. 139(b)(3)), coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.

(c) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the reasonably foreseeable social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(d) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(e) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of

the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute other than NEPA, executive order, or Administration regulation or policy.

(f) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(g) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this part.

§ 771.107 Definitions.

The definitions contained in 42 U.S.C. 4336e and in titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply to this part.

Action. A highway, transit, or railroad project proposed for U.S. DOT funding. It also can include activities such as joint and multiple use permits, changes in access control, or rulemakings, which may or may not involve a commitment of Federal funds.

Administration. FHWA, FRA, or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means FHWA, FRA, or FTA, or a State when the State is functioning as FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327, or other applicable law. A reference herein to FHWA, FRA, or FTA means the State when the State is functioning as FHWA, FRA, or FTA respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327, or other applicable law. Nothing in this definition alters the scope of any delegation or assignment made by FHWA, FRA, or FTA.

Administration action. FHWA, FRA, or FTA approval of the applicant's request for Federal funds for construction. It also can include approval of activities, such as joint and multiple use permits, changes in access control, rulemakings, etc., that may or may not involve a commitment of Federal funds.

Applicant. Any Federal, State, local, or federally recognized Indian Tribal governmental unit that requests funding approval or other action by the Administration and that the

Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this section) may assume the responsibilities of the applicant in this part. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant in this part. The applicant may also be the project sponsor.

Cooperating agency. Any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal and has been designated as a cooperating agency by the lead agency.

Environmental document. An environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

Environmental studies. The investigations of potential reasonably foreseeable environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

Finding of no significant impact (FONSI). Means a final determination by the Administration that the proposed action does not require the issuance of an environmental impact statement.

Lead agency(ies). The Administration and, if applicable, any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or 42 U.S.C. 4336a(1)(B).

Major Federal action. An action that the Administration determines is subject to substantial Federal control and responsibility.

Major project. A project subject to the requirements of 23 U.S.C. 139 that:

(1) Requires multiple (two, or more) authorizations, reviews, or studies under a Federal law other than NEPA;

(2) For which the lead agency has determined an EIS is required (or for which the lead agency has determined an EA is required and where the project sponsor requests that the project be treated as a major project); and

(3) For which the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

Participating agency. A Federal, State, local, or federally recognized Indian Tribal governmental unit with an interest in the proposed project and has accepted an invitation to be a participating agency or, in the case of a Federal agency, has not declined the

invitation in accordance with 23 U.S.C. 139(d)(3).

Programmatic approaches. An approach that reduces the need for project-by-project reviews, eliminates repetitive discussion of the same issue, or focuses on the actual issues ripe for analyses at each level of review, consistent with NEPA and other applicable law.

Project sponsor. The Federal, State, local, or federally recognized Indian Tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project. Where it is not the applicant, the project sponsor may conduct some of the activities on the applicant's behalf.

Section 4(f). Refers to 49 U.S.C. 303 and 23 U.S.C. 138 (as implemented by 23 CFR part 774).

Special expertise. Statutory responsibility, agency mission, or related program experience.

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this part only apply to major Federal actions. Steps taken by the applicant that do not require Federal approvals, such as preparation of a regional transportation plan, are not subject to this part.

(2) The Administration has determined the following additional actions are not major Federal actions subject to NEPA:

(i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside the jurisdiction of the United States.

(ii) [Reserved].

(3) This part does not apply to or alter final agency action the Administration made prior to July 3, 2025.

(4) Environmental documents accepted or prepared after July 3, 2025 must be developed in accordance with this part.

(b)(1) The project sponsor, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this part unless the Administration approves of their deletion or modification in writing. FHWA will ensure that this is accomplished as a part of its stewardship and oversight responsibilities. FRA and FTA will ensure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(2) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, FHWA must ensure the State highway agency constructs the project in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents.

(c) The following roles and responsibilities apply during the environmental review process:

(1) The Federal lead agencies are responsible for managing the environmental review process and the contents of the appropriate environmental documents.

(2) Any State or local governmental entity applicant that is or is expected to be a direct recipient of funds under title 23, U.S. Code or chapter 53 of title 49, U.S. Code for the action, or is or is expected to be a direct recipient of financial assistance for which FRA is responsible (e.g., Subtitle V of Title 49, U.S. Code) must serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance, and independently evaluates the environmental documents.

(3) The Administration may invite other Federal, State, local, or federally recognized Indian Tribal governmental units to serve as joint lead agencies in accordance with 42 U.S.C. 4336(a)(1)(B). If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the Administration will determine the role of the applicant in accordance with this part and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of 42 U.S.C. 4332(G), may prepare the environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) A participating agency must provide input during the times specified in the coordination plan under 23 U.S.C. 139(g) and within the agency's special expertise or jurisdiction. Participating agencies provide

comments and concurrence on the schedule within the coordination plan. For projects not subject to 23 U.S.C. 139, participating agencies will participate in the environmental review process consistent with 42 U.S.C. 4336a, as appropriate.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, the State highway agency must ensure the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written FHWA approval to modify or delete such mitigation features.

(e) When FRA is the lead agency, the project sponsor is a private entity, and there is no applicant acting as a joint-lead agency, FRA may provide written authorization to the project sponsor to prepare the environmental document under FRA supervision. FRA's written authorization will establish the project sponsor's and FRA's respective responsibilities in preparing the environmental document.

§ 771.111 Early coordination, public involvement, and project development.

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental documents an action requires, the scope of the document, the level of analysis, and related environmental requirements. These activities contribute to reducing or eliminating delay, duplicative processes, and conflict, including by incorporating planning outcomes that have been reviewed by agencies and Indian Tribal partners in project development.

(2)(i) The information and results produced by or in support of the transportation planning process may be incorporated into environmental review documents in accordance with 23 CFR part 450, 23 CFR part 450 Appendix A, or 23 U.S.C. 139(f), 168, or 169, as applicable.

(ii) The planning process described in paragraph (a)(2)(i) of this section may include mitigation actions consistent with a programmatic mitigation plan developed pursuant to 23 U.S.C. 169 or from a programmatic mitigation plan developed outside of that framework.

(iii) The purpose and need, alternatives development and screening, and other relevant analyses, studies, and work products developed pursuant to 49 U.S.C. 25101 or other Administration-approved planning efforts, may be incorporated into the NEPA process as appropriate.

(3) Applicants intending to apply for funds or request Administration action should notify the Administration at the time a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (see § 771.115) and related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process. A lead agency, in consultation with participating agencies, must develop an environmental checklist, as appropriate, to assist in resource and agency identification.

(b)(1) The Administration will identify the probable class of action as soon as sufficient information is available to identify the reasonably foreseeable impacts of the action.

(2) For projects to be evaluated with an EIS, the Administration must respond in writing to a project sponsor's formal project notification within 45 days of receipt.

(c) When the FHWA, FRA, or FTA are jointly involved in the development of an action, or when the FHWA, FRA, or FTA act as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis. A project sponsor may request the Secretary to designate the lead Federal agency when project elements fall within the expertise of multiple U.S. DOT agencies.

(d) During early coordination, the lead agencies may invite other agencies with an interest in the action to participate. The lead agencies must, however, invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139 within 45 days from publication of the notice of intent. Any such agencies with special expertise concerning the action may also be invited to become cooperating agencies. Any such agencies with jurisdiction by law concerning the action must be invited to become cooperating agencies.

(e) Other States and Federal land management entities that may be significantly affected by the action or by any of the alternatives must be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.

(f) Any action evaluated under NEPA as a categorical exclusion (CE), environmental assessment (EA), or

environmental impact statement (EIS) must:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering (a form of programmatic environmental documentation) of EISs or EAs may be appropriate. The first tier EIS or EA would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on a project's reasonably foreseeable impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process;

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of reasonably foreseeable social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions;

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project that requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines a public hearing is in the public interest;

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice must also provide information required to comply with public involvement

requirements of other laws, executive orders, and regulations;

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives and major design features,

(C) The reasonably foreseeable social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process, and

(E) The State highway agency's procedures for receiving both oral and written statements from the public;

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing;

(vii) An opportunity for public involvement in defining the purpose and need and the reasonable range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139; and

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 23 CFR 774.5(b)(2)(i).

(i) Applicants for FRA programs or the FTA capital assistance program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seek input from the public through scoping for the environmental review process. Project milestones may be announced to the public using electronic or paper media (*e.g.*, newsletters, note cards, or emails). For actions requiring EISs, an early opportunity for public involvement in defining the purpose and need for the action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS.

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts are underway. Notice of early scoping must be made to the public and other agencies. If early scoping is the start of

the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FRA or FTA will publish the notice of intent if it is determined at that time the proposed action requires an EIS. The notice of intent will establish a 30-day period for comments on the purpose and need, alternatives, impacts, and relevant information, studies, or analyses with respect to the proposed agency action.

(3) Are encouraged to post and distribute materials related to the environmental review process, including, environmental documents (*e.g.*, EAs and EISs), environmental studies (*e.g.*, technical reports), public meeting announcements, and meeting minutes, through publicly-accessible electronic means, including project websites. Applicants should keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Should post all FONSI's, combined final EISs/RODs, and RODs on a project website until the project is constructed and open for operation.

(j) Information on the FHWA environmental process may be obtained from: FHWA Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590, or www.environment.fhwa.dot.gov. Information on the FRA environmental process may be obtained from: FRA Director, Office of Environmental Program Management, Federal Railroad Administration, Washington, DC 20590, or railroads.dot.gov. Information on the FTA environmental process may be obtained from: FTA Director, Office of Environmental Policy and Programs, Federal Transit Administration, Washington, DC 20590 or www.transit.dot.gov.

§ 771.113 Timing of Administration activities when NEPA applies.

(a) The lead agencies, in cooperation with the applicant and project sponsor, as appropriate, will perform the work necessary to complete the environmental review process. This work includes drafting environmental documents and completing environmental studies, related engineering studies, agency coordination, public involvement, and identification of mitigation measures. Except as otherwise provided in law or in paragraph (d) of this section, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction

must not proceed until the following have been completed:

(1)(i) The Administration has classified the action as a CE;

(ii) The Administration has issued a FONSI; or

(iii) The Administration has issued a combined final EIS/ROD or a final EIS and ROD;

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For FHWA actions, completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental review documents unless otherwise specified by the approving official.

(c) Letters of Intent issued under the authority of 49 U.S.C. 5309(g) are used by FTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by FTA until the NEPA process is completed. Letters of Intent issued by FRA under the authority of 49 U.S.C. 24911(g) may be issued prior to completion of the NEPA process.

(d) The prohibition in paragraph (a)(1) of this section is limited by the following exceptions:

(1) Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA. Exceptions for the acquisitions of real property are addressed in paragraphs (c)(6) and (d)(3) of § 771.118 for FTA.

(2) The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.

(3) A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).

(4) FRA may make exceptions on a case-by-case basis for purchases of railroad components or materials that can be used for other projects or resold.

§ 771.115 Classes of actions.

There are three classes of actions that prescribe the level of documentation required in the NEPA process. In selecting the class of action, the Administration may make use of any reliable data source and is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and

the overall costs and time frame of obtaining it are not unreasonable. A programmatic approach may be used for any class of action.

(a) *EIS*. Actions that have a reasonably foreseeable significant effect on the quality of the human environment require an EIS. The following are examples of actions that normally require an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation right-of-way.

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing transportation right-of-way.

(5) New construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.

(6) New construction of major railroad lines or facilities (e.g., terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation right-of-way.

(b) *CE*. Actions that normally do not have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA actions or § 771.118(c) for FTA actions. When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d) for FHWA actions or pursuant to § 771.118(d) for FTA actions. FRA's CEs are listed in § 771.116.

(c) *EA*. Actions that do not have reasonably foreseeably significant effects on the quality of the human environment or for which the significance of the environmental impact is unknown. All actions that are not EISs or CEs are EAs. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

§ 771.116 FRA categorical exclusions.

(a) CEs are actions that, based on FRA's past experience with similar actions, normally do not involve significant environmental impacts. They are actions that do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact

on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in paragraph (a) of this section may be designated as CEs only after FRA approval. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for these CEs are satisfied and significant environmental effects will not result.

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

(2) Personnel actions.

(3) Planning or design activities that do not commit to a particular course of action affecting the environment.

(4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(5) Internal orders, policies, and procedures not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

(6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.

(7) Financial assistance to an applicant where the financial assistance funds an activity already completed, such as refinancing outstanding debt.

(8) Hearings, meetings, or public affairs activities.

(9) Maintenance or repair of existing railroad facilities, where such activities

do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting, of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or facilities, such as advances in signal communication or train control systems, equipment, or track, provided such activities do not require the acquisition of a significant amount of right-of-way and do not significantly alter the traffic density characteristics of the existing rail line or facility.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.

(16) Alterations to existing facilities, locomotives, stations, and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(17) The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment, that does not significantly alter the traffic density characteristics of an existing rail line.

(19) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities,

replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(21) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities, and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(22) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

(d) Any action qualifying as a CE under § 771.117 or § 771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.

§ 771.117 FHWA categorical exclusions.

(a) CEs are actions that, based on FHWA's past experience with similar actions, normally do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in paragraph (a) of this section and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so social, economic, and environmental effects can be assessed; and Federal-aid system revisions establishing classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 23 U.S.C. 125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the

preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the

physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally funded projects:

(i) Receiving less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.transit.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) not requiring a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions that meet the criteria for a CE in paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)–(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas,

kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water

Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (*e.g.*, bridges, wetlands) or actions facilitating open space use (*e.g.*, recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

(f) Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

(g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement; and

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed.

(h) Any action qualifying as a CE under § 771.116 or § 771.118 may be

approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

§ 771.118 FTA categorical exclusions.

(a) CEs are actions that, based on FTA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in paragraph (a) of this section normally do not require any further NEPA approvals by FTA.

(1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: Utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

(2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

(3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site

aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

(4) Planning and administrative activities not involving or leading directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

(5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

(6) Acquisition or transfer of an interest in real property not within or adjacent to recognized environmentally sensitive areas (*e.g.*, wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: Acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects making use of the acquired or transferred property.

(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, not resulting in a change in functional use of the facilities, such as: Equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

(8) Maintenance, rehabilitation, and reconstruction of facilities occupying substantially the same geographic footprint and not resulting in a change

in functional use, such as:

Improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: Buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

(10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: Police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

(11) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 49 U.S.C. 5324; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(12) Projects, as defined in 23 U.S.C. 101, taking place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for

the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(13) Federally funded projects:

(i) Receiving less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.transit.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.transit.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and expanding existing culverts and drainage pipes.

(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(d) Additional actions that meet the criteria for a CE in paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant must submit documentation demonstrating the specific conditions or criteria for these CEs are satisfied and that

significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (e.g., lanes for parking, weaving, turning, climbing).

(2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate development of the land would preclude future transportation use and such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, is completed.

(5) [Reserved]

(6) Facility modernization through construction or replacement of existing components.

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.

(e) Any action qualifying as a CE under § 771.116 or § 771.117 may be approved by FTA when the applicable requirements of those sections are met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.

(f) Where a pattern emerges of granting CE status for a particular type of action, FTA will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section.

§ 771.119 Environmental assessments.

(a)(1) The applicant must prepare an EA in consultation with the Administration for each action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed action is a CE and does not clearly require the preparation of an EIS.

(2) For FTA, the contractor's scope of work for the preparation of the EA should not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).

(b) For actions that require an EA, the applicant, in consultation with the Administration, must, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project, including project's purpose and need, and alternatives to achieve the following objectives: Determine which aspects of the proposed action have potential for reasonably foreseeable social, economic, or environmental impacts; identify alternatives and measures that might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements that should be performed concurrently with the EA. The applicant must accomplish this through early coordination activities or through a scoping process. The applicant must summarize the public involvement process and include the results of agency coordination in the EA.

(c) The Administration must approve the EA before it is made available to the public as an Administration document.

(d) The applicant does not need to circulate the EA for comment, but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices or, for FRA at Headquarters, for 30 days and in accordance with paragraphs (e) and (f)

of this section. The applicant must send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, Tribal, State and local government. The applicant must also send notice to the State intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the EA available.

(e) When a public hearing is held as part of the environmental review process for an action, the EA must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The applicant must publish a notice of the public hearing in local newspapers announcing the availability of the EA and where it may be obtained or reviewed. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant must place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice must invite comments from all interested parties. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, a different period is warranted.

(g) If no significant impacts are identified, the applicant must furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA must be made available for public review (including the affected units of government) for a minimum of 30 days before the FHWA makes its final decision. This public availability must be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines the action is likely to have a significant impact on the environment, the preparation of an EIS will be required, unless the Administration imposes mitigation measures or modifies the action to avoid the significant effects.

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA must be prepared in accordance with the applicable provisions of that statute.

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA, comments submitted on the EA (in writing or at a public hearing or meeting), and other supporting documentation, as appropriate. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), the Administration will issue a written FONSI incorporating by reference the EA and any other appropriate supporting documentation.

(b) After the Administration issues a FONSI, a notice of availability of the FONSI must be sent by the applicant to the affected units of Federal, State, and local government, and the document must be available from the applicant and the Administration upon request by the public. Notice must also be sent to the State intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the FONSI available.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS must be prepared when the Administration determines that the action is likely to cause significant impacts on the quality of the human environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e), and the decision has been made by the Administration to prepare an EIS, the Administration will issue a notice of intent for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the State or local level.

(b)(1) Prior to the notice of intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 CFR 450.212, 450.318, or 23 CFR part

450 Appendix A. The scoping process will be used to identify the purpose and need, the range of alternatives and reasonably foreseeable impacts, and the significant issues to be addressed in the EIS. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration's notice of intent and by appropriate means at the State or local level.

(2) For projects subject to 23 U.S.C. 139, the lead agencies must establish a coordination plan, including a schedule, within 90 days of notice of intent publication.

(c) The draft EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency) or prepared by the project sponsor in accordance with § 771.109(e). The draft EIS must evaluate a reasonable range of alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The range of alternatives considered for further study must be used for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information and circumstances or to fulfill NEPA responsibilities in a timely manner, in accordance with 23 U.S.C. 139(f)(4)(B). The draft EIS must also summarize the studies, reviews, consultations, and coordination required by environmental laws or executive orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies or the applicant may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. For FTA, the contractor's scope of work for the preparation of the EIS will not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content).

(e) The draft EIS should identify the preferred alternative to the extent practicable. If the draft EIS does not identify the preferred alternative, the Administration should provide agencies and the public with an opportunity after issuance of the draft EIS to review the reasonably foreseeable impacts of the preferred alternative.

(f) At the discretion of the lead agency, the preferred alternative (or

portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with other legal requirements, including permitting. The development of such higher level of detail must not prevent the lead agency from making an impartial decision as to whether to accept another alternative being considered in the environmental review process.

(g) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet. The cover sheet should include a notice that after circulation of the draft EIS and consideration of the comments received, the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude issuance of the combined document.

(h) A lead, joint lead, or cooperating agency must be responsible for publication and distribution of the EIS. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the draft EIS available.

(i) The applicant, on behalf of the Administration, must circulate the draft EIS for comment. The draft EIS must be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency. The draft EIS must be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Cooperating and participating agencies. The draft EIS must also be transmitted directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These transmittals must be accompanied by a request that such State or entity advise the Administration in writing of any

disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(j) When a public hearing on the draft EIS is held (if required by § 771.111), the draft EIS must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS must be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice must be made similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(k) The **Federal Register** public availability notice must establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter must identify where comments are to be sent.

§ 771.124 Final environmental impact statement/record of decision document.

(a)(1) After circulation of a draft EIS and consideration of comments received, the lead agency, in cooperation with the applicant (if not a lead agency), must combine the final EIS and ROD, to the maximum extent practicable, unless:

(i) The final EIS makes substantial changes to the proposed action relevant to environmental or safety concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the reasonably foreseeable impacts of the proposed action.

(2) When the combined final EIS/ROD is a single document, it must include the content of a final EIS presented in § 771.125 and present the basis for the decision, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter.

(3) If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement pursuant to 23 U.S.C. 139(n)(1), which together must then become the combined final EIS/ROD.

(4) A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration.

(5) The Administration must indicate approval of the combined final EIS/ROD by signing the document. The provision on Administration's Headquarters prior concurrence in § 771.125(c) applies to the combined final EIS/ROD.

(b) The **Federal Register** public availability notice published by EPA will not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD. When filed with EPA, the combined final EIS/ROD must be available at the applicant's offices and at appropriate Administration offices. A copy should also be made available at institutions such as local government offices, libraries, and schools, as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the combined final EIS/ROD available.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The final EIS must identify the preferred alternative and evaluate all reasonable alternatives considered. It must also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in paragraphs (b) and (d) of § 771.109. The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance their requirements can be met.

(2) Every reasonable effort must be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS must identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted

to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines:

(i) Additional coordination with other Federal, State or local governmental agencies is needed;

(ii) The social, economic, or environmental impacts of the action may need to be more fully explored;

(iii) The impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or

(iv) The action involves national policy issues.

(2) Any action to which a Federal, State, or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(d) Approval of the final EIS is not an Administration action as defined in § 771.107 and does not commit the Administration to approve any future request for financial assistance to fund the preferred alternative.

(e) The initial publication of the final EIS must be in sufficient quantity to meet the request for copies reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(f) The final EIS must be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes. The applicant must also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13, which implements Executive Order 12372. When filed with EPA, the final EIS must be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly

accessible electronic means to make the final EIS available.

(g) The final EIS may take the form of an errata sheet pursuant to 23 U.S.C. 139(n)(1).

§ 771.127 Record of decision.

(a) When the final EIS is not combined with the ROD, the Administration will complete and sign a ROD no sooner than 30 days after publication of the final EIS notice in the **Federal Register** or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision, summarize any mitigation measures to be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the ROD available.

(b) If the Administration subsequently wishes to approve an alternative not identified as the preferred alternative but fully evaluated in the draft EIS, combined FEIS/ROD, or final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised or amended ROD must be subject to review by those Administration offices that reviewed the final EIS under § 771.124(a) or § 771.125(c). To the extent practicable, the approved revised or amended ROD must be provided to all persons, organizations, and agencies that received a copy of the final EIS.

§ 771.129 Re-evaluations.

The Administration must determine, prior to granting any new approval related to an action or amending any previously approved aspect of an action, including mitigation commitments, whether an approved environmental document remains valid as described in this section.

(a) The applicant must prepare a written evaluation of the draft EIS, in cooperation with the Administration, if an acceptable final EIS is not submitted to the Administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) The applicant must prepare a written evaluation of the final EIS before the Administration may grant further approvals if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval

of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant must consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

(d) For tiered EAs or EISs, if the second tier occurs 5 or more years after the first tier document, the applicant in consultation with the Administration, must re-evaluate the analysis and any underlying assumptions of the first tier EIS or EA to ensure reliance on the analysis remains valid.

§ 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS must be supplemented whenever the Administration determines:

(1) Changes to the proposed action would result in significant environmental impacts not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other reasonably foreseeable environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD must be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the reasonably foreseeable impacts of the changes, new information, or new circumstances. If,

based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration must so indicate in the project file.

(d) A supplement is to be developed using the same process and format (*i.e.*, draft EIS, final EIS, and ROD) as an original EIS, except scoping is not required.

(e) In some cases, an EA or supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental document must not necessarily:

- (1) Prevent the granting of new approvals;
- (2) Require the withdrawal of previous approvals; or
- (3) Require the suspension of project activities, for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration must suspend any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental document is completed.

§ 771.131 Emergency action procedures.

Responses to some emergencies and disasters are categorically excluded under § 771.117 for FHWA, § 771.118 for FTA, or § 771.116 for FRA. Otherwise, requests for deviations from the procedures in this part because of emergency circumstances must be referred to the Administration's Headquarters for evaluation and decision after consultation with CEQ.

§ 771.133 Compliance with other requirements.

(a) The combined final EIS/ROD, final EIS or FONSI should document compliance with requirements of all applicable environmental laws, executive orders, and other related requirements. If full compliance is not possible by the time the combined final EIS/ROD, final EIS or FONSI is prepared, the combined final EIS/ROD, final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. FHWA's approval of an

environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

(b) In consultation with the Administration and subject to Administration approval, an applicant may develop a programmatic approach for compliance with the requirements of any law, regulation, or executive order applicable to the project development process.

§ 771.137 International actions.

(a) If the Administration determines a major Federal action is proposed, the requirements of this part apply to:

- (1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.
- (2) Administration actions outside the U.S., its territories, and possessions that significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration must coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

§ 771.138 Timelines, page limits, and certifications

(a)(1) Timelines for completion of EISs.

(i) The Administration must complete the EIS no later than 2 years from publication of the notice of intent to the signature date of the ROD or combined final EIS/ROD (as applicable).

(ii) For EISs that are major projects, the Administration must, to the maximum extent practicable, complete the EIS within a schedule consistent with an agency average of not more than 2 years from publication of the notice of intent to the signature date of the ROD or combined final EIS/ROD.

(2) Timelines for completion of EAs.

(i) The Administration must complete the EA no later than 1 year from the date the Administration determined the class of action to the signature date of the EA. If a notice of intent is published for an EA, then the start date shall be the publication date.

(ii) For EAs that are major projects, the Administration must, to the maximum extent practicable, complete the EA within a schedule consistent with an agency average of not more than 2 years from the date the Administration determined the EA was required to the signature date of the FONSI. If a notice of intent is published for an EA, then

the start date shall be the publication date.

(3) The Administration, in consultation with the applicant, may extend the timelines described in paragraphs (a)(1)(i) and (a)(2)(i) to provide only so much additional time as necessary to complete the EIS or EA, as applicable.

(b) Page Limits.

(1) EIS—

(i) The text of an EIS must not exceed 200 pages, not including citations or appendices, to the maximum extent practicable, unless the Administration establishes a new page limit;

(ii) When a project does not follow the 23 U.S.C. 139 process, the EIS must not exceed 150 pages, not including citations or appendices. An EIS for a proposed action of extraordinary complexity must not exceed 300 pages, not including any citations or appendices.

(2) The text of an EA must not exceed 75 pages, not including any citations or appendices.

(c) Certifications.

(1) The lead agency(ies) signature on the EA, draft EIS, final EIS, or combined final EIS/ROD (as applicable) will certify that the Administration has considered the factors mandated by this part; that the EA, draft EIS, final EIS, or combined final EIS/ROD (as applicable), reflects the Administration's expert judgment and documents the most important considerations required by the statute and within the applicable timeline and page limits; and that any considerations addressed briefly or left unaddressed were, in the Administration's judgment, comparatively unimportant.

(2) [Reserved]

§ 771.139 Limitations on actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the **Federal Register** indicating such decisions are final within the meaning of 23 U.S.C. 139(I). Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 150 days after the date of publication of the limitations on claims notice by FHWA or FTA. Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 2 years after the date of publication of the limitations on claims notice by FRA. These time periods do not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed. This provision does

not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

§ 771.141 Reliance and Adoption Efficiencies

(a) When a single environmental document is not prepared for a proposed major Federal action, an agency may rely upon an existing environmental document, or element thereof, to document compliance with NEPA as follows:

(1) Any Federal agency may rely upon an environmental document prepared in accordance with 23 U.S.C. 139 to the same extent such Federal agency could adopt or use a document prepared by another Federal agency.

(2) The Administration may rely upon an existing environmental document not prepared in accordance with 23 U.S.C. 139 if the Administration determines that the proposed action is substantially the same as the action covered in the existing environmental document and that the environmental issues were adequately identified and addressed.

(3) The Administration may rely upon an existing categorical exclusion decision by another Federal agency if the Administration determines that a proposed major Federal action is substantially the same as the action that another Federal agency determined is categorically excluded from NEPA.

(4) A Federal land management agency may rely upon an existing environmental document or categorical exclusion decision prepared by FHWA for a project addressing substantially the same major Federal action proposed for approval by the Federal land management agency.

(b) Adoption of Categorical Exclusions under 42 U.S.C. 4336c:

(1) FHWA, FRA, or FTA may establish a new categorical exclusion by adopting a category of action listed as a categorical exclusion in another agency's NEPA procedures.

(2) A State functioning as FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327 may not establish a new categorical exclusion through adoption.

(3) To establish the new categorical exclusion, the Administration will:

(i) Identify the categorical exclusion listed in another agency's NEPA procedures that covers a category of proposed actions or related actions;

(ii) Consult with the agency that established this categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of

Administration actions is appropriate; and

(iii) Provide public notification that the Administration plans to use the categorical exclusion for its proposed actions by documenting its adoption.

(4) The Administration may begin to apply the newly adopted categorical exclusion to proposed major Federal actions upon completion of subparagraphs (b)(3)(i)–(iii).

Title 49—Transportation

Part 264—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 2. Revise the authority citation for part 264 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 24201; 23 U.S.C. 139, 327, 330; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, Section 1319; and Pub. L. 114–94, 129 Stat. 1312, Sections 1309, 1432, 11502, and 11503.

■ 3. Revise part 622, subpart A to read as follows:

Part 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303, 5323(c), and 5323(q); 23 U.S.C. 139, 326, 327, and 330; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, and 1318; and Pub. L. 114–94, Section 1309.

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and Executive Orders are set forth in part 771 of Title 23 of the CFR, including compliance with FTA's environmental review statute located at 49 U.S.C. 5323(c). The procedures for complying with 49 U.S.C. 303, commonly known as "Section 4(f)," are set forth in part 774 of Title 23 of the CFR. The procedures for complying with the Surface Transportation Project Delivery Program application requirements and termination are set forth in part 773 of Title 23 of the CFR. The procedures for participating and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of Title 23 of the CFR.

[FR Doc. 2025–12364 Filed 7–1–25; 2:30 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OLP 178]

Civil Monetary Penalties Inflation Adjustments for 2025

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for penalties assessed after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] with respect to violations occurring after November 2, 2015.

DATES: This rule is effective July 3, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

In accordance with the requirements of section 4 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the "Inflation Adjustment Act"), as amended, (28 U.S.C. 2461 note) Justice is required periodically to adjust for inflation the civil monetary penalties assessed or enforced by the Department by publishing a rule in the **Federal Register**.

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) ("BBA"), substantially revised the prior provisions of the Inflation Adjustment Act and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

The BBA further requires agencies to adjust their civil penalties on January 15 of each year thereafter to account for inflation during the preceding year.

Pursuant to the Inflation Adjustment Act, as amended, the Department has promulgated a series of rules adjusting the civil money penalties for inflation. Readers may refer to the **SUPPLEMENTARY INFORMATION** (also known as the preamble) of the Department's prior inflation adjustment rules for additional background information regarding the

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OF

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REBECCA A. WOMELDORF

REPORTER OF DECISIONS



NOTICE: This preliminary print is subject to formal revision before the bound volume is published. Users are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

Syllabus

SEVEN COUNTY INFRASTRUCTURE COALITION
ET AL. *v.* EAGLE COUNTY, COLORADO, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 23–975. Argued December 10, 2024—Decided May 29, 2025

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. § 10901. In 2020, the Seven County Infrastructure Coalition applied to the Board for approval of an 88-mile railroad line connecting Utah’s oil-rich Uinta Basin to the national freight rail network, facilitating the transportation of crude oil to refineries along the Gulf Coast. As part of its project review, the Board prepared an environmental impact statement (EIS) that addressed significant environmental effects of the project and identified feasible alternatives that could mitigate those effects, as required by the National Environmental Policy Act (NEPA). The Board issued a draft EIS and invited public comment. After holding six public meetings and collecting more than 1,900 comments, the Board prepared a 3,600-page EIS that analyzed numerous impacts of the railway’s construction and operation. Relevant here, the EIS noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil. The Board subsequently approved the railroad line, concluding that the project’s transportation and economic benefits outweighed its environmental impacts. Petitions challenging the Board’s action were filed in the D. C. Circuit by a Colorado county and several environmental organizations. The D. C. Circuit found “numerous NEPA violations arising from the EIS.” 82 F. 4th 1152, 1196. Specifically, the D. C. Circuit held that the Board impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects, concluding that those effects were reasonably foreseeable impacts that the EIS should have analyzed more extensively. Based on the deficiencies it found in the EIS, the D. C. Circuit vacated both the EIS and the Board’s final approval order.

Held: The D. C. Circuit failed to afford the Board the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway. Pp. 177–192.

Syllabus

(a) NEPA ensures that agencies and the public are aware of the environmental consequences of certain proposed infrastructure projects. As a purely procedural statute, NEPA “does not mandate particular results, but simply prescribes the necessary process” for an agency’s environmental review of a project. *Robertson v. Methow Valley Citizens Council*, 490 U. S. 332, 350. Some federal courts reviewing NEPA cases have assumed an aggressive role in policing agency compliance with NEPA, and have not applied NEPA with the judicial deference demanded by the statutory text and the Court’s cases.

When, as here, a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the “only role for a court” is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Strycker’s Bay Neighborhood Council, Inc. v. Karlen*, 444 U. S. 223, 227. Further, the adequacy of an EIS is relevant only to the question of whether an agency’s final decision (here, to approve the railroad project) was reasonably explained.

Judicial deference in NEPA cases extends to an agency’s determination of what details are relevant in an EIS. While NEPA requires an EIS to be “detailed,” 42 U. S. C. § 4332(2)(C), and the meaning of “detailed” is a legal question, see *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 391–392, what details need to be included in any given EIS is a factual determination for the agency. The textual focus of NEPA is the “proposed action”—the project at hand—not other separate projects. § 4332(2)(C). Courts should defer to agencies’ discretionary decisions about where to draw the line when considering indirect environmental effects and whether to analyze effects from other projects separate in time or place. See *Department of Transportation v. Public Citizen*, 541 U. S. 752, 767. In sum, when assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. Even a deficient EIS does not necessarily require vacating an agency’s project approval, absent reason to believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. § 706. Pp. 177–185.

(b) Contrary to the D. C. Circuit’s NEPA analysis, the Board’s determination that its EIS need not evaluate possible environmental effects from upstream and downstream projects separate from the Uinta Basin

Syllabus

Railway complied with NEPA’s procedural requirements, particularly NEPA’s textually mandated focus on the “proposed action” under agency review. While indirect environmental *effects* of the project itself may fall within NEPA’s scope even if they might extend outside the geographical territory of the project or materialize later in time, the fact that the project might foreseeably lead to the construction or increased use of a separate project does not mean the agency must consider that separate project’s environmental effects. See *Public Citizen*, 541 U. S., at 767. This is particularly true where, as here, those separate projects fall outside the agency’s regulatory authority. Pp. 186–191.

(c) NEPA does not allow courts, “under the guise of judicial review” of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558. P. 192.

82 F. 4th 1152, reversed and remanded.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, and BARRETT, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment, in which KAGAN and JACKSON, JJ., joined, *post*, p. 192. GORSUCH, J., took no part in the consideration or decision of the case.

Paul D. Clement argued the cause for petitioners. With him on the briefs were *Matthew D. Rowen*, *Kevin Wynosky*, *Jay C. Johnson*, and *Fred R. Wagner*.

Deputy Solicitor General Kneedler argued the cause for federal respondents urging reversal in part. With him on the briefs were *Solicitor General Prelogar*, *Assistant Attorney General Kim*, *Colleen E. Roh Sinzidak*, *Robert J. Lundman*, *Justin D. Heminger*, *Anika Sanders Cooper*, and *Barbara Miller*.

William M. Jay argued the cause for respondent Eagle County et al. With him on the brief were *Jordan Bock*, *Nathaniel H. Hunt*, *Beth Oliver*, and *Christina Hooper*. *Kirti Datla* filed a brief for environmental respondents. With her on the brief were *Benjamin Chagnon*, *Linnet*

Counsel

*Davis-Stermitz, Eric Glitzenstein, Wendy Park, and Edward B. Zukoski.**

*Briefs of *amici curiae* urging reversal were filed for the State of Louisiana et al. by *Elizabeth B. Murrill*, Attorney General of Louisiana, *J. Benjamin Aguiñaga*, Solicitor General, *Kelsey L. Smith*, Deputy Solicitor General, and *Caitlin A. Huettemann*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Steve Marshall* of Alabama, *Treg Taylor* of Alaska, *Tim Griffin* of Arkansas, *Ashley Moody* of Florida, *Christopher M. Carr* of Georgia, *Raül R. Labrador* of Idaho, *Theodore E. Rokita* of Indiana, *Brenna Bird* of Iowa, *Russell Coleman* of Kentucky, *Lynn Fitch* of Mississippi, *Andrew Bailey* of Missouri, *Austin Knudsen* of Montana, *Michael T. Hilgers* of Nebraska, *Drew H. Wrigley* of North Dakota, *Dave Yost* of Ohio, *Gentner Drummond* of Oklahoma, *Alan Wilson* of South Carolina, *Marty Jackley* of South Dakota, *Jonathan Skrmetti* of Tennessee, *Ken Paxton* of Texas, *Jason Miyares* of Virginia, *Patrick Morrissey* of West Virginia, and *Bridget Hill* of Wyoming; for the State of Utah by *Sean D. Reyes*, Attorney General of Utah, and *Stanford E. Purser*, Solicitor General; for the American Exploration and Mining Association et al. by *Michael R. Huston*, *Christopher D. Thomas*, and *Andrea J. Driggs*; for the American Forest Resource Council et al. by *Ivan L. London*; for the Americans for Prosperity Foundation et al. by *Michael Pepson* and *Dan Greenberg*; for the Association of American Railroads by *Daniel Sapphire*; for the Center for American Liberty by *Harmeet K. Dhillon*; for the Center for Environmental Accountability by *Paul E. Salamanca*; for the Chamber of Commerce of the United States of America et al. by *Kyle D. Hawkins*, *Michael B. Schon*, *Andrew R. Varcoe*, *Stephanie A. Maloney*, *Ellen Steen*, and *Travis Cushman*; for Energy Transfer LP by *William S. Scherman* and *Matthew X. Etchemendy*; for Law Professors by *Mario A. Loyola* and *Richard A. Epstein*; for the NACCO Natural Resources Corp. by *Charles T. Wehland* and *Jeffery D. Ubersaar*; for NextDecade LNG, LLC, by *Richard M. Loeb* and *Andrew D. Silverman*; and for U. S. Sen. John Barrasso et al. by *Michael Buschbacher*. *Jeffrey S. Rasmussen* filed a brief for the Ute Indian Tribe of the Uintah and Ouray Reservation et al. urging vacatur.

Briefs of *amici curiae* urging affirmance were filed for the State of Colorado et al. by *Philip J. Weiser*, Attorney General of Colorado, *Natalie Hanlon Leh*, Chief Deputy Attorney General, *Shannon W. Stevenson*, Solicitor General, *Kurtis T. Morrison* and *Scott Steinbrecher*, Deputy Attorneys General, *Carrie Noteboom*, Assistant Deputy Attorney General, *Cory Haller*, Assistant Solicitor General, and *Brea Hinricks*, Assistant

JUSTICE KAVANAUGH delivered the opinion of the Court.

Some 55 years ago, Congress passed and President Nixon signed the National Environmental Policy Act, known as NEPA. For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS. The EIS must address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.

NEPA was the first of several landmark environmental laws enacted by Congress in the 1970s. Subsequent statutes included the Clean Air Amendments of 1970, the Clean Water Act of 1972, and the Endangered Species Act of 1973, among others.

Attorney General, by *Brian Schwalb*, Attorney General of the District of Columbia, and by the Attorneys General for their respective States as follows: *William Tong* of Connecticut, *Kathy Jennings* of Delaware, *Kwane Raoul* of Illinois, *Aaron M. Frey* of Maine, *Andrea Joy Campbell* of Massachusetts, *Dana Nessel* of Michigan, *Keith Ellison* of Minnesota, *Aaron D. Ford* of Nevada, *Matthew J. Platkin* of New Jersey, *Letitia James* of New York, *Ellen Rosenblum* of Oregon, *Peter Neronha* of Rhode Island, *Charity R. Clark* of Vermont, and *Robert W. Ferguson* of Washington; for Colorado Communities by *William S. Eubanks II*, *Matthew R. Arnold*, and *Barbara Green*; for the Constitutional Accountability Center by *Elizabeth B. Wydra* and *Brianne J. Gorod*; for Former Council on Environmental Quality Officials by *Sean H. Donahue*, *Megan M. Herzog*, *Keri R. Davidson*, and *David T. Goldberg*; for the Howard University School of Law Civil Rights Clinic by *Amit Jain*; for the Institute for Policy Integrity at New York University School of Law by *Jason A. Schwartz*; and for 30 Members of the U. S. House and Senate by *Xiao Wang* and *Cale Jaffe*.

Briefs of *amici curiae* were filed for the American Petroleum Institute et al. by *Hadassah M. Reimer*, *Sarah Bordelon*, and *Tina R. Van Bockern*; for the American Planning Association by *John M. Baker* and *Katherine M. Swenson*; for the Anschutz Exploration Corp. by *Tina R. Van Bockern* and *Mark D. Gibson*; for Former Senior Federal Officials by *Beth C. Neitzel*; for the Interstate Natural Gas Association of America et al. by *Donald P. Salzman* and *James P. Danly*; and for the Property and Environment Research Center by *Jonathan Wood*.

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Unlike those later-enacted laws, however, NEPA imposes no substantive environmental obligations or restrictions. NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report. Importantly, NEPA does not require the agency to weigh environmental consequences in any particular way. Rather, an agency may weigh environmental consequences as the agency reasonably sees fit under its governing statute and any relevant substantive environmental laws.

Simply stated, NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decisionmaking, not to paralyze it.

In this case, the U. S. Surface Transportation Board considered a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah. Under federal law, the Board determines whether to approve construction of new railroad lines. The railroad line here would connect Utah's oil-rich Uinta Basin—a rural territory roughly the size of the State of Maryland—to the national rail network. By doing so, the new railroad line would facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere. And the project would bring significant economic development and jobs to the isolated Uinta Basin by better connecting the Basin to the national economy.

For that proposed 88-mile Utah railroad line, the Board prepared an extraordinarily lengthy EIS, spanning more than 3,600 pages of environmental analysis. The Board's EIS addressed the environmental effects of the railroad line. But the U. S. Court of Appeals for the D. C. Circuit nonetheless faulted the EIS for not sufficiently considering the environmental effects of projects separate from the railroad line itself—primarily, the environmental effects that could ensue from (i) increased oil drilling upstream in the Uinta Basin

and (ii) increased oil refining downstream along the Gulf Coast of Louisiana and Texas.

On that basis, the D. C. Circuit vacated the Board's EIS and the Board's approval of the 88-mile railroad line. As a result, construction still has not begun even though the Board approved the project back in December 2021.

We reverse. First, the D. C. Circuit did not afford the Board the substantial judicial deference required in NEPA cases. Second, the D. C. Circuit ordered the Board to address the environmental effects of projects separate in time or place from the construction and operation of the railroad line. But NEPA requires agencies to focus on the environmental effects of the project at issue. Under NEPA, the Board's EIS did not need to address the environmental effects of upstream oil drilling or downstream oil refining. Rather, it needed to address only the effects of the 88-mile railroad line. And the Board's EIS did so.

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Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. § 10901. After receiving an application for a new railroad line, the Board issues a public notice and initiates an agency proceeding to review the proposal; alternatively, the Board may streamline approval through a statutory exemption process. §§ 10101, 10502, 10901. In addition, for covered projects, NEPA compels the Board to prepare an environmental impact statement, or EIS.

In 2020, the Seven County Infrastructure Coalition—a group of seven Utah counties—applied to the Board for approval of an 88-mile railroad line in northeastern Utah. The new railroad line would connect the Uinta Basin with the interstate freight rail network—and via that network, to refineries in Louisiana, Texas, and other destinations.

The Uinta Basin contains significant quantities of crude oil and other fossil fuels. The Uinta Basin Railway would

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provide oil producers a more efficient option for transporting oil out of the Basin to refineries. As of now, oil from the Basin is carried by trucks that must navigate mountain passes on narrow roads, a difficult and slow journey in any season.

The Board’s environmental review of the Uinta Basin Railway followed standard NEPA procedures. In October 2020, the Board issued a draft EIS and invited public comment. During the public comment period, the Board held six public meetings and collected more than 1,900 comments. In August 2021, the Board published its final EIS.

All told, the Board’s final EIS clocked in at more than 3,600 pages. The EIS identified and analyzed numerous “significant and adverse impacts that could occur as a result” of the railroad line’s construction and operation—including disruptions to local wetlands, land use, and recreation. App. 121; see *id.*, at 94–105, 121–126, 206–347. The EIS likewise addressed several “minor impacts,” such as air pollution and big-game movement around the construction site. *Id.*, at 126; see *id.*, at 126–134, 251–259, 309–325.

The EIS also noted, but did not fully analyze, the potential effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil carried by the railroad. *Id.*, at 135, 348–482, 511–516, 520–534, 539–543.

As to the environmental effects of upstream oil drilling, the EIS explained why further analysis of those “potential future, as yet unplanned, oil and gas development projects” was not needed. *Id.*, at 520. To begin with, the project at issue was an 88-mile railroad line, not an oil well or a drilling permit in the Uinta Basin. Moreover, the Board possesses “no authority or control over potential future oil and gas development” in the Basin. *Id.*, at 522. Future projects would be “subject to the approval processes of other federal, state, local, and tribal agencies.” *Ibid.* In any event, the environmental effects of future oil and gas development in

the Basin are “speculative” and attenuated from the project at hand. *Id.*, at 525; see *id.*, at 525–527 (citing *Department of Transportation v. Public Citizen*, 541 U. S. 752, 767–768, 770 (2004)).

As for the environmental effects of downstream oil refining projects, the Board recognized that “trains originating on the proposed rail line would transport crude oil to markets in other regions of the United States,” such as Louisiana and Texas, and that oil refining (and the associated effects on the environment) could increase in those locations as a result. App. 477; see *id.*, at 477–482. But the identity of specific destinations “would depend on the ability and willingness of refineries in other markets to receive rail cars carrying Uinta Basin crude oil and process the oil in their refineries.” *Id.*, at 477. Moreover, the Board “would have no role in approving or regulating the production, refining, or use” of Uinta Basin crude oil. *Id.*, at 540–541. So the Board did not fully evaluate the effects of additional oil refining along the Gulf Coast.

In December 2021, a few months after issuing the final EIS, the Board approved the construction and operation of the Uinta Basin Railway. Recognizing that “rail construction projects are in the public interest,” the Board concluded that the new railroad line would “have substantial transportation and economic benefits,” and that those benefits outweighed the environmental impacts identified in the EIS. App. to Pet. for Cert. 121a, 119a; see *id.*, at 118a–121a.

In the wake of the Board’s final approval, a Colorado county and several environmental organizations sued by filing petitions for review in the U. S. Court of Appeals for the D. C. Circuit.

The D. C. Circuit found “numerous NEPA violations arising from the EIS.” *Eagle Cty. v. Surface Transp. Bd.*, 82 F. 4th 1152, 1196 (2023). In the court’s view, the Board “failed” to take “the requisite ‘hard look’ at all of the environmental impacts of the Railway.” *Id.*, at 1175.

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Specifically, the Court of Appeals held that the Board impermissibly limited its analysis of upstream and downstream projects. The court concluded that the environmental effects from oil drilling in the Uinta Basin and oil refining along the Gulf Coast were “‘reasonably foreseeable impacts’” that the EIS should have analyzed more extensively. *Id.*, at 1177. The court rejected the Board’s argument that those effects would arise from other projects (upstream oil drilling, downstream oil refining, and the like) that are separate from the current project and regulated by other agencies. *Id.*, at 1177–1180 (citing *Sierra Club v. FERC*, 867 F. 3d 1357, 1372–1375 (CADCA 2017) (*Sabal Trail*)).

Based on the deficiencies it found in the EIS, the Court of Appeals vacated the EIS and the Board’s final approval order. 82 F. 4th, at 1196. The Coalition and the Uinta Basin Railway sought review in this Court, and we granted certiorari. 602 U. S. 1038 (2024).

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II

For certain infrastructure projects that are built, funded, or approved by the Federal Government, NEPA requires federal agencies to prepare an environmental impact statement, or EIS, identifying significant environmental effects of the projects, as well as feasible alternatives. The law ensures that the agency and the public are aware of the environmental consequences of proposed projects. Properly applied, NEPA helps agencies to make better decisions and to ensure good project management.

Importantly, however, NEPA is purely procedural. In ultimately deciding whether to build, fund, or approve a project, an “agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” *Robertson v. Methow Valley Citizens Council*, 490 U. S. 332, 350 (1989). Otherwise stated, NEPA “does not mandate particular results, but simply prescribes the necessary process” for an agency’s environmental review of a project. *Ibid.*; see

Department of Transportation v. Public Citizen, 541 U. S. 752, 756–757 (2004); *Marsh v. Oregon Natural Resources Council*, 490 U. S. 360, 370–372 (1989); *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U. S. 87, 97–98 (1983); *Strycker’s Bay Neighborhood Council, Inc. v. Karlen*, 444 U. S. 223, 227–228 (1980); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978); *Kleppe v. Sierra Club*, 427 U. S. 390, 410, n. 21 (1976).¹

Here, the Board’s EIS evaluated the environmental effects of the proposed 88-mile railroad line in Utah’s rural Uinta Basin. But the D. C. Circuit, following Circuit precedent applying NEPA, concluded that the EIS did not sufficiently address the reasonably foreseeable environmental impacts of increased upstream oil drilling in the Uinta Basin, as well as the environmental effects of increased downstream oil refining along the Gulf Coast. 82 F. 4th, at 1196.

¹ As it was phrased at the time of the Board’s EIS (before a 2023 amendment to the statute, see n. 3, *infra*), NEPA directed federal agencies to

“include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- “(i) the environmental impact of the proposed action,
- “(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- “(iii) alternatives to the proposed action,
- “(iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and
- “(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

“Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.” § 102(2)(C), 83 Stat. 853, as amended, 42 U. S. C. § 4332(2)(C) (2018).

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As we will explain, we disagree with the D. C. Circuit's decision on two grounds. First, the court did not afford the Board the substantial judicial deference required in NEPA cases. Second, the court incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway.

A

Since the early 1970s, federal courts have reviewed NEPA cases. Over time, some courts have assumed an aggressive role in policing agency compliance with NEPA. Other courts have adopted a more restrained approach. In light of the continuing confusion and disagreement in the Courts of Appeals over how to handle NEPA cases, we think it important to reiterate and clarify the fundamental principles of judicial review applicable in those cases. As we will explain, the central principle of judicial review in NEPA cases is deference.²

As a general matter, when an agency interprets a statute, judicial review of the agency's interpretation is *de novo*. See *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 391–392 (2024). But when an agency exercises discretion granted by a statute, judicial review is typically conducted

²Some have debated whether Congress and the President in 1970 actually intended or anticipated judicial review of agency compliance with NEPA. See R. Lazarus, *The National Environmental Policy Act in the U. S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 *Geo. L. J.* 1507, 1515 (2012) (describing the history). In any event, an early D. C. Circuit case concluded that an agency's compliance with NEPA was judicially reviewable. See *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n.*, 449 F. 2d 1109 (1971). And this Court's cases have treated NEPA compliance as judicially reviewable. That said, courts must conduct their review with significant deference to the agency. When reviewing compliance with NEPA, "courts are to play only a limited role." *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 558 (1978).

under the Administrative Procedure Act’s deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained. See *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983); *FCC v. Prometheus Radio Project*, 592 U. S. 414, 423 (2021).

When a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the reviewing court must account for the fact that NEPA is a *purely procedural statute*. Under NEPA, an agency’s only obligation is to prepare an adequate report. “NEPA requires no more.” *Strycker’s Bay Neighborhood Council*, 444 U. S., at 228. Unlike a plethora of other federal environmental statutes (such as the Clean Air Act, the Clean Water Act, etc.), NEPA imposes no *substantive* constraints on the agency’s ultimate decision to build, fund, or approve a proposed project. So when reviewing an agency’s EIS, “the only role for a court” is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. *Id.*, at 227; see *Vermont Yankee*, 435 U. S., at 551, 555. Because an EIS is only one input into an agency’s decision and does not itself require any particular substantive outcome, the adequacy of an EIS is relevant only to the question of whether an agency’s final decision (here, to approve the railroad) was reasonably explained.

In short, when determining whether an agency’s EIS complied with NEPA, a court should afford substantial deference to the agency.

In practice, judicial deference in NEPA cases can take several forms. For example, NEPA says that the EIS should be “detailed.” 42 U. S. C. § 4332(2)(C). Of course, the meaning of “detailed” is a question of law to be decided by a court. *Loper Bright*, 603 U. S., at 391–392. But what details need to be included in any given EIS? For the most

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part, that question does not turn on the meaning of “detailed”—instead, it “involves primarily issues of fact.” *Marsh*, 490 U. S., at 377. The agency is better equipped to assess what facts are relevant to the agency’s own decision than a court is. As a result, “agencies determine whether *and to what extent* to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” *Public Citizen*, 541 U. S., at 767 (emphasis added). So the question of whether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion—which should not be excessively second-guessed by a court. Brevity should not be mistaken for lack of detail. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages. So courts should not insist on length as a prerequisite for finding an EIS to be detailed.³

The EIS also must identify significant environmental impacts and feasible alternatives. But there too, an agency exercises substantial discretion. An agency must make predictive and scientific judgments in assessing the relevant impacts (what are the likely impacts; do they rise to the level of “significant”?) and alternatives (what are the potential alternatives; are they really “feasible”?). As this Court has said, “the term ‘alternatives’ is not self-defining,” and “[c]ommon sense” should be brought to bear. *Vermont Yankee*,

³ Indeed, federal law now strictly *prohibits* an agency’s EIS from going on endlessly. In 2023, two years after the Board issued its final EIS for the Uinta Basin Railway, Congress passed and President Biden signed an Act amending NEPA meaningfully titled the “Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023.” Pub. L. 118–5, Div. C, Tit. III, § 321, 137 Stat. 38–39. Under that BUILDER Act, an EIS “shall not exceed 150 pages” and must be completed in “2 years” or less. *Id.*, at 41–42 (42 U. S. C. §§ 4336a(e)(1)(A), (g)(1)(A)). That Act strongly reinforces the basic principles that NEPA, correctly interpreted, already embodied but that have been too often overlooked. The analysis in this opinion thus applies to NEPA as amended by the BUILDER Act.

435 U. S., at 551. Black-letter administrative law instructs that when an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its “most deferential.” *Baltimore Gas & Elec.*, 462 U. S., at 103; see *Marsh*, 490 U. S., at 378; *State Farm*, 463 U. S., at 43.

In preparing an EIS, an agency also must determine the scope of the environmental effects that it will address. The textual focus of NEPA is the “proposed action”—that is, the project at hand. 42 U. S. C. § 4332(2)(C) (2018). The agency therefore will obviously seek to assess significant effects from the project at issue. But how far will the agency go in considering the indirect effects that might occur outside the area of the immediate project—for example, due to emissions or run off from the project carried elsewhere by air or water? And will the agency evaluate the environmental effects from other future or geographically separate projects that may be initiated (or expanded) as a result of or in the wake of the current project? And what if another agency also possesses regulatory authority over a related project?

In analyzing those scope questions, it is critical to disaggregate the agency’s role from the court’s role. So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies’ decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a “manageable line.” *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U. S. 766, 774, n. 7 (1983)).

To tie all of this together: When assessing significant environmental effects and feasible alternatives for purposes of

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NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness. As the Court has emphasized on several occasions, and we doubly underscore again today, “inherent in NEPA . . . is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” *Public Citizen*, 541 U. S., at 767. A reviewing court may not “substitute its judgment for that of the agency as to the environmental consequences of its actions.” *Kleppe*, 427 U. S., at 410, n. 21.

Some courts have strayed and not applied NEPA with the level of deference demanded by the statutory text and this Court’s cases. Those decisions have instead engaged in overly intrusive (and unpredictable) review in NEPA cases. Those rulings have slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects.

The upshot: NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects. Some project opponents have invoked NEPA and sought to enlist the courts in blocking or delaying even those projects that otherwise comply with all relevant substantive environmental laws. Indeed, certain project opponents have relied on NEPA to fight even clean-energy projects—from wind farms to hydroelectric dams, from solar farms to geothermal wells. See, *e. g.*, Brief for Chamber of Com-

merce of the United States of America, et al. as *Amici Curiae* 19–20.

All of that has led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation. Delay upon delay, so much so that the process sometimes seems to “borde[r] on the Kafkaesque.” *Vermont Yankee*, 435 U. S., at 557. Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of the project. And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.

A 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development “under the guise” of just a little more process. *Id.*, at 558. A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense. *Id.*, at 525. Congress did not design NEPA for *judges* to hamstring new infrastructure and construction projects. On the contrary, as this Court has stressed, courts should and “must defer to ‘the informed discretion of the responsible federal agencies.’” *Marsh*, 490 U. S., at 377.

Critically, as the Government and the Coalition explained at oral argument, courts not only must defer to the agency’s reasonable choices regarding the scope and contents of the EIS, but also must keep in mind that review of an agency’s EIS is not the same thing as review of the agency’s final decision concerning the project. See Tr. of Oral Arg. 31–32, 70–71. That, too, follows from NEPA’s status as a purely procedural statute. The ultimate question is not whether

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an EIS in and of itself is inadequate, but whether the agency's final decision was reasonable and reasonably explained. Review of an EIS is only one component of that analysis. Even if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS. Cf. 5 U. S. C. § 706. For example, in a case like this one, even if the EIS drew the line on the effects of separate upstream or downstream projects too narrowly, that mistake would not necessarily require a court to vacate the agency's approval of the railroad project. Cf. *Vermont Yankee*, 435 U. S., at 558.⁴

In other words, as this Court has said before, NEPA does not authorize a court to “interject itself within the area of discretion . . . as to the choice of the action to be taken” by the agency. *Strycker's Bay Neighborhood Council*, 444 U. S., at 227–228 (quoting *Kleppe*, 427 U. S., at 410, n. 21). NEPA's procedural mandate helps “to insure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or of this Court would have reached had they been members of the decisionmaking unit of the agency.” *Vermont Yankee*, 435 U. S., at 558.

The “role of a court in reviewing the sufficiency of an agency's consideration of environmental factors is a limited one.” *Id.*, at 555. The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.

⁴When, unlike this case, an agency *denies* approval of a project, the denied applicant may ordinarily challenge the denial under the APA or the relevant agency's governing statute. The denied applicant may argue, among other things, that the agency acted unreasonably in denying approval by weighing environmental consequences too heavily in light of the agency's governing statute and other relevant factors, or perhaps that the agency erred because the governing statute did not allow the agency to weigh environmental consequences at all. NEPA does not alter those judicial inquiries.

B

Even apart from failing to afford sufficient deference to the Surface Transportation Board, the D. C. Circuit's decision was mistaken on the merits under NEPA. The D. C. Circuit erroneously required the Board to address environmental effects from projects that are separate in time or place from the 88-mile railroad project at hand—that is, effects from potential future projects or from geographically separate projects. Moreover, those separate projects fall outside the Board's authority and would be initiated, if at all, by third parties.

In its EIS, the Board determined that upstream oil drilling in the Uinta Basin and downstream oil refining along the Gulf Coast were separate from the construction and operation of the 88-mile railroad line. The Board's EIS explained that the “proposed rail line and any future oil and gas development projects are not two phases of a single action,” but “separate, independent projects.” App. 523. Those other projects, the Board reasoned, should not be considered “part of the proposed action assessed in the EIS.” *Ibid.* The Board concluded that its EIS need not evaluate the possible environmental effects from separate upstream or downstream projects.⁵

The Board's approach complied with NEPA and this Court's longstanding NEPA precedents. Importantly, the textually mandated focus of NEPA is the “proposed ac-

⁵ Even though not mandated by NEPA to do so, the Board did identify some of the potential effects and marginal risks from projects separate from the 88 miles of additional railroad track in rural Utah. See, *e.g.*, App. 354–358 (forecasting the number of oil wells that could be added in the Uinta Basin as a result of increased production spurred by the new railway); *id.*, at 420–423, 539–542 (evaluating effects from increased oil refining along the Gulf Coast). The Board should not necessarily earn bonus points for studying more than NEPA demanded. But it should definitely not receive a failing grade just because its 3,600-page EIS was less thorough in analyzing the effects from other projects than the Court of Appeals might have preferred.

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tion”—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration. 42 U. S. C. § 4332(2)(C) (2018); see *Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 422 U. S. 289, 322–324 (1975); *Kleppe*, 427 U. S., at 398–402. Therefore, when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project.

To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA, as the Government explained at oral argument. See Tr. of Oral Arg. 59–63.

But if the project at issue might lead to the construction or increased use of a *separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects of *that separate project*. To put it in legal terms, the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project. See *Public Citizen*, 541 U. S., at 767 (citing *Metropolitan Edison*, 460 U. S., at 774, and n. 7). The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency’s decisionmaking process or that it is reasonable to hold the agency responsible for those effects. Cf. *Public Citizen*, 541 U. S., at 766–767. In those circumstances, “the causal chain is too attenuated.” *Metropolitan Edison*, 460 U. S., at 774.

In other words, there is no “‘reasonably close causal relationship’” between the project at hand and the environmental effects of those other projects. *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774).

Moreover, and importantly, the Board here possesses no regulatory authority over those separate projects. The Board does not regulate oil drilling, oil wells, oil and gas leases, or oil refineries. The Board approves railroad lines. See 49 U. S. C. §§ 10101, 10901. Other agencies possess authority to regulate those separate projects and their environmental effects. As this Court stated in one of the more important sentences in the NEPA canon, “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” *Public Citizen*, 541 U. S., at 770. In other words, agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority. For that reason as well, there is no “‘reasonably close causal relationship’” between the 88-mile railroad project at hand and the environmental effects of the separate oil drilling and oil refining projects. *Id.*, at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774); see also *Robertson*, 490 U. S., at 350–353; *Vermont Yankee*, 435 U. S., at 550–551, 558.

To be sure, NEPA mandates that an agency “consult with” other agencies as appropriate. 42 U. S. C. § 4332(2)(C). But there is a vast difference between, for example, an agency’s consulting with the Forest Service to determine the effects of a railroad line that would pass through a national forest and an agency’s asking another agency to assess how 88 miles of additional track in rural Utah would contribute to emissions or climate change along the Gulf Coast. Indeed, “no rule of reason worthy of that title would require an agency to prepare an EIS” addressing effects from another project that is separate in time or place from the project at hand—particularly when it would require the agency to

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speculate about the effects of a separate project that is outside its regulatory jurisdiction. *Public Citizen*, 541 U. S., at 767–768 (citing *Aberdeen & Rockfish R. Co.*, 422 U. S., at 325).

In this case, the Uinta Basin Railway was the relevant project. NEPA therefore required the Board to consider the environmental effects of that 88-mile railroad line’s construction and operation. To the extent that the new 88-mile railroad line could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air, NEPA dictated that the Board evaluate those effects. And consistent with NEPA, the Board here *did* comprehensively evaluate those effects, including via consultation with other agencies. As the D. C. Circuit itself recognized, the Board explained that “construction and operation of the Railway” would affect “water resources, air quality, [and] special status species like the greater sage-grouse.” 82 F. 4th, at 1168. But nothing in NEPA required the Board to go further and study environmental impacts from upstream or downstream projects separate in time or place from the 88-mile railroad line’s construction and operation.

Under NEPA, it also bears emphasis, a mere “‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect.” *Public Citizen*, 541 U. S., at 767. Likewise, the fact that other projects might foreseeably be built or expanded in the wake of the current project does not, by itself, make the agency responsible for addressing the environmental effects of those other projects. The agency may draw what it reasonably concludes is a “‘manageable line’”—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place. *Ibid.* (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). True, a new airport may someday lead to a new stretch of highway; a new pipeline to a new power plant; a new housing development to a new subway stop. But the environmental effects of the project at hand constitute NEPA’s textual

focus. An agency need not assess the environmental effects of other separate projects simply because those projects (and effects) might not materialize but for the project at hand, or are in some sense foreseeable.

Simply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project. See *Public Citizen*, 541 U. S., at 767–768; *Metropolitan Edison*, 460 U. S., at 774–775. NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects. A relatively modest infrastructure project should not be turned into a scapegoat for everything that ensues from upstream oil drilling to downstream refinery emissions. As Justice Rehnquist underscored in *Vermont Yankee*, NEPA is not a “game” where project objectors can engage in “unjustified obstructionism”—here, for example, by raising a slew of remote effects that they think “ought to be” considered.” 435 U. S., at 553–554.

To be sure, in certain circumstances, other projects may be interrelated and close in time and place to the project at hand—a residential development next door to and built at the same time as a ski resort, for example. See, *e. g.*, *Robertson*, 490 U. S., at 338–340. The question then is whether that is a single project within the authority of the agency in question. There may be a gray area in defining the project at hand. Even in those circumstances, however, a court’s review still must remain deferential, as we explained in Part II–A above. In other words, even if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and “manageable line.” *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison*, 460 U. S., at 774, n. 7). All of that is to again underscore that a difference may exist between what an agency should

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do as a matter of good policy and best practices under NEPA, and what a reviewing court may subsequently order an agency to do under NEPA.

In this case, in any event, the NEPA question is not close. The Board did not need to evaluate potential environmental impacts of the separate upstream and downstream projects. As to other projects upstream, the EIS rightly explained that the environmental consequences of future oil drilling in the Basin are distinct from construction and operation of the railroad line. App. 525–527. As for other projects downstream, the Board likewise correctly explained that any environmental effects from highly regulated oil refineries along the Gulf Coast are well outside the scope of the 88-mile railroad project in rural Utah. *Id.*, at 420–423, 539–542.⁶

An agency may decline to evaluate environmental effects from separate projects upstream or downstream from the project at issue. *Public Citizen*, 541 U. S., at 770. Here, the Board’s EIS concluded that the “proposed rail line and any future oil and gas development projects are not two phases of a single action,” but “separate, independent projects.” App. 523. So the Board concluded that they need not be considered “part of the proposed action assessed in the EIS.” *Ibid.* Absolutely correct.

⁶In addition, inherent in Board approval of railroad lines is the understanding that any new freight railroad may transport different kinds of cargo over an approved line—from corn to cars to coal and the like. See Brief for Association of American Railroads as *Amicus Curiae* 2, 8–9. As common carriers, railroads subject to the Board’s jurisdiction are required to provide “transportation or service on reasonable request” to any person or commodity. 49 U. S. C. §§ 11101(a), 10102(9). Railroad lines approved by the Board cannot decline to provide “common carrier” transport based on the product or commodity to be carried. § 11101(a). For that additional reason, the EIS here correctly explained that the Board was “not required to analyze impacts related to the destinations or end uses of any such products or commodities” transported by the 88-mile railroad line, including Uinta Basin crude oil. App. 422; see *Department of Transportation v. Public Citizen*, 541 U. S. 752, 766–770 (2004).

SOTOMAYOR, J., concurring in judgment

* * *

In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability. Some courts' NEPA decisions have fallen short of that objective. The proper judicial approach for NEPA cases is straightforward: Courts should review an agency's EIS to check that it addresses the environmental effects of the project at hand. The EIS need not address the effects of separate projects. In conducting that review, courts should afford substantial deference to the agency as to the scope and contents of the EIS.

Plaintiffs' policy objections to this 88-mile Utah railroad may or may not be persuasive. But neither "the language nor the history of NEPA suggests that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements." *Metropolitan Edison*, 460 U. S., at 777. Citizens may not enlist the federal courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. *Vermont Yankee*, 435 U. S., at 558.

We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GORSUCH took no part in the consideration or decision of this case.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, concurring in the judgment.

The National Environmental Policy Act improves agency decisionmaking by requiring agencies to consider environmental impacts for which their decisions would be responsi-

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ble. I agree with the Court that the Surface Transportation Board would not be responsible for the harms caused by the oil industry, even though the railway it approved would deliver oil to refineries and spur drilling in the Uinta Basin. I reach that conclusion because, under its organic statute, the Board had no authority to reject petitioners' application on account of the harms third parties would cause with products transported on the proposed railway. The majority takes a different path, unnecessarily grounding its analysis largely in matters of policy. Accordingly, I write separately to explain why the result in this case follows inexorably from our precedent.

I

A

The Uinta Basin spans thousands of square miles across northwestern Utah and Colorado. Bookended by the Uinta Mountains in the north and the Roan Cliffs in the south, the Basin is hard to access and has few residents. The Basin, however, contains “‘extensive deposits of valuable minerals,’” including large reserves of “waxy crude,” a form of petroleum known for its thick consistency at ambient temperatures. 82 F. 4th 1152, 1165–1166 (CADC 2023). For over a decade, oil producers have transported this oil out of the Basin in heated tanker trucks, to be sold to refineries in Utah and beyond.

Petitioners, the Seven County Infrastructure Coalition and the Uinta Basin Railway, LLC, plan to build a railway connecting the Uinta Basin with the Union Pacific Railroad Company station in Kyune, Utah, and from there to the national rail network. As the Coalition recognizes, “the Railway’s predominant and expected primary purpose would be” to enable Basin oil producers to transport, with greater ease and in greater quantities, waxy crude to refineries in the Gulf Coast. *Ibid.* Nearly all the waxy crude transported by train out of the Uinta Basin would continue its travels

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over the Union Pacific track from Kyune to Denver, which runs through Eagle County, Colorado, and closely abuts the Colorado River.

B

No person may “construct an additional railroad line” or “provide transportation over . . . an extended or additional railroad line” without a certificate of approval from the Surface Transportation Board. 49 U.S.C. §10901(a). Applicants can file a formal application for such a certificate, §10901(c), or they can seek approval through an abbreviated exemption process, §10502(a). In either case, the Act expresses a clear presumption in favor of approving railways. See *ibid.* (exemptions must be granted “to the maximum extent” consistent with law); §10901(c) (the Board “shall” issue a certificate “unless” inconsistent with public convenience and necessity).

In May 2020, petitioners requested permission to build the Railway by way of the exemption procedure. Because the proposed railway constitutes a “major Federal actio[n] significantly affecting” the environment, the National Environmental Policy Act (NEPA) required the Board to prepare a “detailed” statement addressing its environmental impacts. 42 U.S.C. §4332(C). The Board conditionally approved petitioners’ request based on the Railway’s “transportation merits,” but it deferred a final decision pending the results of its environmental review. Surface Transportation Board, Office of Environmental Analysis, Uinta Basin Railway Final Environmental Impact Statement S–2, n. 2 (Aug. 2021) (Final EIS).

After soliciting public comment, the Board completed its environmental impact statement on August 6, 2021.¹ App.

¹The final statement consisted of a 600-page report accompanied by supporting appendixes and responses to the public comments. See www.uintabasinrailwayeis.com (Board-created website containing the complete EIS and all related documentation); cf. *ante*, at 173, 175, 186, n. 5 (asserting that the EIS spanned more than 3,600 pages of analysis).

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to Pet. for Cert. 76a. The statement recognized that “between 3.68 and 10.52 trains” would travel daily on the proposed new railway, which would be used “primarily to transport crude oil from the Basin to markets across the United States.” Final EIS 1–4. Consistent with its obligations under NEPA, the Board discussed the comparative environmental merits of alternative railway routes as well as the environmental consequences common to all alternatives. Among other things, the Board analyzed the Railway’s likely impact on the Basin’s natural environment and the impacts increased freight traffic from the Railway would have on the existing Union Pacific line running through Eagle County.

Of particular relevance here, the Board recognized that “[r]efiners would refine the crude oil transported by the proposed rail line into various fuels,” which in turn would be combusted, causing an increase in greenhouse-gas emissions. *Id.*, at 3.15–35. Depending on market conditions, the Board estimated that increased oil production made possible by the Railway would cause greenhouse-gas emissions equivalent to between 0.04 and 0.1 percent of the global total. *Id.*, at 3.15–36. (By way of comparison, Sweden and Ireland are each responsible for about 0.1 percent of global emissions.²) Although the Board recognized the “massive deleterious impacts” of climate change, it explained that it was “not required to analyze impacts related to the destinations or end uses of” products transported on proposed rail lines. *Ibid.* After all, the Board explained, “railroads have a common carrier obligation to carry all commodities, including hazardous materials, upon reasonable request,” meaning the Board cannot control the products “transported on the proposed rail line.” *Ibid.* (citing 49 U. S. C. § 11101 and *Riffin v. STB*, 733 F. 3d 340, 345–347 (CADDC 2013)). For that reason, the Board did not consider in further detail the effects of in-

²See European Commission, Emissions Database for Global Atmospheric Research Report 2024 (last accessed May 7, 2025), https://edgar.jrc.ec.europa.eu/report_2024#emissions_table.

creased drilling for oil in the Basin, or increased refining of oil in the Gulf Coast.

After completing this analysis, the Board issued a decision approving the railway. With respect to the anticipated increase in oil production, the Board again concluded that it had “no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development.” App. to Pet. for Cert. 108a. Board member Oberman dissented. In his view, the Board did have “the power to deny construction approval based on weighing all of the environmental impacts that will arise from oil and gas development in the Basin,” particularly because the Railway’s “‘entire purpose’” would be to stimulate such production. *Id.*, at 124a.

C

Several environmental groups filed a petition for review of the Board’s decision to approve the railway, arguing principally that the Board should have further considered the consequences of increased oil drilling and refining that the Railway’s construction would enable. Eagle County separately petitioned for review of the Board’s decision, alleging that the Board’s environmental analysis was deficient because it ignored or underestimated the Railway’s impacts, through increased rail traffic, on the County and the nearby Colorado River. Petitioners intervened in support of the Board’s decision.

The D. C. Circuit rejected several claims no longer at issue here, but it sided with the challengers on others. With regard to the environmental respondents’ challenge, the court held that the Board should have more carefully considered the deleterious environmental effects of increased oil production made possible by the Railway’s construction. 82 F. 4th, at 1180. Among other things, the court explained, the Board should have “estimate[d] the emissions or other environmental impacts” of oil refining as localized for the “spe-

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cific regions that will receive the oil based on expected train traffic.” *Id.*, at 1179. The court rejected the Board’s argument “that it lacks authority to prevent, control, or mitigate those developments.” *Id.*, at 1180. Instead, in the D. C. Circuit’s view, the Board’s statutory obligation to consider whether the Railway would serve the “‘public convenience and necessity’” encompassed “‘reasonably foreseeable environmental harms,’” including those resulting from the increase in oil production on the Gulf Coast. *Ibid.*

Moving to the County’s claims, the D. C. Circuit agreed the Board’s analysis of the Railway’s effect on the Union Pacific track and the Colorado River contained serious, unexplained errors and omissions. The court further concluded that the Board had failed to comply with several other statutory requirements unrelated to NEPA. Accordingly, the D. C. Circuit vacated the Board’s decision and remanded it to the agency for further proceedings.

Petitioners asked this Court to review only one part of the D. C. Circuit’s decision: whether NEPA required the Board to study the environmental impacts of oil wells and refineries that lie outside the Board’s regulatory authority. Pet. for Cert. i. This Court granted review to decide that question.

II

A

NEPA requires agencies to prepare and publish a “detailed statement” reviewing the environmental impact of any major federal action. 42 U. S. C. § 4332. That “action-forcing” requirement serves dual purposes, ensuring both that an agency considers a project’s environmental consequences before deciding whether to approve it, and rendering the agency publicly accountable for environmental harms it decides to tolerate. See *Robertson v. Methow Valley Citizens Council*, 490 U. S. 332, 349–350 (1989). The point, as this Court has recognized, is not merely that an agency produce a report but “that environmental concerns be inte-

grated into the very process of agency decision-making.” *Andrus v. Sierra Club*, 442 U. S. 347, 350 (1979); see also *Kleppe v. Sierra Club*, 427 U. S. 390, 409–410 (1976); *Robertson*, 490 U. S., at 350. In that way, NEPA’s procedural requirements advance Congress’s aim that the Federal Government “use all practicable means [to ensure] that the Nation may . . . fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.” § 4331(b)(1).

Because NEPA’s central aim is to improve agency decisionmaking, an agency need not consider every conceivable environmental consequence of a proposed federal action. Rather, agencies need only analyze environmental impacts for which their decision would be (at least in part) “responsible,” a requirement akin to “the familiar doctrine of proximate cause from tort law.” *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U. S. 766, 774, and n. 7 (1983). An agency is not responsible for environmental impacts it could not lawfully have acted to avoid, either through mitigation or by disapproving the federal action. See *Department of Transportation v. Public Citizen*, 541 U. S. 752, 770 (2004). Nor is an agency responsible for impacts that, though technically avoidable, are so causally attenuated from or ancillary to the agency’s statutorily assigned tasks that it could not reasonably have been expected to consider them as part of its decisionmaking process. *Metropolitan Edison*, 460 U. S., at 774. Together these limitations serve to keep the scope of the agency’s review targeted to environmental impacts it is well positioned to address.

Precedent makes these abstract principles concrete. In *Public Citizen*, this Court evaluated the Federal Motor Carrier Safety Administration’s environmental analysis of regulations establishing an application process for Mexican motor carriers who wanted to operate in the United States. 541 U. S., at 758–763. The application system itself had only minimal environmental impacts (related to anticipated roadside inspections of the Mexican trucks and buses). Yet the

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agency developed it at the direction of the President, who had decided to lift a long-running moratorium on Mexican carriers' operation in the United States following the system's completion. *Id.*, at 760. Thus, promulgation of the agency's regulations would enable a substantial influx of new trucking, which in turn would have major environmental implications.

This Court concluded that, though the agency's regulations would be a "but-for" cause of the new trucking, it did not need to consider the related environmental impacts because it had "no authority to prevent" them. *Id.*, at 766–767. After all, the decision to lift the moratorium had been the President's, not the agency's, and the agency could not lawfully refuse to issue its regulations in order to block the President's decision. *Id.*, at 761. The agency had no means to prevent, and thus was not responsible for, the consequences of lifting the moratorium. Hence NEPA did not require it to analyze those consequences.

The Court's decision in *Metropolitan Edison* illustrates the companion principle: Some environmental impacts are connected to an agency action by way of so "attenuated" a causal chain that the agency may reasonably dismiss them as ancillary to its decision. 460 U. S., at 774. In *Metropolitan Edison*, the Court considered whether the Nuclear Regulatory Commission had to analyze not only the risk that a proposed nuclear plant would cause an accident, but also the psychological concern nearby residents might experience when they learned about that risk. *Ibid.* Although the psychological concern would be "caused by" the nuclear plant, the Court held that NEPA did not require the agency to consider it. *Id.*, at 774–775. That makes sense: Preventing nuclear accidents is a core element of the Commission's statutory task; preventing psychological distress is not. See *id.*, at 776 (noting that "psychiatric expertise" is "not otherwise relevant to [the agency's] congressionally assigned functions"). Because the agency could reasonably disregard

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psychological distress in deciding whether to approve a power plant, it could disregard that risk in its environmental analysis as well.

As these cases show, the dual limitations on an agency's duty to consider information under NEPA yield a "‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." *Public Citizen*, 541 U. S., at 767 (quoting *Marsh v. Oregon Natural Resources Council*, 490 U. S. 360, 373–374 (1989)). NEPA requires consideration of environmental impacts only if such consideration would result in information on which the agency could act.

B

Consistent with these principles, judicial review of an agency's environmental impact statement involves a two-step analysis. First, courts must consider the grounds on which an agency may rely under its organic statute to modify (by mitigation) or reject a proposed federal action. If the organic statute precludes consideration of a particular issue, the agency may set it aside for purposes of its NEPA review as well. That is the rule of *Public Citizen*.³

Second, if an agency decided not to review an environmental impact because (in its judgment) the impact was too causally attenuated from the question at hand, courts must ask whether the agency "acted arbitrarily" in doing so. *Kleppe*, 427 U. S., at 412. That deferential standard of review is appropriate here, as it is across substantive areas of administrative law, because "[a]gencies . . . have 'unique expertise,' often of a scientific or technical nature, relevant to applying

³It follows from this rule that the proper scope of an agency's NEPA review depends in part on the nature of the agency's statutory authority. The greater an agency's authority to consider and prevent environmental impacts in its decisionmaking process, the greater its duty under NEPA to consider those impacts, and vice versa.

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a regulation ‘to complex or changing circumstances.’” *Kisor v. Wilkie*, 588 U. S. 558, 571 (2019) (plurality opinion). Thus, as the majority points out, agencies often are “better equipped to assess what facts are relevant to the[ir] . . . own decision than a court is.” *Ante*, at 181; cf. *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 456 (2024) (KAGAN, J., dissenting) (“[A]gencies often know things about a statute’s subject matter that courts could not hope to”).⁴

This case provides no occasion to consider the second step because the question presented is resolved at the first. The Board twice decided it lacked authority to reject railway applications on account of the ways in which third parties would use the products “transported on the proposed rail line.” Final EIS 3.15–36; App. to Pet. for Cert. 108a (“Here, the Board has no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development”). Each time, the agency cited *Public Citizen* to justify its decision not to analyze further the environmental effects of oil drilling and refining made possible by the Railway. See Final EIS 3.15–36; App. to Pet. for Cert. 108a.

Review of the Board’s organic statute, the Interstate Commerce Commission Termination Act of 1995, confirms the Board’s understanding of the scope of its review. “As common carriers, railroads subject to the Board’s jurisdiction are required to provide ‘transportation or service on reasonable request’ to any person or commodity.” *Ante*, at 191, n. 6 (quoting 49 U. S. C. § 11101(a)). In addition, the Act contains a clear presumption in favor of approving new railways. See *supra*, at 194. And of the 15 statutory policies the Board must consider in the exemption process, not one concerns the anticipated use of commodities that will be transported on the proposed railway. See §§ 10101(1)–(15). Unlike the Board, meanwhile, other entities do have authority “to approve oil

⁴Of course, that point applies equally when an agency decides that an environmental impact is relevant to its decision.

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and gas development projects” and to regulate the effects of refining. See Brief for Federal Respondents 19. All this suggests, as the Board concluded, that the Board could not have rejected petitioners’ application in order to prevent the harmful effects of oil drilling and refining.⁵ Short of rejecting the Railway entirely, moreover, the common carrier mandate prevented the Board from mitigating, by limiting the transport of crude oil, the Railway’s spurring of the oil industry. See § 11101(a).

The environmental respondents concede that the Board correctly understood the scope of its decisionmaking authority. See Tr. of Oral Arg. 84–85. Instead, they argue that the Board should have analyzed even environmental impacts it could not lawfully prevent. Yet *Public Citizen* squarely forecloses that position. See *supra*, at 201. Even a foreseeable environmental effect is outside of NEPA’s scope if the agency could not lawfully decide to modify or reject the proposed action on account of it. NEPA thus did not require the Board to consider the effects of oil drilling and refining.

* * *

Under NEPA, agencies must consider the environmental impacts for which their decisions would be responsible. Here, the Board correctly determined it would not be responsible for the consequences of oil production upstream or downstream from the Railway because it could not lawfully

⁵The D. C. Circuit came to the opposite conclusion because it viewed the Board’s authority to license railroad construction based on the “‘public convenience and necessity’” as encompassing the effects of oil drilling and refining enabled by the Railway. 82 F. 4th 1152, 1180 (2023). That phrase, however, must be read “with a view to [its] place in the overall statutory scheme.” *Davis v. Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989). Here, the Board’s organic statute contains clear indicators, most significantly the common carrier mandate, that the Board’s authority does not extend so far.

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consider those consequences as part of the approval process. For that reason, I concur in the Court's judgment reversing the D. C. Circuit's holding requiring the Board to consider in further detail harms caused by the oil industry.

Page Proof Pending Publication

REPORTER'S NOTE

The attached opinion has been revised to reflect the usual publication and citation style of the United States Reports. The revised pagination makes available the official United States Reports citation in advance of publication. The syllabus has been prepared by the Reporter of Decisions for the convenience of the reader and constitutes no part of the opinion of the Court. A list of counsel who argued or filed briefs in this case, and who were members of the bar of this Court at the time this case was argued, has been inserted following the syllabus. Other revisions may include adjustments to formatting, captions, citation form, and any errant punctuation. The following additional edits were made:

p. 185, line 7 from bottom: "of" is inserted before "this"

p. 198, line 1: "agency" is inserted before "decision-making"

Rules and Regulations

Federal Register

Vol. 90, No. 190

Friday, October 3, 2025

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2025–0412]

Accepted Means of Compliance for Small Unmanned (sUA) Aircraft Category 2 and Category 3 Operations Over Human Beings; Aerial Vehicle Safety Solutions Inc. (AVSS)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for sUA Category 2 and Category 3 operations over human beings. The Administrator finds that AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, dated January 7, 2025, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: The means of compliance is accepted effective October 3, 2025.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3414; email Kimberly.H.Luu@faa.gov.

AVSS Contact: Josh Ogden, CEO, AVSS, 570 Queen Street, Suite 600, Fredericton, New Brunswick, E3B–6Z6, Canada, +1 (650) 741–1326; Info@avss.co.

SUPPLEMENTARY INFORMATION:

Background

Title 14, Code of Federal Regulations, part 107, subpart D, prescribes the

eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.120(a) for Category 2 operations or § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.120(a) or § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare that sUA for Category 2 or Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notification of availability serves as a formal acceptance by the FAA of the AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, as an acceptable means of compliance, but not the only means of compliance with §§ 107.120(a) and 107.130(a). Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to AVSS's "Means of Compliance (MOC) with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft (sUA)," revision 6, will not be automatically accepted and will require further FAA acceptance for any revisions to be considered an accepted means of compliance.

Issued in Kansas City, Missouri, on September 30, 2025.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2025–19435 Filed 10–2–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2025–0897]

RIN 2105–AF33

Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule (IFR) ensures that the U.S. Department of Transportation (DOT or Department) operates its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Programs (collectively, Programs) in a nondiscriminatory fashion—in line with law and the U.S. Constitution. The IFR removes race- and sex-based presumptions of social and economic disadvantage that violate the U.S. Constitution.

DATES: This IFR is effective October 3, 2025. Comments must be received on or before November 3, 2025. To the extent practicable, DOT will consider late-filed comments.

ADDRESSES: You may submit comments identified by the docket number DOT–OST–2025–0897 by any of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number DOT–OST–2025–0897 or Regulatory Identifier Number

(RIN) 2105–AF33 for this rulemaking. DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this IFR contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” Submissions containing CBI should be sent to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Any commentary that OST receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Electronic Access and Filing

A copy of the IFR, all comments received, and all background material may be viewed online at <http://www.regulations.gov>. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <http://www.ofr.gov> and the Government Publishing Office’s website at <http://www.gpo.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 658–9670 or peter.constantine@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Spanning nearly 40 years, the Department’s DBE and ACDBE programs are small business initiatives intended to level the playing field for businesses seeking to participate in federally assisted contracts and in airport concessions. Rooted in a desire to give small businesses a fair shake in the process, the Programs must balance a desire to help the small business community with an overriding government obligation to serve the public. The government must undertake all these efforts consistent with law—including constitutional nondiscrimination requirements that establish the conditions for national harmony and unity. This IFR advances the administration’s goals of nondiscrimination, fairness, and excellence in serving the American public.

Although the Programs aim to assist small businesses owned and controlled by “socially and economically disadvantaged individuals,” Congress has mandated by statute that DOT treat certain individuals—women and members of certain racial and ethnic groups—as “presumed” to be disadvantaged.¹ Other individuals do not benefit from that statutory presumption. This means that two similarly situated small business owners may face different standards for entering the program, based solely on their race, ethnicity, or sex.

On September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program’s statutory race- and sex-based presumptions likely do not comply with the Constitution’s promise of equal protection under the law.² The Court held that the Government may only use a racial classification to “further a compelling government interest” and may only use race in a “narrowly

¹ Congress has provided that: (1) “women shall be presumed to be socially and economically disadvantaged individuals”; and (2) the term “socially and economically disadvantaged individuals” should otherwise be given the meaning given by section 8(d) of the Small Business Act and its implementing regulations. See Infrastructure Investment and Jobs Act, Public Law 117–58, 11101(e)(2) (B) (2021) (DBE program for highway and transit funding); 49 U.S.C. 47107(e)(1) (ACDBE program); 49 U.S.C. 47113(a)(2) (DBE program for airport funding). Section 8(d) of the Small Business Act and its implementing regulations create a rebuttable presumption that “Black Americans,” “Hispanic Americans,” “Native Americans,” “Asian Pacific Americans,” and “Subcontinent Asian Americans” are disadvantaged. See 15 U.S.C. 637(d)(3); 13 CFR 124.103(b)(1).

² *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23–cv–00072, 2024 WL 4267183 (Sept. 23, 2024).

tailored fashion.” It held that although courts have identified a compelling government interest in “remediating specific, identified instance[s] of past discrimination that violated the constitution or a statute,” the Government did not present evidence of such discrimination by DOT against each of the groups covered by the DBE program’s presumptions. The Court held, moreover, that the presumptions were not narrowly tailored because Congress used an unexplained “scattershot” approach in identifying the covered groups, and because the presumptions had no “logical end point.” The Court also held that the sex-based presumptions failed heightened scrutiny. Accordingly, the Court issued a preliminary injunction that prohibits DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. DOT has implemented the injunction by requiring funding recipients to remove DBE contract goals from any contracts on which the plaintiffs intend to bid.

On January 20, 2025, the President issued Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, which affirmed that “Americans deserve a government committed to serving every person with equal dignity and respect” and directed agencies to recommend actions to align their programs and activities with this policy. On January 21, 2025, the President issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which ordered agencies to “terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.”

On March 21, 2025, the Attorney General issued a memorandum to all Federal agencies on implementing these Executive Orders.³ The Attorney General noted that “federal policies that give preference to job applicants, employees, or contractors based on race or sex trigger heightened scrutiny under the Constitution’s equal protection guarantees and can only survive in rare circumstances.” The Attorney General directed all Federal agencies immediately to “[d]iscontinue any policies that establish numerical goals, targets, or quotas based on race or sex,” and to “[r]emove any contracting or

³ Memorandum from the Attorney General for All Federal Agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations* (March 21, 2025), available at <https://www.justice.gov/ag/media/1409556/dl?inline>.

funding requirement or guidance that induces, requires, or encourages private parties to adopt discriminatory practices.”

On February 19, 2025, the President issued Executive Order 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, which directed agencies to identify “unconstitutional regulations and regulations that raise serious constitutional difficulties,” and to target those regulations for repeal. On April 9, 2025, the President issued a memorandum directing that this effort should prioritize regulations that conflict with certain Supreme Court decisions, including *Students for Fair Admissions, Inc. v. Harvard (SFFA)*.⁴

In accordance with the directives of the President and the Attorney General, DOT and the U.S. Department of Justice (“DOJ”) have evaluated the DBE and ACDBE programs. DOT and DOJ, consistent with the ruling of the District Court, have determined that the race- and sex-based presumptions of DOT’s DBE programs are unconstitutional. In *SFFA*, the Supreme Court held that race-based admissions programs at universities violated the Equal Protection Clause of the Fourteenth Amendment—and, by corollary, Title VI of the Civil Rights Act. In light of *SFFA*, multiple Federal courts have held unlawful the use of presumptions similar to those used in the DBE and ACDBE programs. In *Ultima Serv. Corp. v. U.S. Dep’t of Agric.*, the Eastern District of Tennessee held that a Small Business Act program violated the equal protection component of the Fifth Amendment’s Due Process Clause to the extent that it used the exact same type of race-based presumptions used by the DBE and ACDBE programs.⁵ And in *Nuziard v. Minority Business Development Agency*, the Northern District of Texas held that a race-based statutory presumption of disadvantage was unconstitutional and that the U.S. Department of Commerce’s application of this statutory preference violated the equal protection principle of the Fifth Amendment.⁶ As with the presumptions at issue in *Ultima* and *Nuziard*, there is not a strong basis in evidence that the race- and sex-based presumptions used by the DBE and ACDBE programs are necessary to support a compelling governmental interest, and the presumptions are not narrowly tailored.

The government has no compelling justification for engaging in overt race or sex discrimination in the awarding of contracts in the absence of clear and individualized evidence that the award is needed to redress the economic effects of actual previous discrimination suffered by the awardee. For these reasons, the presumptions must be disregarded, and the Department’s DBE and ACDBE programs must be administered in all other respects in accordance with the law and consistent with the U.S. Constitution.

On May 28, 2025, DOT (represented by DOJ), along with the plaintiffs in the litigation in the U.S. District Court for the Eastern District of Kentucky, asked the Court to enter a Consent Order resolving a constitutional challenge to the DBE program.⁷ The motion is currently pending. In the proposed Consent Order, DOT stipulated and agreed that “the DBE program’s use of race- and sex-based presumptions of social and economic disadvantage . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution.” The parties asked the Court to declare that “the use of DBE contract goals in a jurisdiction, where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption, violates the equal protection component of the Due Process Clause of the Fifth Amendment,” and to “hold and declare that [DOT] may not approve any Federal, State, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption.”

On June 25, 2025, the Solicitor General wrote to the Speaker of the House, consistent with 28 U.S.C. 530D, to advise the Speaker that DOJ had concluded that the DBE program’s presumptions violate the U.S. Constitution, that DOJ would no longer defend the presumptions in court, and that DOJ had taken that position in ongoing litigation.⁸ The Solicitor General noted that DOJ “had previously defended the DBE program’s race- and sex-based presumptions by pointing to societal discrimination against minority-owned businesses generally.” He stated, however, that “[c]onsistent with *SFFA*’s rejection of a similar justification in the university-admissions context, [DOJ] has determined that an interest in

remediating the effects of societal discrimination does not justify the use of race- and sex-based presumptions in the DBE program.” The Solicitor General also reported that DOJ has determined that “like the admissions programs at issue in *SFFA*, the DBE program relies on arbitrary, overbroad, and underinclusive racial categories and lacks any logical end point.” DOT agrees with and adopts the Solicitor General’s analysis.

In light of DOT and DOJ’s determination that the DBE program’s race- and sex-based presumptions are unconstitutional, DOT is issuing this IFR to remove the presumptions from the DBE program regulations set forth in 49 CFR part 26. Because the ACDBE presumptions are functionally identical and suffer the same constitutional infirmity, this IFR also removes the presumptions from the ACDBE regulations set forth in 49 CFR part 23. To ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance in whole or in part on claims of disadvantage based on race or sex, this IFR requires each Unified Certification Program (UCP) to reevaluate any currently certified DBE or ACDBE, to recertify any DBE or ACDBE that meets the new certification standards, and to decertify any DBE or ACDBE that does not meet the new certification standards. The IFR includes certain requirements that apply during the pendency of this reevaluation process.

II. Revisions

Part 26

Subpart A—General

1. Objectives (§ 26.1)

The Department amends § 26.1 to clarify the proper objectives of the DBE program. The Department’s amendments replace references to the DBE program being “narrowly tailored” with an objective intended to ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service. These amendments center the DBE program’s purpose of leveling the playing field for businesses owned and controlled by socially and economically disadvantaged individuals while providing excellent service to the American people.

2. Definitions (§ 26.5)

The Department changes the definition of “socially and economically disadvantaged individual” in § 26.5 to

⁴ 600 U.S. 181 (2023).

⁵ *Ultima Servs. Corp. v. U.S. Dep’t of Agric.*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

⁶ *Nuziard v. Minority Bus. Dev. Agency*, 721 F. Supp. 3d 431 (N.D. Tex. 2024).

⁷ Joint Motion for Entry of Consent Order, *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-00072 (E.D. Ky. May 28, 2025).

⁸ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

remove the race- and sex-based presumptions that DOT and DOJ and have found to violate the Fifth Amendment. Under the revised rule, any individual seeking to demonstrate that he or she is a “socially and economically disadvantaged individual” will be required to make the same individualized showing of disadvantage, regardless of the individual’s race or sex.

In furtherance of these legal conclusions, the IFR also replaces the terms “race-neutral” and “race-conscious” in § 26.5 with “DBE-neutral” and “DBE-conscious” and modifies the definitions slightly for the same reasons.

3. Recordkeeping and Reporting (§ 26.11)

Similarly, the IFR eliminates the requirement in § 26.11(c)(2)(iv) for recipients to obtain bidders list information about the majority owner’s race and sex for all DBEs and non-DBEs who bid as prime contractors and subcontractors on each of a recipient’s federally assisted contracts, and then renumbers the requirements in current §§ 26.11(c)(v) through (c)(vii) as §§ 26.11(c)(iv) through (c)(vi).

The IFR also eliminates the requirement in § 26.11(e)(1) that recipients report and categorize the percentage of in-State and out-of-State DBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 26.11(e)(5) and (6) that recipients report the number of in-State and out-of-State applications for an “individualized” determination of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the DBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 26.11(e)(2) through (e)(4) as §§ 26.11(e)(1) through (e)(3).

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

4. Recipient Monitoring Responsibilities (§ 26.37)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in § 26.37(b).

5. Fostering Small Business Participation (§ 26.39)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in §§ 26.39(b)(1) and (5).

Subpart C—Goals, Good Faith Efforts, and Counting

6. Setting Goals (§ 26.45)

For consistency, the IFR replaces the phrase “race-neutral DBE program” with “DBE-neutral program” in § 26.45(a)(2).

For consistency, the IFR amends the second sentence of § 26.45(b) to replace the word “discrimination” with “social and economic disadvantage” so it will read as follows: “The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage.”

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 26.45(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used. The Department makes the same clarification regarding the use of disparity studies in § 26.45(d)(ii).

For consistency, the IFR amends § 26.45(f)(3) to remove references to race-neutral and race-conscious measures.

The IFR amends § 26.45(g)(1) to remove consultation requirements for minority and women’s contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

The IFR amends § 26.45(h) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language in § 26.45(h) to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 26.111.

7. Failing To Meet Overall Goals (§ 26.47)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” in § 26.47(c)(4) and § 26.47(d).

The IFR adds § 26.47(e) to provide that until a Unified Certification Program (UCP) completes the reevaluation process described in § 26.111, the compliance provisions of

§ 26.47 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

8. Means Used To Meet Overall Goals (§ 26.51)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” throughout § 26.51 and the corresponding examples.

The IFR adds § 26.51(h) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not set any contract goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

9. Counting DBE Participation Toward Goals (§ 26.55)

The IFR adds § 26.55(i) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not count any DBE participation toward DBE goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

Subpart D—Certification Standards

10. Burden of Proof (§ 26.61)

The IFR eliminates § 26.61(b)(2), which imposed a burden of proof on certifiers with respect to individuals subject to the race- and sex-based presumptions that the IFR eliminates.

11. Social and Economic Disadvantage (§ 26.67)

The IFR revises § 26.67 to implement the removal of unconstitutional race- and sex-based presumptions. The IFR requires all small business concerns to demonstrate social and economic disadvantage based on their own experiences and circumstances without reliance in whole or in part on race or sex.

Subpart F—Compliance and Enforcement

12. Reevaluation Process (§ 26.111)

This IFR adds § 26.111 to require each UCP to reevaluate any currently certified DBE, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any

decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 23 with respect to reevaluation of ACDBEs.

Part 23

Subpart A—General

13. Aligning Part 23 With Part 26 Objectives (§ 23.1)

The IFR amends the program objectives for the ACDBE program in § 23.1 that are similar to the amendments to the DBE program objectives in § 26.1.

14. Definitions (§ 23.3)

The IFR amends the definition of the phrase “socially and economically disadvantaged individual” in § 23.3 to conform to the definition of the phrase in § 26.5. In addition, the IFR replaces the terms “race-conscious” and “race-neutral” with “ACDBE-conscious” and “ACDBE-neutral” in § 23.3.

Subpart B—ACDBE Programs

15. Measures To Ensure Nondiscrimination Participation of ACDBEs (§ 23.25)

For consistency, the IFR replaces the words “race-neutral” and “race-conscious” with “DBE-neutral” and “DBE-conscious” in §§ 23.25(d) and (e).

The IFR adds § 23.25(h) to provide that until a UCP completes the reevaluation process described in § 23.81, a recipient covered by that UCP may not set concession-specific goals or use any of the other methods described in § 23.25(e). This provision ensures that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

16. Fostering Small Business Participation (§ 23.26)

For consistency, the IFR replaces the words “race-neutral” with “DBE-neutral” in § 23.26(b)(1).

For consistency, the IFR replaces the words “minority and women owned” with “socially and economically disadvantaged” in § 23.26(d)(5).

For consistency, the IFR replaces the word “gender” with “sex” in § 23.26(e).

17. Reporting and Recordkeeping (§ 23.27)

The IFR eliminates the requirement in § 23.27(c)(2)(iv) for recipients to obtain information about the majority owner's race and sex for all ACDBEs and non-ACDBEs who seek to work on each of a recipient's concession opportunities, and then renumbers the requirements in current §§ 23.27(c)(v) through (c)(vii) as §§ 23.27(c)(iv) through (c)(vi). The IFR also eliminates the requirement in § 23.27(d)(1) that recipients report and categorize the percentage of in-State and out-of-State ACDBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 23.27(d)(5) and (6) that recipients report the number of in-State and out-of-State applications for “individualized” determinations of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the ACDBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 23.27(d)(2) through (d)(4) as §§ 23.27(d)(1) through (d)(3).

Subpart D—Goals, Good Faith Efforts, and Counting

18. Goal and Consultation Requirements (§§ 23.41, 23.43)

The IFR amends § 23.41(d) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 23.81.

The IFR amends § 23.43(b) to remove consultation requirements for minority and women's contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

19. Setting Goals (§ 23.51)

For consistency, the Department amends § 23.51(a) to replace the words “discrimination and its effects” with “social and economic disadvantage.” For consistency, the IFR replaces the

words “race-neutral” and “race-conscious” with “ACDBE-neutral” and “ACDBE-conscious” in §§ 23.51(f), (g), and (h), and in § 23.51(d)(5).

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 23.51(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used.

20. Counting ACDBE Participation During Transition Period (§§ 23.53, 23.55)

The IFR adds § 23.53(g) and § 23.55(m) to provide that until a UCP completes the reevaluation process described in § 23.81, recipients covered by that UCP, and car rental companies operating at airports covered by that UCP, may not count any ACDBE participation toward ACDBE goals. These provisions ensure that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

21. Failing To Meet Overall Goals (§ 23.57)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” in § 23.57(b)(4) and § 23.57(c).

The IFR adds § 23.57(d) to provide that until a UCP completes the reevaluation process described in § 23.81, the compliance provisions of § 23.57 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

22. Reevaluation Process (§ 23.81)

This IFR adds § 23.81 to require each UCP to reevaluate any currently certified ACDBE, to recertify any ACDBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation

process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 26 with respect to reevaluation of DBEs.

III. Public Proceedings

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies to publish a final rule without first seeking public comment on a proposed rule "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." DOT finds that providing advance notice and an opportunity to comment on these regulatory changes pertaining to the DBE and ACDBE programs would be impracticable, unnecessary, and contrary to the public interest. Consistent with the letter authored by the Solicitor General and discussed elsewhere in the preamble,⁹ DOT has determined that race- and sex-based presumptions of the DBE and ACDBE programs violate the U.S. Constitution. In the absence of this IFR, however, DOT's own regulations would continue to require funding recipients to apply those very same presumptions. Allowing this confusing and contradictory situation to continue during a notice-and-comment process would be impracticable and contrary to the public interest. Further, notice-and-comment is unnecessary where a regulatory action is required as a matter of law to ensure consistency with rulings of the United States Supreme Court. It is well-established that an agency is not required to continue to enforce a statutory provision that it has found to be unconstitutional.¹⁰ By the

same token, an agency is not required to subject the public to unconstitutional requirements. This IFR provides notice of the amendments to the regulations' provisions and invites the public to comment. DOT has determined, however, that it should not delay the effectiveness of the amendments and that it should act immediately to remedy the unconstitutional programs. For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to DOT's decision to make this IFR effective upon publication.

IV. Regulatory Analyses and Notices

A. Executive Order: 12866 ("Regulatory Planning and Review"), Executive Order 13563 ("Improving Regulation and Regulatory Review"), and DOT Regulatory Policies and Procedures

The IFR is a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," as supplemented by Executive Order 13563, "Improving Regulation and Regulatory Review." Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Executive Order.

The IFR amends reporting and eligibility requirements for the Department's Airport Concession Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program. These programs are implemented and overseen by recipients of certain Department funds. The changes to the requirements would affect businesses participating in the programs, recipients of Department funds who oversee the programs, and the Department.

The IFR replaces the race- and sex-based presumptions previously embedded in these programs with a requirement for individualized demonstrations of social and economic disadvantage. The IFR also modifies terminology and data reporting requirements to align with constitutional principles while maintaining the programs' statutory objectives.

Need for Regulatory Revisions

The IFR is being issued pursuant to legal determinations by DOT and DOJ that the race- and sex-based presumptions previously embedded in these programs are unconstitutional. In addition to legal compliance, this action corrects a regulatory failure—namely,

reliance on presumptions that no longer withstand judicial scrutiny—by shifting to individualized determinations. The IFR aligns the programs with constitutional mandates.

Costs and Benefits

Costs

While DOT is unable to quantify all the economic costs and benefits of the IFR, the Department has identified both qualitative and quantitative impacts. Several provisions may lead to increased or decreased burdens for applicants, certifying agencies, and recipients related to transitional documentation requirements, the degree of technical rigor in disparity studies, and changes in program reporting. The magnitude of these costs and benefits would depend on the scope of the change; the likelihood of behavior adjustment; and potential legal, administrative, or programmatic effects.

Unquantified Costs

Key provisions of the IFR and their related cost impacts include:

- *Removal of race- and sex-based presumptions.* This provision eliminates presumptive eligibility based on race or sex and requires applicants to submit individualized evidence of social disadvantage, alongside the remaining required showing of economic disadvantage. Although the underlying economic disadvantage documentation (e.g., Personal Net Worth, income verification) was already a component of many applications, the shift to a required narrative or case-specific justification for all applications, as opposed to just those that did not meet the presumption of eligibility, may introduce additional procedural burdens and time costs on some applicants. This may increase the complexity of preparing applications and even potentially deter participation among some eligible small businesses, especially those with limited administrative capacity or legal support. This may also implicate reliance interests for businesses that were previously certified based on presumptive eligibility. However, many eligible small businesses will continue efforts at applying for certification and assume the additional burden to apply because of the benefits to being certified and the potential opportunity it brings outweighs the added burden of the application process. All eligible businesses may apply for and potentially obtain certification under the new certification process, which mitigates any impact on reliance interests. In addition, businesses'

⁹ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

¹⁰ See *In re Aiken County*, 725 F.3d 255, 259 (D.C. Cir. 2013) (Kavanaugh, J.) ("If the President has a constitutional objection to a statutory mandate or prohibition, the President may decline to follow the law unless and until a final Court order dictates otherwise. . . . [This] basic constitutional

principle[] applies] to the President and subordinate executive agencies."); Office of Legal Counsel Opinion, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199 (1994).

reliance interests do not justify continuing to implement presumptions that DOT and DOJ have determined are unconstitutional.

- *Certification burden.* As the burden of production and persuasion shifts away from certifying officials to individual applicants, certifying agencies may experience increased numbers of intake inquiries and clarification requests as applicants navigate the new social disadvantage requirements, or face inconsistent application quality, especially during the transition period. This would require certifying agencies to spend time following up with applicants and guiding them through the application as they go through the re-certification process, which implicates certifying agencies' reliance interests. In the short-term, the increase in workload and support services on certifying agencies may temporarily elevate the demands on the recipients' staff demands or delay determinations, which could at least partially offset any cost savings from shifting this burden to applicants. However, in the long run, it is expected that after the initial review of each applicant, subsequent reviews of applicants will require minimal agency time and will not implicate agencies' reliance interests.

- *Reevaluation of all affected DBEs/ACDBEs.* DBE/ACDBE participants who have previously qualified based in whole or in part on their race or sex will incur additional costs to develop and provide the individualized narrative required by the IFR. In addition, all firms will temporarily lose certifications until the reevaluation process is complete, and some firms may lose the certifications that currently lead to opportunities for them to participate, potentially leading to a loss of business opportunities and implicating firms' reliance interests (though this would be offset by other firms who face increased access to the same opportunities). Additional administrative burdens will also fall on certifiers (UCPs) performing the reevaluations. This could also lead to delays in goal setting and program participation, resulting from the temporary pause in counting DBE participation while the reevaluation process is underway.

- *Clarified disparity study expectations.* The rule requires that disparity studies include detailed capacity analyses, which may necessitate additional economic modeling, data collection, and expert analysis beyond what is standard practice in many jurisdictions. These requirements could increase costs,

particularly for large or multi-jurisdictional studies. While such studies are episodic rather than annual, the enhanced methodology could impose non-trivial compliance costs when undertaken.

- *Elimination of race/sex reporting in bidder lists.* The removal of demographic fields from bidder list reporting will reduce the administrative burden of data entry for participants and recipients, though the cost impact would likely be negligible.

- *Terminology changes and redefinitions.* These changes update program language to reflect constitutional terminology but do not alter administrative procedures or eligibility. The impact is purely semantic and is not expected to have any material cost impacts.

Quantified Costs: Information Collection Burden (Paperwork Reduction Act)

In addition to the above qualitative costs, the Department has quantified a portion of the expected compliance burdens as part of its Paperwork Reduction Act (PRA) package of the rule. These burdens represent the time and resources required to prepare, submit, and review program-related information.

Requirement	Estimated cost burden	Timing
Certification narratives (firms)	\$91.9 million	One-time.
UCP reevaluations	\$3.4 million	One-time.
Interstate certification	\$0.46 million	One-time.
Bidders' list reporting	\$1.24 million	Annual.
ACDBE annual report	\$0.58 million	Annual.
Goal setting (disparity studies)	\$0.46 million (annual cost)	Every three years.

These figures reflect fully loaded labor costs consistent with the Bureau of Labor Statistics data and DOT's standard methodology. One-time burdens primarily reflect transaction costs related to individualized certification requirements, while recurring burdens are associated with ongoing reporting and program administration. Overall, the IFR's primary quantified costs are transitional and one-time, totaling approximately \$95 million, with recurring annualized burdens of about \$1.8 million.

Benefits

With respect to benefits, the IFR will enhance constitutional compliance and reduce risks associated with constitutional litigation. It may also improve public trust by reinforcing fairness in eligibility determinations, which, although not easily quantifiable,

represent important benefits from improved program integrity.

B. Executive Order 14192 ("Unleashing Prosperity Through Deregulation")

This interim final rule is considered an E.O. 14219 deregulatory action because the unquantified cost-savings associated with constitutional compliance outweigh the quantified costs.

C. Executive Order 13132 ("Federalism")

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the rule satisfies the requirements of the Executive Order. While the rule may include provisions that impose substantial direct compliance costs on State and local governments, the Department has determined that

consultation with State and local governments prior to promulgation of the rule is not practicable given the urgent need to cure constitutional infirmities with the existing DBE and ACDBE regulations. These changes are required not by statute, but to ensure that the DBE and ACDBE programs do not violate the U.S. Constitution. We seek comment from State and local governments on these burdens during the comment period for this IFR.

D. Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments")

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal

governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not result in annual State expenditures exceeding the minimum threshold. The Department has determined that the requirements of the Title II of the Unfunded Mandates Reform Act of 1995 therefore do not apply to this rulemaking.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D, available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts>. Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department's DBE and ACDBE regulations. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . ." 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.

This IFR modifies existing collection instruments in both parts 23 and 26. The following is a description of the sections that contain new and modified information collection requirements, along with the estimated hours and cost to fulfill them.

For purposes of estimating the cost burden on recipients, the State government wage rate was taken from the Bureau of Labor and Statistics (BLS) estimate of median wages for employees in the category of "Eligibility Interviewer in Government Programs" (OEWS Designation 43–4061). For the purpose of calculating loaded wage rates, these burden estimates assume wages represent 61.9 percent of total compensation, which is consistent with similar loaded wage rate estimates identified by BLS and used by DOT for related purposes. Because wages represent 61.9 percent of total compensation, the appropriate cost multiplier is 1.62 (1/0.619). Accordingly, the wage rate (\$25.95) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$42.04 to account for the cost of employer-provided benefits.

For purposes of estimating the cost burden on applicant and certified DBE/ACDBE firms, the wage rate was taken from the BLS estimate of median wages for individuals in the category of "Cross-industry, Private Ownership Only" (OEWS Designation 00–0001). Using the same loaded wage rate identified above, the wage rate for DBE/

ACDBE applicant firms (\$69.20) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$112.10 to account for the cost of employer-provided benefits. The Department emphasizes that many of these hour and cost burdens are one-time burdens as a result of the change in the DBE certification eligibility requirements. After the initial transition to the new requirements, increases in annual burdens will be modest. For DOT recipients, reporting burdens are expected to decrease as a result of reduced DBE/ACDBE reporting requirements.

i. Reapplication Review for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

To satisfy the social and economic disadvantage (SED) requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated persons who did not face barriers in obtaining terms.

The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

The owner must attach to the PN a current personal net worth (PNW) statement and any other financial information the owner considers relevant. The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2,000 hours. The total annual cost burden was calculated based on one stakeholder response of \$80,000.

In preparing this estimate, DOT estimated a 10 percent decrease in the number of currently certified firms who will submit documentation to maintain their DBE/ACDBE decertification status. DOT also assumed a 50 percent reduction in the total burden hours compared to the pre-existing estimated burden for completing the full Uniform Certification Application (UCA), as firms will be able to use many of their other existing certification documents for resubmission.

Respondents: Firms seeking to maintain their DBE/ACDBE certification.

Estimated Number of Respondents: 41,000.

Frequency: One time per respondent.

Total Annual Burden Hours: 820,000 (one-time burden).

Total Annual Cost Burden: \$91,922,000 (one-time burden).

ii. Unified Certification Program (UCP) Reevaluation of Applications for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

UCPs will need to reevaluate DBE/ACDBE applicant firms based on updated submission of application materials, including the PN and PNW statement. This estimate assumes an average burden of two hours to complete a review and make a disposition for each DBE/ACDBE certification application, including notifications to other jurisdictions.

Respondents: UCPs.

Estimated Number of Respondents: 53.

Frequency: One-time reevaluation of 41,000 applicant firms.

Total Annual Burden Hours: 82,000 (one-time burden).

Total Annual Cost Burden: \$3,447,280 (one-time cost).

iii. Maintaining and Updating Bidders' Lists

We estimate that recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: FAA, FHWA, and FTA funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: 3 times per year.

Total Annual Burden Hours: 29,502.

Total Annual Cost Burden: \$1,240,264.

iv. ACDBE Annual Report of Percentages of ACDBEs in Various Categories

We estimate that FAA airport recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: State Departments of Transportation, District of Columbia, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: \$579,311.

v. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

The Department estimates a modest increase in burden for setting overall DBE goals as a result of the transition to the new DBE certification requirements and enhanced expectations related to disparity studies used in setting overall goals. These changes may result in increases in the amount of time for recipients to set goals based on the relative availability of certified DBEs.

Respondents: DOT funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: Once every three years.

Total Annual Burden Hours: 10,927.

Total Annual Cost Burden: \$459,371.

vi. Providing Evidence of Certification to an Additional State When a Firm Certified in Its Home State Applies to Another State for Certification (Interstate Certification)

The Department estimates a one-time increase in the burden for firms to provide evidence of certification to an additional State when a firm certified in its home State applies to another State for certification.

Respondents: DBE/ACDBE firms applying for interstate certification.

Estimated Number of Respondents: 4,100.

Frequency: Once.

Total Annual Burden Hours: 4,100.

Total Annual Cost Burden: \$459,610 (one-time cost).

As noted in the Costs and Benefits section of this analysis, these burden hour and cost estimates have been incorporated into the Department's overall assessment of regulatory costs.

Notwithstanding any other provision of law, no person is required to respond to a collection of information unless that collection displays a valid OMB control number.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DOT will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Sean P. Duffy,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Amend § 23.1 by revising paragraph (c) to read as follows:

§ 23.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's ACDBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 3. Amend § 23.3 as follows:

■ a. Add definitions for ACDBE-conscious and ACDBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The additions and revisions read as follows:

§ 23.3 What do the terms used in this part mean?

ACDBE-conscious measure or program is one that is focused specifically on assisting only ACDBEs.

ACDBE-neutral measure or program is one that is, or can be, used to assist all small business concerns.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically

disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, applicants may qualify as socially and economically disadvantaged only if they can meet the relevant criteria described in § 26.67.

- 4. Amend § 23.25 as follows:
 - a. Revise the introductory text of paragraphs (d) and (e); and
 - b. Add paragraph (h).

The revisions read as follows:

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(d) Your ACDBE program must include ACDBE-neutral measures that you will take. You must maximize the use of ACDBE-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of ACDBE-neutral measures you can implement:

(e) Your ACDBE program must also provide for the use of ACDBE-conscious measures when ACDBE-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of ACDBE-conscious measures you can implement:

(h) Effective October 3, 2025, you may not use any of the measures described in paragraph (e) of this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

- 5. Amend § 23.26 by revising paragraphs (b) introductory text, (b)(1), (d)(5), and (e) to read as follows:

§ 23.26 Fostering small business participation.

(b) This element must be submitted to the FAA for approval as a part of your ACDBE program. As part of this program element, you may include, but are not limited to including, the following strategies:

(1) Establish an ACDBE-neutral small business set-aside for certain concession opportunities. Such a strategy would include the rationale for selecting small

business set-aside concession opportunities that may include consideration of size and availability of small businesses to operate the concession.

(5) You will take aggressive steps to encourage those socially and economically disadvantaged firms eligible for ACDBE certification to become certified; and

(e) A State, local, or other program, in which eligibility requires satisfaction of race, sex, or other criteria in addition to business size, may not be used to comply with the requirements of this part.

§ 23.27 [Amended]

- 6. Amend § 23.27 as follows:
 - a. Remove paragraph (c)(2)(iv);
 - b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;
 - c. Remove paragraph (d)(1);
 - d. Redesignate subparagraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and
 - e. Remove paragraphs (d)(5) and (d)(6).

- 7. Amend § 23.41 by revising paragraph (d) to read as follows:

§ 23.41 What is the basic overall goal requirement for recipients?

(d) Effective October 3, 2025, you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 23.81.

- 8. Amend § 23.43 by revising paragraph (b) to read as follows:

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

(b) Stakeholders with whom you must consult include, but are not limited to, business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and the recipient's efforts to increase participation of ACDBEs.

- 9. Amend § 23.45 by revising paragraphs (f), (g), and (h) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of ACDBE-neutral and ACDBE-conscious means, respectively, and the basis for making this projection (see § 23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your ACDBE-neutral/ACDBE-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (i.e., the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or ACDBE-neutral/ACDBE-conscious "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding.

- 10. Amend § 23.51 as follows:

- a. Revise the introductory text of paragraph (a);
- b. Revise paragraph (a)(2);
- c. Revise paragraph (c)(3); and
- d. Revise paragraph (d)(5).

The revisions read as follows:

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47 through 23.49 that would be performed by ACDBEs in the absence of social and economic disadvantage and its effects.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have been impacted by social and economic disadvantage in connection with concession opportunities or related business opportunities.

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must

provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(5) Among the information you submit with your overall goal (see § 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through ACDBE-neutral and ACDBE-conscious measures, respectively (see §§ 26.51(c) of this chapter).

* * * * *

■ 11. Amend § 23.53 by adding paragraph (g) to read as follows:

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

* * * * *

(g) Effective October 3, 2025, you as a car rental company may not count any ACDBE participation toward the goal that an airport has set for you until the UCP covering that airport has completed the reevaluation process described in part 26, § 23.81

■ 12. Amend § 23.55 by adding paragraph (m) to read as follows:

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

* * * * *

(m) Effective October 3, 2025, you may not count any ACDBE participation toward ACDBE goals until the UCP covering you has completed the reevaluation process described in § 23.81.

■ 13. Amend § 23.57 as follows:

- a. Revise paragraphs (b)(4) and (c); and
- b. Add paragraph (d).

The revision and addition read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) * * *

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your ACDBE-

neutral/ACDBE-conscious split, or the introduction of additional ACDBE-neutral or ACDBE-conscious measures.

* * * * *

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your ACDBE-conscious/ACDBE-neutral split or introducing additional ACDBE-neutral or ACDBE-conscious measures for the remainder of the fiscal year.

(d) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 14. Add § 23.81 to subpart E to read as follows:

§ 23.81 ACDBE reevaluation process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified ACDBE;

(2) Provide each firm identified pursuant to paragraph (a)(1) of this section with the opportunity to submit documentation demonstrating its ACDBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to paragraph (a)(1) of this section meets the ACDBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this chapter shall not apply to any action taken pursuant to paragraph (a) of this section.

(c) Each UCP must reevaluate each firm identified pursuant to paragraph (a)(1) of this section as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 15. The authority for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312,

1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 16. Amend § 26.1 by revising paragraph (c) to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 17. Amend § 26.5 as follows:

■ a. Add definitions for DBE-conscious and DBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The addition and revision read as follows:

§ 26.5 Definitions.

* * * * *

DBE-conscious measure or program is one that is focused specifically on assisting only DBEs.

DBE-neutral measure or program is one that is, or can be, used to assist all small businesses.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can meet the relevant criteria described in § 26.67. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

* * * * *

§ 26.11 [Amended]

■ 18. Amend § 26.11 as follows:

■ a. Remove paragraph (c)(2)(iv);

■ b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as subparagraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;

■ c. Remove paragraph (e)(1);

■ d. Redesignate paragraphs (e)(2), (e)(3), and (e)(4) as paragraphs (e)(1), (e)(2), and (e)(3), respectively; and

■ e. Remove paragraphs (e)(5) and (e)(6).

■ 19. Amend § 26.37 by revising paragraph (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring?

* * * * *

(b) A recipient's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed, or in the case of DBE-neutral participation, the work subcontracted, to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of § 26.55. This mechanism must include a written verification that you have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. The monitoring to which this paragraph (b) refers may be conducted in conjunction with monitoring of contract performance for other purposes such as a commercially useful function review.

* * * * *

■ 20. Amend § 26.39 by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 26.39 Fostering small business participation.

* * * * *

(b) * * *

(1) Establishing a DBE-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

* * * * *

(5) To meet the portion of your overall goal you project to meet through DBE-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

* * * * *

■ 21. Amend § 26.45 as follows:

- a. Revise paragraph (a)(2);
- b. Revise paragraph (b);
- c. Revise paragraph (c)(3);
- d. Revise paragraph (d)(1)(ii);
- e. Revise paragraph (d)(3);
- f. Revise paragraph (f)(3);
- g. Revise paragraph (g)(1); and
- h. Revise paragraph (h);

The revisions read as follows:

§ 26.45 How do recipients set overall goals?

(a) * * *

(2) If you are an FTA Tier II recipient who intends to operate a DBE-neutral program, or if you are an FAA recipient who reasonably anticipates awarding \$250,000 or less in FAA prime contract funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage. You cannot simply rely on either the 10 percent national goal, your previous overall goal, or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(1) * * *

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure. To the extent that the disparity study provides a detailed capacity analysis, include the methodology used;

* * * * *

(3) If you attempt to make an adjustment to your base figure to account for the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

* * * * *

(f) * * *

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through DBE-neutral and DBE-conscious measures, respectively (see § 26.51(c)).

* * * * *

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official internet website and may be posted in any other sources (e.g., trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official internet website.

* * * * *

(h) Effective October 3, 2025 you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 22. Amend § 26.47 as follows:

- a. Revise paragraph (c)(4);
- b. Revise paragraph (d); and
- c. Add paragraph (e).

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) * * *

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your DBE-conscious/DBE-neutral split, or the introduction of additional DBE-neutral or DBE-conscious measures.

* * * * *

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current

trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your DBE-conscious/DBE-neutral or introducing additional DBE-neutral or DBE-conscious measures for the remainder of the fiscal year.

(e) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 26.111.

- 23. Amend § 26.51 as follows:
- a. Revise paragraph (a);
- b. Revise the introductory text to paragraph (b);
- c. Revise paragraph (c);
- d. Revise paragraph (d);
- e. Revise paragraph (e)(2);
- f. Revise paragraph (f);
- g. Revise paragraph (g); and
- h. Add paragraph (h).

The revisions read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using DBE-neutral means of facilitating DBE-neutral participation. DBE-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) DBE-neutral means include, but are not limited to, the following:

* * * * *

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through DBE-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using DBE-neutral means.

* * * * *

(e) * * *

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work

involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of DBE-neutral means.

* * * * *

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of social and economic disadvantage, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through DBE-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example 1 to paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through DBE-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I. However, if part way through Year I, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year I, you could begin setting DBE-conscious contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of DBE-neutral or DBE-conscious measures to allow you to meet the overall goal.

Example 2 to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of DBE-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your

participation for the year is likely to be only 8 percent total, then you would increase your use of DBE-neutral or DBE-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by DBE-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only DBE-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example 3 to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through DBE-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using DBE-neutral means. You simply use DBE-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) of this section projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years using contract goals (*i.e.*, not through DBE-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example 4 to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) of this section projection estimates that you will obtain 4 percent DBE participation through DBE-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through DBE-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

(h) Effective October 3, 2025, you may not set any contract goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 24. Amend § 26.55 by adding paragraph (i) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(i) Effective October 3, 2025, you may not count any DBE participation toward DBE goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 25. Amend § 26.61 by revising paragraph (b) to read as follows:

§ 26.61 Burden of proof.

* * * * *

(b) The firm has the burden of demonstrating, by a preponderance of the evidence, *i.e.*, more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, the certifier must consider all the information in the record, viewed as a whole. In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

■ 26. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including

obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

■ 27. Add § 26.111 to subpart F to read as follows:

§ 26.111 DBE Reevaluation Process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified DBE;

(2) Provide each firm identified pursuant to subparagraph (a)(1) with the opportunity to submit documentation demonstrating its DBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to subparagraph (a)(1) meets the DBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this part shall not apply to any action taken pursuant to paragraph (a).

(c) Each UCP must reevaluate each firm identified pursuant to subparagraph (a)(1) as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 250915-0853]

RIN 0648-BM94

Fisheries of the Caribbean, Gulf of America, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 2 to the Fishery Management Plans (FMPs) for Puerto Rico, St. Croix, St. Thomas and St. John FMP (Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). This final rule prohibits and restricts the use of certain net gear in U.S. Caribbean Federal waters and requires a descending device to be available and ready for use on vessels when fishing for federally managed reef fish species in U.S. Caribbean Federal waters. The purpose of this final rule and Amendment 2 is to protect habitats and species from the potential negative impacts associated with the use of certain net gear and to enhance the survival of released reef fish in U.S. Caribbean Federal waters.

DATES: This final rule is effective November 3, 2025, except for the revisions for §§ 622.437(a)(4), 622.477(a)(4), and 622.512(a)(4), which are effective April 1, 2026.

ADDRESSES: Electronic copies of Amendment 2, which includes a fishery impact statement, an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-2-puerto-rico-st-croix-and-st-thomas-and-st-john-fishery-management-plans-trawl>.

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, NMFS Southeast Regional Office, 727-824-5305, maria.lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS, with the advice of the Council, manages the Puerto Rico, St. Croix, and St. Thomas and St. John fisheries in U.S. Caribbean Federal waters under the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs. The Council prepared the FMPs, which the Secretary of Commerce approved, and NMFS implements the FMPs through regulations at 50 CFR parts 600 and 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 27, 2024, NMFS published a notice of availability for Amendment 2 and requested public comment (89 FR 68572). On September 30, 2024, NMFS published a proposed rule for Amendment 2 and requested public comment (89 FR 79492). NMFS

**Official Frequently Asked Questions (FAQs) on the U.S.
Department of Transportation’s Disadvantaged Business Enterprise
Program and Disadvantaged Business Enterprise in Airport
Concessions Program Implementation Modifications,
October 3, 2025, Interim Final Rule

Updated December 1, 2025**

The General Counsel of the Department of Transportation has reviewed these questions and answers and approved them as consistent with the language and intent of 49 CFR Part 26. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

A. General

1. When did the Interim Final Rule (IFR) become effective?

The IFR was published in the Federal Register on October 3, 2025 and became effective that day.

2. By when must the recipients update their DBE program plans?

In accordance with § 26.21(b), significant changes to DBE plans must be submitted to DOT for approval. The Department believes the IFR significantly changes the way recipients must implement their DBE plans. Therefore, we expect that recipients will amend their plans as soon as practicable after the Unified Certification Program (UCP) in their jurisdiction completes the reevaluation process described in § 26.111 to reflect the changes in the IFR. Any portion of a DBE program plan that is dependent upon presumptions of disadvantage, DBE goals, or any aspect of the prior DBE rule that has changed based on the IFR is no longer valid.

3. Do these changes apply to the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program?

Yes, the IFR made changes to the ACDBE regulations in 49 CFR part 23 in a substantially similar manner to those changes made in 49 CFR part 26. Accordingly, these FAQs apply to ACDBEs.

4. Can recipients implement their own race- and sex-neutral small business enterprise programs on federally assisted contracts? (added 12/01/2025)

Yes. DOT's DBE regulations at 49 CFR § 26.39 (Fostering Small Business Participation) provide that recipients must include an element in their DBE program plans to facilitate competition by small business concerns. This element must be submitted to the appropriate DOT operating administration for approval as a part of the recipient's DBE program. As part of this type of program's elements, recipients may include, among other practices, establishing a DBE-neutral small business set-aside program. Certification for eligibility in a recipient's small business enterprise program cannot be based in whole or in part on race or sex.

5. Are recipients expected to continue meeting the requirements of a DBE conciliation agreement under 49 CFR § 26.103? (added 12/01/2025)

Yes, but only for compliance measures in a conciliation agreement that relate to compliance with regulations that remain valid under the IFR. Any compliance measures remaining open that relate to the implementation of race- or sex- based preferences removed under the IFR are null and void.

6. After the reevaluation process, if a DBE performing work on a contract is not recertified during the reevaluation process, the recipient will be required to take appropriate action to discontinue the effect of the unconstitutional certification. What appropriate action must be taken? (added 12/01/2025)

If the reevaluation process results in circumstances that necessitate a recipient to take appropriate action, the recipient must assess its project, including, for example, the contracts and subcontracts, and take all measures to ameliorate prior unconstitutional actions. The appropriate action a recipient must take will depend on individual circumstances and should be tailored on a case-by-case basis.

7. Where the FAQs reference DBE programs and their regulatory provisions, do they apply similarly to ACDBE programs? (added 12/01/2025)

Yes, the FAQs apply to both the DBE and ACDBE programs.

B. Contracting Questions

1. How does the IFR affect projects that are currently authorized/advertised and projects/contracts already awarded that have DBE goals?

Recipients with DBE goals on contracts that have been advertised but not yet let (i.e., bids not yet opened) must issue amendments to the advertisements removing the DBE contract goals. For projects with DBE contract goals that have been let (i.e., bids opened) but contracts not yet awarded (i.e., executed), recipients must take appropriate action to

zero out the DBE goal. Due to the program changes in the IFR, DOT will allow recipients to amend the contracts without readvertising the projects, but each recipient should make its own determination on whether the contract needs to be recompeted under State law. Contracts with a DBE goal that were let and executed prior to October 3, 2025 are not required to be modified, but DBE participation on such contracts cannot be counted toward the DBE contract goal or toward the recipient's overall DBE goal until the UCP in the recipient's jurisdiction completes the reevaluation process described at 49 CFR § 26.111. If, after the reevaluation process, every DBE performing work on a contract is recertified under the new standards, then the contract will not need to be modified. In contrast, if a DBE performing work on a contract is not recertified during the reevaluation process, the recipient will be required to take appropriate action to discontinue the effect of the unconstitutional certification; if a recipient does not take appropriate action with respect to a contract, DOT will not make any payments with respect to that contract.

2. Do recipients need to continue to perform commercially useful function (CUF) reviews of DBE work on existing contracts during the reevaluation process described in 49 CFR § 26.111?

No. Because the purpose of CUF reviews is to ensure that DBE participation on a project can be properly counted toward DBE goals (contract goals and overall DBE goals) and the counting of DBE participation is suspended during the reevaluation process, it is unnecessary for recipients to conduct CUF reviews during the reevaluation process. Recipients may determine whether any existing contracts should be modified with respect to ongoing CUF requirements.

3. Do the regulatory DBE termination provisions continue to apply during the reevaluation period described in 49 CFR § 26.111?

Yes. The termination provisions at 49 CFR § 26.53(f) continue to apply to existing contracts. A prime contractor cannot terminate a DBE or any portion of the DBE's work listed in response to the good faith efforts bidding requirements of 49 CFR § 26.53(b) without the recipient's prior written consent upon a showing of good cause, unless the recipient causes the termination or reduction. (49 CFR § 26.53(f)). The regulations provide:

“Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.”

Good cause for termination exists if a DBE loses its DBE certification after the reevaluation process described in § 26.111 is completed because it is ineligible to receive DBE credit for the type of work required. (49 CFR 26.53(viii)).

4. How does the IFR affect DBE open-ended performance plans for design-build projects?

In cases in which a design-build contractor has already signed contracts prior to October 3, 2025 with DBE subcontractors toward meeting an open-ended performance plan, the contractor should proceed with the contract. The DBE subcontractor may not be terminated or have its work reduced without the written consent of the recipient and only for good cause, including a change in eligibility. See 49 CFR 26.53 for additional grounds for good cause. Where a DBE goal has been established for a design-build contract or a separate phase of a design-build contract, but no DBEs have yet been awarded contracts, the recipient should take appropriate action to zero out the DBE goal.

If, after the reevaluation process, every DBE performing work on a design-build contract is recertified under the new standards, then the recipient need not take any further action. In contrast, if a DBE performing work on a design-build contract is not recertified during the reevaluation process, the recipient will be required to take appropriate action to discontinue the effect of the unconstitutional certification; if a recipient does not take appropriate action with respect to a contract, DOT will not make any payments with respect to that contract.

5. How does a recipient remove an advertised DBE contract goal prior to a letting?

Recipients should issue amendments to the project advertisements to remove the DBE goal.

6. Does Section II (Nondiscrimination), Part 10.a, of Federal Highway Administration (FHWA) Form 1273 incorporate by reference the DBE regulations as amended by the IFR?

Yes. For contracts awarded on or after October 3, 2025, the new DBE program regulations apply.

7. What changes should be made to DBE special provisions that recipients use for contract awards?

DBE special provisions based on the DBE regulations in effect before October 3, 2025, should not be included in contracts entered into on or after October 3, 2025. For any contracts entered into on or after October 3, 2025, recipients should review and update any such DBE special provisions to comply with the DBE regulations as amended by the IFR. To the extent that an operating administration approves DBE special provisions, updated DBE special provisions must be approved by that DOT operating administration. Recipients may use their revised and DOT-approved DBE special provisions (when required) on contracts entered into after the recipient's UCP has completed the reevaluation described in 49 CFR § 26.111 and adopted a new overall DBE goal in accordance with 49 CFR § 26.45.

8. Are DOT recipients required to include the contract clauses in 49 CFR §§ 23.9 and 26.13 in contracts awarded on or after October 3, 2025 during the UCP reevaluation period?

Yes, DOT recipients are required to include the contract clauses listed in 49 CFR §§ 23.9 and 26.13(a-b) in all contracts. The IFR did not make changes to this requirement.

9. Are DOT recipients required to comply with the prompt payment requirements in 49 CFR § 26.29 during the UCP reevaluation period?

Yes. DOT recipients are required to implement and document compliance with the prompt payment requirements in 49 CFR § 26.29, including: (1) ensuring prime contractors pay subcontractors for satisfactory performance of their contract no later than 30 days from receipt of each payment made to the prime contractor, and (2) prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractors work is satisfactorily completed. The IFR did not make changes to this requirement.

10. Is a prime contractor that terminates a DBE or a portion of a DBE's work on an existing contract in accordance with the termination provisions in 49 CFR § 26.53(f) during the reevaluation process described in 49 CFR § 26.111 required to use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal in accordance with 49 CFR § 26.53(g)? (added 12/01/2025)

No. During the reevaluation process described in 49 CFR § 26.111, a recipient is prohibited from counting DBE participation toward DBE goals. As a result, a prime contractor who terminates a DBE or a portion of a DBE's work in compliance with the termination procedures in 49 CFR § 26.53(f) is not required to attempt to include additional DBE participation because the DBE goal provisions of the contract cannot be given effect under the IFR.

11. May a recipient issue a change order to zero out a DBE goal on an existing contract executed before October 3, 2025? (added 12/01/2025)

Yes. A recipient may issue a change order to zero out a contract goal on an existing contract executed before October 3, 2025. However, termination of any DBEs in executed contracts prior to October 3, 2025, must be processed in accordance with the termination provisions in 49 CFR § 26.53(f).

12. Should recipients set DBE goals to zero for task orders issued for on-call, Indefinite Delivery Indefinite Quantity (IDIQ), or Job-Order-Contracting (JOC) contracts extending past the IFR issuance? (added 12/01/2025)

Yes. The IFR provides that until a UCP completes the reevaluation process provided in 49 CFR § 26.111, each recipient covered by that UCP may not: (1) include DBE contract goals; or (2) count any participation toward overall DBE goals.

13. Should recipients set concession-specific ACDBE goals to zero on new Requests for Proposals (RFPs), Requests for Qualifications (RFQs), Requests for Letters of Interest (RLIs), or similar concession procurement methods during the IFR transition? (added 12/01/2025)

Yes. According to the IFR, until the UCP completes the reevaluation process provided in 49 CFR § 23.81, each recipient covered by that UCP may not: (1) include concession-specific ACDBE goals; or (2) count any participation toward overall ACDBE goals.

14. For projects with DBE goal shortfalls that were completed prior to October 3, 2025, should a recipient conduct shortfall reviews and carry out the applicable remedies? (added 12/01/2025)

No. Because the IFR requires recipients to stop counting DBE participation toward goals until the recipient's UCP completes the reevaluation process at 49 CFR § 26.111, any project shortfall analysis regarding the prime contractor's good faith efforts to meet a DBE contract goal (49 CFR § 26.53(g)) not completed prior to October 3, 2025, should be terminated and no remedies applied.

C. Certification Reevaluation

1. Does a UCP have to reevaluate all currently certified DBEs in its DBE directory or only those DBEs for which the UCP was the jurisdiction of original certification?

Under the certification reevaluation requirements at 49 CFR § 26.111, UCPs are required to reevaluate the certifications only of those DBEs for which the UCP is the jurisdiction of original certification. UCPs are not required to reevaluate the certifications of DBEs that obtained certification from the UCP through the interstate certification procedures at 49 CFR § 26.85. DBEs that received certification from UCPs through interstate certification will have their certifications reevaluated by the UCPs in their jurisdiction of original certification. If such DBEs are recertified by the UCP in their jurisdiction of original certification, they will be required to reapply for interstate certification with the UCPs for the jurisdictions in which they wish to be certified.

2. Is there a date by which a UCP must complete its certification reevaluation process?

No. The regulation at 49 CFR § 26.111 provides that UCPs should complete the reevaluation process “as quickly as practicable.”

3. Can a UCP impose a deadline on currently certified DBEs for submission of the reevaluation documentation required under 49 CFR § 26.111?

No, the regulation at 49 CFR § 26.111 does not provide a deadline for a currently certified DBE to submit documentation demonstrating its DBE eligibility under the new standards provided in the IFR. Firms that do not submit the necessary information, however, will remain ineligible for the DBE program until they submit the required documentation demonstrating DBE eligibility under the new standards.

4. Can a UCP simply decertify all currently certified DBEs without completing the reevaluation process?

No. The IFR requires UCPs to identify each currently certified DBE and provide each identified firm with the opportunity to submit documentation demonstrating its DBE eligibility under the standards described at 49 CFR § 26.67

5. Are recipients required to submit Uniform Reports during the reevaluation process?

Under the IFR, recipients are not required to update their overall DBE goals until the UCP in the recipient’s jurisdiction has completed the reevaluation process described in 49 CFR § 26.111 and notified the Department that the reevaluation process is complete. In addition, recipients may not set any contract goals and may not count any DBE participation toward DBE goals until the UCP in the recipient’s jurisdiction completes the reevaluation process described in 49 CFR § 26.111. As a result of these requirements, recipients are not required to submit Uniform Reports under 49 CFR § 26.21 until the recipient has established a new overall annual DBE goal following completion of the reevaluation process at 49 CFR § 26.111.

6. What is the Department’s role in the reevaluation process?

Each UCP is responsible for carrying out the reevaluation of currently certified DBEs for which the UCP was the jurisdiction of original certification. DOT is available to provide technical assistance as necessary.

7. Can a firm that is decertified through the reevaluation process appeal the decision to DOT?

Yes. A firm that is decertified under the reevaluation procedures described at 49 CFR § 26.111 is entitled to appeal the decertification to DOT under the procedures described at 49 CFR § 26.89.

8. Should recipients take down their DBE directories until their respective UCP completes the reevaluation process (and certifies qualified DBEs)? (added 12/01/2025)

That is a matter of discretion for each recipient. No DBE goals may be set, and no DBE participation may be counted until the UCP in the recipient's jurisdiction completes the reevaluation process described in 49 CFR § 26.111.

9. Does the owner of a DBE firm undergoing reevaluation need to submit a new personal net worth statement along with the personal narrative of social disadvantage? (added 12/01/2025)

Yes. In seeking reevaluation of its certification under 49 CFR § 26.111, the owner of a currently certified DBE needs to submit the personal narrative along with the current personal net worth statement and any other financial information the owner considers relevant, in accordance with 49 CFR § 26.67. Under 49 CFR § 26.83(i), currently certified DBEs continue to be responsible for notifying the UCP in writing of any changes in circumstances affecting the DBE's ability to meet the certification requirements of 49 CFR Part 26, including disadvantaged status (*e.g.*, compliance with the personal net worth threshold of \$2,047,000).

10. To establish social disadvantage through the personal narrative, does a DBE owner have to meet all categories of economic hardship, systemic barriers, and denied opportunities described in 49 CFR § 26.67? (added 12/01/2025)

No. Per 49 CFR § 26.67, a DBE owner must provide the certifier a personal narrative that establishes the existence of disadvantage by a preponderance of the evidence. Certifiers must holistically evaluate all presented evidence before making a determination. Considerations may include:

Education -- factors such as denial of equal access, compared to all similarly situated persons, to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures that discouraged the individual from pursuing a professional or business education.

Employment -- factors such as unequal treatment compared to all similarly situated persons in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory behavior by an employer or labor union; and social patterns or pressures that have channeled the individual into non-professional or non-business fields; or

Business history – factors such as unequal access, compared to all similarly situated persons, to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts

or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

Other relevant evidence may be considered, but the incidents or experiences discussed in the narrative must not rely, in whole or in part, on race or sex.

11. Should the personal narrative span the full scope of the owner’s life experiences related to economic disadvantage, from childhood through to the present, including both the time before and after starting the business? (added 12/01/2025)

The personal narrative can discuss incidents and experiences of economic hardship, systemic barriers, and denied opportunities from any point in the owner’s life within American society that impeded the owner’s progress or success in education, employment, or business opportunities, including obtaining financing on terms available to similarly situated, non-disadvantaged persons. However, the incidents or experiences discussed in the narrative must not rely, in whole or in part, on race or sex.

12. If a DBE is recertified through the reevaluation process, will its certification anniversary remain the date of its original certification or the date it is recertified under the new IFR certification standards? (added 12/01/2025)

The DBE regulations at 49 CFR § 26.83(j) require a certified DBE to provide its certifiers, every year on the anniversary of its original certification, a new Declaration of Eligibility (DOE) along with the specified documentation in section 26.65(a). The certification anniversary of a DBE recertified under the reevaluation process at 49 CFR § 26.111 will continue to be the date of the DBE’s original certification under the DBE certification standards issued prior to October 3, 2025. This should alleviate the burden on UCPs of reviewing annually submitted DOEs that may otherwise be concentrated around the time the UCPs are completing their reevaluations of existing DBEs.

13. Because a UCP cannot establish a deadline by which currently certified DBEs must submit the reevaluation documentation required under 49 CFR § 26.111 (Q&A C.3), at what point in time can a UCP notify DOT the reevaluation process is complete? (added 12/01/2025)

The reevaluation regulation at 49 CFR § 26.111 provides that each UCP must provide currently certified DBEs with the opportunity to submit documentation demonstrating DBE eligibility under the new standards adopted under the IFR. 49 CFR § 26.111(a)(2). The rule, however, does not establish a deadline by which currently certified DBEs must submit such documentation. See Q&A C.3. This creates a situation where a UCP may be prevented from completing the reevaluation process if a currently certified DBE delays or refrains from submitting the required documentation. To address this situation, a UCP can set a date by which currently certified DBEs should submit the required documentation. A UCP may notify DOT that its reevaluation process is complete after it completes its reevaluation of the firms that submit the necessary information by the UCP’s submission

date. Currently certified DBEs that do not submit the required information by the UCP's submission date may still submit the required documentation at a later time, but such firms will remain ineligible for counting towards DBE participation until they submit the required documentation demonstrating DBE eligibility under the new standards and obtain certification.

14. Does the IFR affect Alaska Native Corporations (ANCs) or require ANCs to seek certification? (added 12/01/2025)

The DBE IFR does not change the DBE certification rules for ANCs. The DBE certification requirements for ANC-owned firms continue to be governed by 49 CFR § 26.63(c)(2), which was not amended by the DBE IFR.

15. Does a UCP have the discretion to complete the reevaluation process for ACDBEs first and get that ACDBE program reinstated to start setting goals and counting participation, and then focus on the reevaluation of the DBEs thereafter? (added 12/01/2025)

UCPs should use their established procedures for determining the order for reevaluations.

D. Goal Setting and Counting

1. What do recipients need to do about their existing overall annual DBE goals?

Recipients are not required to do anything with their DBE goals until their respective UCPs have completed the reevaluation process described in 49 CFR § 26.111. Until the UCP completes the reevaluation process, a recipient is not required to update its DBE goal (§ 26.45(h)) and may not count any DBE participation toward its goal (§ 26.55(i)).

2. What is the role of DOT operating administrations in reviewing the three-year DBE goal setting methodology?

DOT operating administrations will continue to review and approve the DBE goal methodologies of their recipients in accordance with 49 CFR § 26.45. Recipients are not required to update their overall goal methodologies until the UCP in the recipient's jurisdiction has completed the reevaluation process described in 49 CFR § 26.111.

3. Can recipients continue to set DBE contract goals before the recipient's UCP has completed the reevaluation process described in 49 CFR § 26.111?

No. A recipient may not set any DBE contract goals until the UCP in the recipient's jurisdiction has completed the reevaluation process described in 49 CFR § 26.111.

4. Should recipients continue counting DBE participation on existing contracts without DBE goals toward the recipient's overall goal?

No. Starting on October 3, 2025, no DBE participation may be counted toward a recipient's overall goal, including such participation obtained through race and gender-neutral means.

E. New Certification Applications

1. Will new DBE applicants only need to provide a personal narrative statement and personal net worth statement, or will other components of the regulatory application process apply?

New applicants will be required to provide a personal narrative statement in addition to meeting the other certification standards at 49 CFR part 26, Subpart D. Applicants are required to submit the Uniform Application Form found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/uniform-certification-application-english>. DOT expects to provide an updated Uniform Application Form on its website.

2. Will DOT update the Declaration of Eligibility (DOE) form on its website to account for the regulatory changes in the IFR? (added 12/01/2025)

Yes. DOT will update the DOE form on its website.

3. Does the IFR affect firms recently denied certification? (added 12/01/2025)

No. The IFR did not make changes to 49 CFR § 26.86. Under that provision, each UCP is authorized to set a waiting period of no more than 12 months before a firm denied certification may reapply for certification. Applicants who reapply after the waiting period expires must comply with the revised certification standards established in the IFR.

F. Transit Vehicle Manufacturers

1. Are transit vehicle manufacturers (TVM) required to set DBE goals and submit Uniform Reports in accordance with 49 CFR § 26.49(b) and (c)?

DOT will treat TVMs similarly to recipients. A TVM will not be required to update its DBE goal or submit Uniform Reports until after the UCP reevaluation of DBEs described in 49 CFR § 26.111. A manufacturer that wants to request eligibility as a TVM before the completion of the UCP reevaluation can submit a request to the Federal Transit Administration (FTA) at ftatvmsubmissions@dot.gov. During this time, FTA will not require the submission of a DBE program or DBE goal to become a TVM.

2. Are FTA recipients required to continue checking the eligible list of TVMs when purchasing vehicles?

Yes. FTA recipients are required to continue checking the eligible list of TVMs to determine if the manufacturer is eligible to bid or propose on an FTA-assisted transit vehicle procurement. FTA is working directly with the manufacturers to ensure that this list is kept up-to-date.

3. Are FTA recipients required to comply with the requirement in 49 CFR § 26.49(a)(4) and report transit vehicle purchases within 30 days of becoming contractually required during the UCP reevaluation period?

No. FTA recipients are not required to submit Transit Vehicle Award Reports during the UCP reevaluation period.

4. How do the changes to the DBE rule affect ferry procurements? (added 12/01/2025)

The DBE rule generally requires FTA recipients to limit solicitations for transit vehicles (including ferries) to vendors that are certified Transit Vehicle Manufacturers (TVM). 49 CFR § 26.49(a). However, as an alternative, a recipient may establish a project-specific DBE goal for a vehicle procurement when a TVM cannot be identified. 49 CFR § 26.49(f). Historically, recipients have relied on this alternative when procuring ferries.

Until the recipient's UCP finishes the reevaluation described in 49 CFR § 26.111, a recipient setting a project-specific goal following the procedures of 49 CFR § 26.49(f) should set a goal of zero.

§ 0.175 Judicial and administrative proceedings.

* * * * *

(b) The Assistant Attorneys General or any Deputy Assistant Attorney General of the Antitrust Division, the Civil Division, the Civil Rights Division, and the Environment and Natural Resources Division are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6003 to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before or ancillary to a court or grand jury of the United States when the subject matter of the case or proceeding is within the cognizance of their respective Divisions: Provided, however, that no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

* * * * *

Dated: December 5, 2025.

Pamela Bondi,

Attorney General.

[FR Doc. 2025–22449 Filed 12–9–25; 8:45 am]

BILLING CODE 4410–12–P; 4410–14–P

DEPARTMENT OF JUSTICE

28 CFR Part 42

[CRT Docket No. 146; AG Order No. 6509–2025]

RIN 1190–AA83

Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Justice amends its regulations implementing Title VI of the Civil Rights Act of 1964 (“Title VI”) to eliminate disparate-impact liability. These amendments align the conduct prohibited by the Department’s regulations with Title VI’s original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions implement changes directed in Executive Order 14281.

DATES: The rule is effective on December 10, 2025.

FOR FURTHER INFORMATION CONTACT: R. Jonas Geissler, Deputy Assistant Attorney General, Civil Rights Division, at 202–353–8866.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department is rescinding portions of its regulations promulgated pursuant to Title VI, 42 U.S.C. 2000d–1, to more closely align its regulations to the language that Congress enacted in Title VI prohibiting intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. There are serious statutory and constitutional concerns with the legality of the Department’s Title VI regulations that go beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. This rule accordingly rescinds those portions of the regulations that prohibit conduct having a disparate impact, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest. First, this rule rescinds the full text of 28 CFR 42.104(b)(2), which currently prohibits the utilization of “criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” Second, this rule removes the two uses of the phrase “or effect” from 28 CFR 42.104(b)(3). Third, this rule rescinds the full text of 28 CFR 42.104(b)(6). Fourth, this rule rescinds the full text of 28 CFR 42.104(c)(2), which addresses employment practices subject to Federal financial assistance.

The rule’s revisions also conform to Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy*, 90 FR 17537 (Apr. 23, 2025). That Order stated that “[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” *Id.* at 17537. The Order directed the Attorney General to, among other things, review Title VI regulations and “initiate appropriate action to repeal or amend” these regulations “to the extent they contemplate disparate-impact liability.” *Id.* at 17538. Section 3 of the Order specifically revoked the Presidential approvals of certain Justice Department Title VI regulations that address disparate-impact liability promulgated under 42 U.S.C. 2000d–1. *Id.* Though the Department would take this action independent of Executive Order 14281, the Order supports this action.

The practical impact of this rule’s modifications will be to make clear to Department Federal-funding recipients that the Department’s Title VI regulations do not prohibit conduct or activities that have a disparate impact

and prohibit only intentional discrimination, and the Department thus will not pursue Title VI disparate-impact liability against its Federal-funding recipients.

II. Discussion

A. Statutory History of Title VI

Title VI of the Civil Rights Act of 1964, as amended, provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to “effectuate the provisions of” Title VI “by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d–1. The section of the Title VI statute that sets forth the prohibited conduct, 42 U.S.C. 2000d, prohibits specifically intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (“[I]t is . . . beyond dispute—and no party disagrees—that [Title VI] prohibits only intentional discrimination.”). The statute does not explicitly provide any Federal department or agency with authority to prohibit unintentional disparate impact. And despite ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Regulatory History of Title VI

Pursuant to Executive Order 12250, “[t]he Attorney General shall coordinate the implementation and enforcement by Executive agencies of . . . Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*)” 45 FR 72995, 72995 (Nov. 2, 1980). Accordingly, the Department of Justice acts as the lead Federal agency responsible for defining the nature and scope of Title VI’s prohibition of discrimination on the basis of race, color, and national origin in programs or activities receiving Federal financial assistance. The Order directs the Department, among other things, to “develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.” *Id.* Further, as part of this responsibility, the Order provides that other agencies’ Federal regulations implementing Title VI are also subject to the Attorney General’s approval. *Id.* at 72996.

The Department’s Title VI implementing regulations are codified at

28 CFR 42.101, 42.112. The initial set of model regulations for Title VI were issued by the then-Department of Health, Education, and Welfare on December 4, 1964, which included only one reference to the “effect of” language in the “discrimination prohibited” provision of the rule. See 29 FR 16298, 16299 (Dec. 4, 1964) (provision found at 45 CFR 80.3(b)(2)). The Department adopted these model regulations in 1966, which likewise contained a single instance of the “or effect” language at 28 CFR 42.104(b)(2). 31 FR 10265, 10266 (July 29, 1966). In 1973, the Department substantively amended its regulatory description of prohibited discrimination. See 38 FR 17955 (July 5, 1973). These substantive changes include, among other things, the addition of 28 CFR 42.104(b)(3) (which added the “or effect” language to an additional provision), 28 CFR 42.104(b)(6) (which introduced the “affirmative action” language to the regulations), and 28 CFR 42.104(c)(2) (which extends the rule to Federal financial assistance whose primary objective is not to provide employment). *Id.* at 17955. In 2003, the Department added language regarding “program or activity” to reflect the amendment of Title VI by the Civil Rights Restoration Act of 1987. See 68 FR 51334, 51364 (Aug. 26, 2003); Public Law 100–259, sec. 6, 102 Stat. 28, 31 (1988). Thus, beyond the required updating of the phrase “program or activity” pursuant to the Civil Rights Restoration Act, the Department has not substantively updated its Title VI regulations since 1973—over 50 years ago.

The Department’s implementing regulation describing the scope of prohibited discriminatory conduct, 28 CFR 42.104, currently includes prohibitions on conduct that has an unintentional disparate impact, discussed more fully below.

C. Relevant Supreme Court Decisions

The Supreme Court has found that Title VI, 42 U.S.C. 2000d, does not prohibit facially neutral policies that result in disparate outcomes when there is no discriminatory intent. Rather, it prohibits only intentional discrimination. In 1978, five years after the Department last substantively amended its Title VI regulations, the Supreme Court found that Congress intended Title VI to prohibit “only those racial classifications that would violate the Equal Protection Clause” if committed by a government actor. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978) (Powell, J., announcing the judgment of the Court); *id.* at 325, 328, 352–53 (Brennan, White,

Marshall, and Blackmun, JJ., concurring in part and dissenting in part); see also *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 198 n.2 (2023) (“*SFFA*”). Shortly before *Bakke*’s Title VI holding, the Supreme Court held that the Equal Protection Clause requires proof of intentional discrimination and that “a law or other official act” that has a “racially disproportionate impact” alone does not violate that Clause. *Washington v. Davis*, 426 U.S. 229, 239 (1976); see also *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.”). Taken together, these Supreme Court cases establish that Title VI’s statutory prohibition, like the Equal Protection Clause, extends only to intentional discrimination.

In 2001, the Supreme Court, in *Alexander v. Sandoval*, reaffirmed that settled understanding. 532 U.S. at 280 (“[I]t is . . . beyond dispute . . . that [Title VI] prohibits only intentional discrimination.”). In *Sandoval*, the Supreme Court held that private plaintiffs lacked a private right of action to enforce the Department’s “disparate-impact regulations.” *Id.* at 285–87. Though the Supreme Court had previously found a private cause of action to enforce Title VI’s bar on intentional discrimination, *id.* at 279–80, that conclusion did not extend to enforcing the Department’s “disparate-impact regulations.” *Id.* at 285. As the Supreme Court explained, it is “clear” that “the disparate-impact regulations do not simply apply” the statutory prohibition, as the regulations “forbid conduct that [Title VI] permits,” so it is equally “clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations.” *Id.* While the Supreme Court in *Sandoval* “assume[d],” without deciding, that the Department’s disparate-impact regulations were valid, the Court explained that the regulations are in “considerable tension” with the Supreme Court’s Title VI precedents. Similarly, the regulations do not “authoritatively” construe Title VI because the regulations “forbid conduct”—namely, policies that unintentionally result in a disparate impact—that Title VI “permits.” *Id.* at 281–82, 284–85; see also *id.* at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”).

Finally, in 2024, the Supreme Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). See *Loper*

Bright Enters. v. Raimondo, 603 U.S. 369, 409–12 (2024). In reaching that result, the Supreme Court made clear that “statutes . . . have a single, best meaning” that is “‘fixed at the time of enactment.’” *Id.* at 400 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). Thus, Title VI’s bar on discrimination can have only one meaning. And under Supreme Court precedent, the single, best meaning of Title VI is that it “prohibits only intentional discrimination” and “permits” facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval*, 532 U.S. at 280, 286 n.6.

D. Executive Order 14281

On April 23, 2025, the President issued Executive Order 14281. This Order restated the “bedrock principle of the United States . . . that all citizens are treated equally under the law.” 90 FR at 17537. The Order explained that this “principle guarantees equality of opportunity, not equal outcomes,” and “promises that people are treated as individuals, not components of a particular race or group.” *Id.*

That Order also explained that disparate-impact liability “endangers this foundational principle.” *Id.* Disparate-impact liability, the Order reasoned, “all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability.” *Id.* As the Order explained, disparate-impact liability “not only undermines our national values, but also runs contrary to equal protection under the law and, therefore, violates our Constitution.” *Id.*

The Order relayed that because of disparate-impact liability’s problems, “[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” *Id.* The Order directed the Attorney General to, among other things, review Title VI regulations and “initiate appropriate action to repeal or amend” them “to the extent they contemplate disparate-impact liability.” *Id.* at 17538.

Section 3 of the Order also specifically revoked prior Presidential approvals of the disparate-impact regulations promulgated under Title VI, including the presidential approval of July 25, 1966, of 28 CFR 42.104(b)(2) and the presidential approval of July 5, 1973, of 28 CFR 42.104(b)(3), (b)(6)(ii) and (c)(2). *Id.* Section 5 of the Order directed the Attorney General to “initiate appropriate action to repeal or

amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.” *Id.* Accordingly, this rule revises the Department’s currently existing Title VI regulations to effectuate the Order’s policy and purpose.

In any event, the Department would have independently initiated steps toward making these changes regardless of Executive Order 14281. Even if Executive Order 14281 did not exist, in other words, the Department would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Order states, and the Department firmly agrees, that a “bedrock principle of the United States is that all citizens are treated equally under the law. This principle guarantees equality of opportunity, not equal outcomes. It promises that people are treated as individuals, not components of a particular race or group. It encourages meritocracy and a colorblind society,” not race-, color-, or national-origin-based favoritism. 90 FR at 17537. And adherence to this principle, including in the issuance of grants, “is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.” *Id.* But imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. After considering the relevant issues and factors and weighing the relevant considerations, the Department concludes that these reasons together support eliminating disparate-impact liability from the Department’s Title VI regulations. In any event, the Department concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from the Department’s Title VI regulations.

E. Need for Rulemaking

The Department’s regulation at 28 CFR 42.104, entitled “Discrimination prohibited,” contains several provisions that prohibit conduct or activities causing unintentional disparate impact, without a statutory or constitutional basis for doing so, and in some instances, may encourage or even require unlawful discrimination labeled as “affirmative action.” Section 42.104(b)(2) is the current regulation’s general disparate-impact prohibition, which states that a “recipient . . . may

not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 28 CFR 42.104(b)(2). Beyond that general prohibition, section 42.104(b)(3) addresses a Federal funding recipient’s selection of the site or location of facilities and includes two references to “effect” that extend the scope of prohibited conduct to include conduct with unintentional disparate impact. *Id.* 42.104(b)(3). Section 42.104(b)(6) concerns the use of “affirmative action,” and provides that funding recipients may (and sometimes must) use race, color, or national origin to overcome unintentional disparate “effects,” but does not expressly specify that the funding recipient must narrowly tailor such use nor that this use must serve a compelling governmental interest, as is required to satisfy strict scrutiny. *Id.* 42.104(b)(6). Finally, section 42.104(c) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that “tends” to have a discriminatory effect. *Id.* 42.104(c)(2).

There are serious statutory and constitutional concerns with the legality of the Department’s Title VI disparate-impact regulations. The Department also has serious policy concerns with its current disparate-impact regulations because they create confusion, undermine public confidence in the nation’s civil rights laws and the rule of law, and produce burdensome litigation and compliance costs.

1. Serious Legal Concerns

There are serious statutory concerns as to whether the Title VI statute authorizes the disparate-impact provisions of the current regulations. As the Supreme Court has made clear, Title VI prohibits “only intentional discrimination” and “permits” facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval*, 532 U.S. at 280, 286 n.6. That is the “single, best meaning” of Title VI. *Loper Bright*, 603 U.S. at 400. As summarized above, *Sandoval* calls into serious doubt the legality of the Department’s “disparate-impact regulations.” *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that the Department’s regulations are in “considerable tension” with the Supreme Court’s Title VI precedents); *see also id.* at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”). Although *Sandoval* resolved only the question of private enforceability, subsequent cases

such as *Loper Bright* have made clear that the Department cannot extend Title VI beyond its original public meaning. *See* 603 U.S. at 412–13 (holding that “courts must . . . ensur[e] that [an] agency acts within” its statutory authority). And even in the absence of Supreme Court precedent, the Department would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

Title VI authorizes agencies to promulgate regulations “to effectuate” the statute’s prohibition of intentional discrimination. 42 U.S.C. 2000d–1. The current regulations’ extension of prohibited conduct to include conduct with an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval*, 532 U.S. at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”). Thus, the disparate-impact regulations do not “effectuate” Title VI. 42 U.S.C. 2000d–1.

There are also serious concerns about whether the Department’s Title VI regulations pass constitutional muster under the Equal Protection Clause. As the Supreme Court recently held in *SFFA*, “the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application” and the “guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.” 600 U.S. at 206 (internal quotation marks omitted) (first quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); and then quoting *Bakke*, 438 U.S. at 289–90 (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient’s risk of disparate-impact liability under the Department’s regulations is triggered by unintentional disparate outcomes, which the recipient may not even know about without investigation. To evaluate and avoid this risk, the funding recipient must incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use it to change the unintended disparate outcomes. In short, disparate-impact liability encourages and, in some cases, requires covered entities to engage in the intentional use of race and racial balancing to eliminate those disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection

Clause forbids. *See id.* This serious constitutional concern further confirms that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize the Department to impose disparate-impact liability. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” (citing *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499–501, 504 (1979))).

This use of race, color, or national origin violates the Equal Protection Clause unless it survives review under the “daunting” strict-scrutiny standard. *SFFA*, 600 U.S. at 206; *see also Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2310 (2025) (“Strict scrutiny—which requires a restriction to be the least restrictive means of achieving a compelling governmental interest—is ‘the most demanding test known to constitutional law.’” (quoting *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997))). The use of race, color, or national origin necessitated by the disparate-impact provisions runs into serious issues with the requirement of narrow tailoring to achieve a compelling interest. *SFFA*, 600 U.S. at 206–07.

Similarly, the “affirmative action” provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing “to overcome the effects of” unintended racial disparities. 28 CFR 42.104(b)(6). Thus, for substantially the same reasons as above, the “affirmative action” provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Department’s disparate-impact regulations. But even if the regulations were legal, the Department finds that eliminating the potential constitutional concerns addressed above would independently justify the amendment of the regulations. *Cf. U.S. Tel. Ass’n v. FCC*, 188 F.3d 521, 528 (D.C. Cir. 1999) (concluding it was not “arbitrary and capricious” to adopt a certain policy in order to “avoid[] raising a non-trivial constitutional question”). And even if the regulations did not raise serious constitutional concerns, the Department finds that eliminating the costs and confusion caused by the mismatch

between the statute and the disparate-impact regulations would independently justify the repeal of the regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the Title VI regulations’ imposition of disparate-impact liability. While the Department expresses its policy concerns with disparate-impact liability independent of Executive Order 14281, that Order sets forth many valid policy concerns with disparate-impact liability. As noted in section 1 of the Order,

On a practical level, disparate-impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate-impact lawsuits. This has made it difficult, and in some cases impossible, for employers to use bona fide job-oriented evaluations when recruiting, which prevents job seekers from being paired with jobs to which their skills are most suited—in other words, it deprives them of opportunities for success.

90 FR at 17537. Moreover, the legal concerns identified above have caused uncertainty and confusion for Federal funding recipients as to whether and when they need to comply with the disparate-impact regulations and when they can or must consider race, color, and national origin. As explained above, *Sandoval* casts substantial doubt on the validity of the disparate-impact regulations that many Federal departments and agencies have promulgated pursuant to Title VI. 532 U.S. at 280–82.

Additionally in practice, and as explained above, disparate-impact liability leads covered entities to engage in racial balancing even as the underlying Title VI statute forbids intentional racial discrimination. This tension tends to create confusion, undermine public confidence in the nation’s civil rights laws, and undermine public confidence in the rule of law itself, as the law seems to both forbid and require the same conduct.

These problems are amplified by the arbitrary nature of the racial and ethnic categories typically used to measure disparate effects, which, by virtue of their arbitrariness, typically lack a meaningful connection to a compelling interest. *See, e.g., SFFA*, 600 U.S. at 216–17 (explaining that the “[racial] categories” utilized by Harvard and University of North Carolina were “themselves imprecise in many ways” and “the use of these opaque racial

categories undermine[d], instead of promote[d], [their] goals”). This confusion undermines the law’s ability to teach principles of nondiscrimination and is evident in, among other things, many of the grant proposals that the Department awarded funds to in past years. Many of the grant proposals explicitly targeted certain racial groups. *See, e.g., OVC FY 2022 Bridging Inequities—Legal Services and Victims’ Rights Enforcement for Underserved Communities* at 5, Off. of Just. Progs. (Apr. 25, 2022), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/o-ovc-2022-171291.pdf> (the Department awarding \$5 million FY 2022 to expand access to legal assistance for victims of crime in communities comprised of “Black people, Hispanic and Latino/a/e people, Native American and other Indigenous peoples of North America (including Alaska Natives, Eskimos, and Aleuts), Asian Americans, Native Hawaiians, and Pacific Islanders”). The Department believes that these policy concerns independently justify repealing certain parts of its regulation to cure this confusion, remove the incentive for covered entities to engage in racial balancing, and maintain clarity and public confidence in the nation’s civil rights laws.

The Department has considered the view that looking at disparate effects can sometimes be useful in uncovering or deterring subtle intentional discrimination or intentional indifference to unnecessary and arbitrary barriers. But that view’s alleged benefits are outweighed by the other issues and factors the Department has considered. And in any event, the concern is mitigated by the fact that eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. Indeed, under the Department’s Title VI regulations, which the current changes do not alter, “recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.” 28 CFR 42.106(b). Both the Department and private litigants rely on such data as a potential indicator of intentional discrimination. This use of statistical disparity to help establish, as an evidentiary matter, liability for *intentional* discrimination materially differs from using it to impose liability for an unintentional disparate impact.

The Department has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring

covered entities to remedy unintentional discrimination for only certain types of cases in education or housing. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI's original public meaning. Regardless, even a modified version of disparate-impact liability would not eliminate the Department's serious legal and policy concerns. The Department determines that any benefits from a regulation adopting alternative versions of disparate-impact liability are outweighed by the Department's legal and policy concerns. And even if possible, developing such a rule would not solve the confusion or rule-of-law concerns expressed above, nor reduce the compliance and litigation costs that covered entities face. The Department believes that the better course is to avoid the complexities, costs, and litigation associated with this alternative, even if eliminating disparate-impact liability ultimately would leave some problems unaddressed and others inadequately addressed.

The Department has additionally considered the potential reliance interests of funding recipients and others on the disparate-impact regulations. The *Sandoval* decision in 2001, however, cast serious doubt on the continuing viability of the

regulations more than 20 years ago. At least since *Sandoval*, the Department's enforcement of its Title VI disparate-impact regulations has been minimal and sporadic. And Executive Order 14281 also directed all agencies to "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability," including specifically the Department's Title VI disparate-impact regulations. 90 FR at 17538. The Department accordingly believes that any reliance interests should be minimal and do not outweigh the Department's legal and other policy concerns. Further, each of the Department's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Department notes that *Sandoval* has also led to a divergence between Title VI enforcement by private plaintiffs and enforcement by Federal departments and agencies. After *Sandoval*, private plaintiffs can enforce only Title VI's statutory prohibition on intentional discrimination, while the Department could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations would eliminate this incongruent enforcement.

Overall, after considering the relevant issues and factors and weighing the relevant considerations, the Department finds that, regardless of the legality of the Department's disparate-impact

regulations, the above summarized policy concerns, when viewed separately or cumulatively, independently justify the repeal of its disparate-impact regulations.

III. Regulatory Amendments

This rule's regulatory changes address the concerns regarding the statutory authority that the Supreme Court questioned in *Sandoval* and the other legal and policy concerns discussed above, harmonize the implementing regulations' scope with the conduct that Congress intended Title VI to prohibit, promote consistent enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to the courts and Federal funding recipients and beneficiaries.

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing regulation that explain the particular types of discrimination prohibited, located at 28 CFR 42.104.

A. Table Summarizing Amendments

The table below indicates the exact wording changes. For each section indicated in the left column, the text shown in the middle column is removed and the text shown in the right column is added:

Section	Remove	Add
42.104(b)(2)	Full text of paragraph: "(2) A recipient . . . or national origin."	"[Removed]".
42.104(b)(3)	"or effect" from both places.	
42.104(b)(6)	Full text of paragraph (6), subparts (i) and (ii).	
42.104(c)(1)	"(1)" from "(c) Employment practice. (1) Whenever a primary objective of the".	
42.104(c)(2)	Full text of paragraph: "(2) In regard to . . . of beneficiaries."	

B. Section-by-Section Analysis

Section 42.104(b)(2)

Section 42.104(b)(2) is the current regulation's general prohibition of conduct with unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to imposed liability on Federal funding recipients who "utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination." Because section 42.104(b)(2)'s only purpose is to extend the scope of Title VI to reach unintentional disparate-impact discrimination, this rule deletes this paragraph in its entirety. It thus amends the Department's Title VI implementing regulations to conform to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and

determinations described in this document. The rule replaces paragraph (b)(2) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 42.104(b)(3)

Section 42.104(b)(3) addresses a Federal funding recipient's or applicant's selection of the site or location of facilities. It provides that a funding recipient may not make selections with the "purpose or effect" of discriminating, or "with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of" Title VI or the Department's implementing regulations. The paragraph's two references to "effect" extend its scope to unintentional disparate impacts. This rule deletes both "or effect" references

to conform paragraph (b)(3) more closely to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document.

Section 42.104(b)(6)

Section 42.104(b)(6) deals with "affirmative action." Paragraph (b)(6)(ii) authorizes affirmative action even in the absence of a finding of prior discrimination in a program "to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin." This provision points not to intentional discrimination, but rather to the unintentional "effects of conditions." It consequently encourages intentional racial classifications, racial preferences, and other race-based actions without specifying the

compelling governmental interest and narrow tailoring that the Equal Protection Clause demands. This section has long been unlawful under an Equal Protection Clause analysis.

Paragraph (b)(6)(i) requires that a recipient “must take affirmative action to overcome the effects of prior discrimination” if, in “administering a program,” the funding “recipient has previously discriminated against persons on the ground of race, color, or national origin.” This provision goes beyond the Equal Protection Clause, which permits in limited circumstances, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g., Bakke*, 438 U.S. at 307 (Powell, J.). Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring to counter particular past discrimination, but rather just “affirmative action to overcome the effects of prior discrimination.” This provision accordingly promotes potentially illegal race, color, and national origin discrimination. Moreover, in some instances, it may even coerce recipients to consider and use race preferences when the recipient does not want to. This is contrary to the Department’s goal of promoting and defending a culture of nondiscrimination and is destructive to the public’s understanding of and faith in the nation’s civil rights laws. This rule, therefore, removes paragraph (b)(6).

Section 42.104(c)

Section 42.104(c) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. Paragraph (c)(2) extends the prohibition on discrimination to employment practices of the funding recipient even when the financial assistance “does not have providing employment as a primary objective” if discrimination in the non-funded “employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance.” This paragraph does not prohibit only intentional discrimination but rather extends the prohibition to conduct that “tends” to have a discriminatory effect.

Moreover, the Department notes that paragraph (c)(2)’s extension to

employment practices where the Federal funding’s primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d–3. That section states that “[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.” 42 U.S.C. 2000d–3; *see also Johnson v. Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616, 627–28 n.6 (1987) (citing the statutory limitation and noting Congress’s intent that Title VI not “impinge” on Title VII, which prohibits discriminatory employment practices). The rule deletes paragraph (c)(2) to amend the regulation so that it more closely adheres to the scope of conduct Congress prohibited with Title VI and to address the legal and policy considerations and determinations described in this document. This rule makes no change to the current text of paragraph (c)(1) except for a technical edit to reflect the removal of paragraph (c)(2).

IV. Severability

The Department’s position is that each of the amendments serve a vital, related, but distinct purpose. The Department also confirms that each of the amendments is intended to operate independently of each other and that the potential invalidity of one amendment should not affect the other amendments. The Department would adopt any of the amendments independent to, and regardless of, the invalidity of a separate amendment.

V. Regulatory Certifications

Administrative Procedure Act

The Department issues this final rule without prior public notice and comment or a delayed effective date pursuant to the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. 553(a)(2).

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly to the receipt of Federal “[g]rants and loans,” “property,” “personnel” and “[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.” 28 CFR 42.102(c); *see also* 28 CFR 42.105 (requiring funding recipient sign

contractual assurance of compliance with Title VI); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217–18 (2022) (observing that Congress enacted Title VI “[p]ursuant to its authority to ‘fix the terms on which it shall disburse federal money’” (internal citation omitted)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance*, 82 FR 46655, 46655 (Oct. 6, 2017) (invoking the section 553(a)(2) exception to amend Title IX regulations to “promote consistency in the enforcement of Title IX for [the Department of Agriculture] financial assistance recipients”); *Preserving Community and Neighborhood Choice*, 85 FR 47899 (Aug. 7, 2020) (invoking the exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs*, 53 FR 18285 (May 23, 1988) (invoking the exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration’s airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs—Suspension of Guidelines with Respect to Mass Transportation*, 46 FR 40687 (Aug. 11, 1981) (invoking the exception to suspend Department of Justice guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Indeed, invoking 5 U.S.C. 553(a)(2) is consistent with the U.S. Office for Management and Budget’s (OMB) definition for Federal financial assistance under 2 CFR 200.1, which defines Federal financial assistance with the same categories as the Administrative Procedure Act’s exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Department administers would fall under the “public property, loans, grants, benefits, or contracts” exception. Thus, the Department issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

Executive Orders 12866 and 13563 (Regulatory Review)

The Department has determined that this rulemaking is a “significant regulatory action” under section 3(f) of

Executive Order 12866, 58 FR 51735, 51738 (Sep. 30, 1993), but it is not an “economically significant” action.

Accordingly, this rule has been submitted to the Office of Management and Budget (“OMB”) for review.

This regulation has been drafted and reviewed in accordance with Executive Order 12866 section 1(b), *id.* at 51735, and in accordance with Executive Order 13563 section 1(b), 76 FR 3821, 3821 (Jan. 18, 2011), which supplements and reaffirms the principles of Executive Order 12866. These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 58 FR at 51735; 76 FR at 3821.

Executive Order 13563 also recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. *Id.*

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform Department regulations to Executive Order 14281, address serious concerns regarding the Department’s Title VI regulation that the Supreme Court raised in *Sandoval*, harmonize the implementing regulation’s scope with the scope of conduct that Congress intended Title VI to prohibit, promote consistency in enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to courts and Federal funding recipients and beneficiaries regarding the scope of the Department’s Title VI regulations. Indeed, with respect to section 42.104(c) of the Department’s Title VI-implementing regulations, the changes this rule makes are clearly necessary to bring the regulations into compliance with 42 U.S.C. 2000d–3. In short, this rule is necessary to conform the Department’s regulation to existing statutory law, as interpreted by the Supreme Court.

Data limitations make the costs and benefits of the rule difficult to quantify. While not representing the monetary impact of the rule, more generally the Department of Justice issued approximately 21,600 separate awards totaling approximately \$19.6 billion over the past four years. In FY2023 alone, the Department issued approximately 5,900 separate awards totaling \$5.7 billion. The Department’s Title VI related, active investigations and compliance reviews regarding these funds and their recipients totaled just over 100 for FY2020 through FY2024.

The Department does not track which of its investigations and compliance reviews involve solely allegations of disparate-impact discrimination. For enforcement actions that relate to both intentional discrimination and conduct having an unintentional disparate impact, the Department does not track and cannot reliably quantify the costs attributable to the varying disparate-impact portions of enforcement actions. That the existence of a disparate impact is sometimes a factor that may be considered in determining whether discrimination was intentional further impedes monetizing costs and benefits. Therefore, the overall cost effect on the Department is difficult to quantify. The deregulatory action should decrease the Department’s enforcement costs, however. It should also have the benefit, also difficult to quantify, of bringing the Department’s conduct in line with the law. Similarly, the Department is unable to quantify how funding recipients will respond to the regulatory changes. But the deregulatory action should result in greater flexibility and lower compliance costs for recipients.

The Department recognizes that a funding recipient may receive Federal funds from sources other than, and in addition to, the Department. Because of the Department’s unique role in the interpretation and enforcement of Title VI, as discussed above, the Department expects that this rule will cause other Federal departments and agencies to consider similarly revising their Title VI regulations. Regardless, the Department does not envision that this rule will appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of another department or agency. The deregulatory action the Department takes here does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, it eliminates a source of regulatory confusion, narrows and makes more specific the conduct prohibited, and thus lessens the costs of compliance and potential liability. Moreover, recipients who receive funds for the same program or activity from more than one Federal entity already enter into separate contractual assurances with each funding entity, *see, e.g.*, 28 CFR 42.105. These contractual assurances already impose varying requirements that each Federal funding source deems necessary. Funding recipients will continue to be held to the most stringent contractual assurance and regulation.

Based on the analysis of the practical qualitative costs and benefits noted

above, the Department believes that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, the Department adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits. *See* 58 FR at 51735; 76 FR at 3821.

Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Order 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. 90 FR 9065, 9065 (Jan. 31, 2025). In furtherance of this requirement, section 3(c) of the Order requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” *Id.* By revising the Department’s current Title VI regulations, which extend prohibited conduct to include unintentional disparate impacts and thus expand the scope of those regulations to a vastly broader range of conduct than the statute prohibits, this rule eliminates unnecessary regulation. Accordingly, the Department expects this rule to be a deregulatory action under Executive Order 14192.

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to “explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to” each element of those offenses. 90 FR 20363, 20363 (May 9, 2025). This rule does not impose a criminal regulatory penalty and is thus exempt from Executive Order 14294 requirements.

Executive Order 13132 (Federalism)

This rule will not have a substantial, direct effect on the relationship between the national government and the states, on distribution of power and responsibilities among various levels of government, or on states’ policymaking discretion. States that choose to receive Federal financial assistance from the Department do so voluntarily and agree to comply with relevant statutory requirements as a condition of receiving such funding. This rule does not subject

states or any other funding recipients or beneficiaries to new obligations. This rule amends and clarifies existing regulations that are required by statute. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255, 43257–58 (Aug. 4, 1999), the Department has determined that these amendments do not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order 12988 to specify provisions in clear language. See 61 FR 4729, 4731–32 (Feb. 5, 1996). Pursuant to section 3(b)(1)(I) of the Executive Order, *id.* at 4731, nothing in this proposed or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

Regulatory Flexibility Act

This rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 603, 604, because, for the reasons described above, no notice of proposed rulemaking is required under 5 U.S.C. 553. See *Or. Trollers Ass'n v. Gutierrez*, 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553). Further, the Department, in accordance with 5 U.S.C. 605(b), has reviewed these regulations and certifies that the rule's changes will not have a significant economic impact on a substantial number of small entities, in large part because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings the Department into compliance with the Equal Protection Clause and harmonizes the scope of its regulations to conform with the scope of Title VI, which does not prohibit unintentional disparate impact. All Federal funding recipients have been bound by the existing standards that will remain in place after this rule since their initial promulgation.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (“UMRA”), 2 U.S.C. 1501 *et seq.*, requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by state, local, or tribal governments, or the private sector. 2 U.S.C. 1532(a). The UMRA also, however, excludes from its coverage any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” 2 U.S.C. 1503(2). Accordingly, this rulemaking is not subject to the provisions of the UMRA.

Congressional Review Act

This rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of companies based in the United States to compete with foreign-based companies in domestic and export markets. The rule merely narrows the scope of the Department's Title VI regulations to conform them to the scope of Title VI and the Equal Protection Clause. Doing so does not impose any new obligations on any recipients of Federal funding.

Paperwork Reduction Act of 1995

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects for 28 CFR Part 42

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs.

Accordingly, for the reasons set forth above, and by the authority vested in me as the Attorney General by law, part 42 of title 28 of the Code of Federal Regulations is amended as follows:

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964

■ 1. The authority citation for subpart C of part 42 is revised to read as follows:

Authority: 42 U.S.C. 2000d, 2000d–1, 2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 14281, 90 FR 17537.

■ 2. In § 42.104:

- a. Remove and reserve paragraph (b)(2);
- b. Revise paragraph (b)(3);
- c. Remove paragraph (b)(6); and
- d. Revise paragraph (c).

The revisions read as follows:

§ 42.104 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

* * * * *

(c) *Employment practices.* Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or to provide work experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

Dated: December 5, 2025.

Pamela Bondi,
Attorney General.

[FR Doc. 2025–22448 Filed 12–9–25; 8:45 am]

BILLING CODE 4410–13–P



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 19, 2025

MEMORANDUM FOR OFFICE OF THE ASSOCIATE ATTORNEY GENERAL
CIVIL DIVISION
CIVIL RIGHTS DIVISION
CRIMINAL DIVISION
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *Paul Blum*

SUBJECT: Civil Rights Fraud Initiative

Under Attorney General Bondi's leadership, "[t]he Department of Justice is committed to enforcing federal civil rights laws and ensuring equal protection under the law." Attorney General Memorandum, *Ending Illegal DEI and DEIA Discrimination and Preferences* (Feb. 5, 2025). One of the most effective ways to accomplish this objective is through vigorous enforcement of the False Claims Act, 31 U.S.C. § 3729 et seq., against those who defraud the United States by taking its money while knowingly violating civil rights laws.

The False Claims Act is the Justice Department's primary weapon against government fraud, waste, and abuse. Liability results in treble damages and significant penalties. It is implicated when a federal contractor or recipient of federal funds knowingly violates civil rights laws—including but not limited to Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964—and falsely certifies compliance with such laws. Accordingly, a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions. Colleges and universities cannot accept federal funds while discriminating against their students.

The False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin. While racial discrimination has always been illegal, the prohibition on such policies became clear after the Supreme Court stated that "[e]liminating racial discrimination means eliminating all of it." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 205 (2023).

President Trump reinforced that principle in Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), explaining that racist policies “violate the text and spirit of our long-standing Federal civil-rights laws.” Nevertheless, many corporations and schools continue to adhere to racist policies and preferences—albeit camouflaged with cosmetic changes that disguise their discriminatory nature.

The federal government should not subsidize unlawful discrimination. To that end, I am standing up the Civil Rights Fraud Initiative. This Initiative will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws. This Initiative will be co-led by the Civil Division’s Fraud Section, which enforces the False Claims Act, and the Civil Rights Division, which enforces civil rights laws. Each division will identify a team of attorneys to aggressively pursue this work together. Each of the 93 United States Attorney’s Offices will identify an Assistant United States Attorney to advance these efforts.

To ensure a comprehensive approach, the Civil Fraud Section and the Civil Rights Division will engage in regular coordination meetings and share relevant information about potential violations. The Civil Fraud Section and the Civil Rights Division will also engage with the Criminal Division, as well as with other federal agencies that enforce civil rights requirements for federal funding recipients, including the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Labor. The Civil Fraud Section and the Civil Rights Division will also establish partnerships with state attorneys general and local law enforcement to share information and coordinate enforcement actions.

The Department recognizes that it alone cannot identify every instance of civil rights fraud. Congress likewise has recognized as much and, as a result, has authorized private parties to protect the public interest by filing lawsuits and litigating claims under the False Claims Act—and, if successful, sharing in any monetary recovery. *See* 31 U.S.C. § 3730. The Department strongly encourages these lawsuits. The Department also encourages anyone with knowledge of discrimination by federal-funding recipients to report that information to the appropriate federal authorities so that the Department may consider the information and take any appropriate action. Please visit <https://www.justice.gov/civil/report-fraud> for more information.

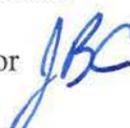


EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 21, 2025

M-25-36

MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT DEPARTMENTS
AND AGENCIES AND MANAGING AND EXECUTIVE
DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Jeffrey Bossert Clark, Sr., Acting Administrator 
Office of Information and Regulatory Affairs

SUBJECT: Streamlining the Review of Deregulatory Actions

Purpose

President Trump has prioritized, through many bold Executive Orders and presidential memoranda, the timely and efficient execution of his deregulatory agenda. Chief among these is Executive Order 14192, [*Unleashing Prosperity Through Deregulation*](#) (Feb. 6, 2025), which requires that for every one new regulation issued, at least ten existing regulations must be repealed. Further, Executive Order 14219, [*Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*](#) (Feb. 19, 2025), seeks to restore the constitutional separation of powers by ensuring regulations are squarely authorized by federal statutes, ending federal bureaucratic overreach.

As established by the Presidential Memorandum [*Directing the Repeal of Unlawful Regulations*](#) (April 9, 2025) ("April 9 Memo"), President Trump has ordered agencies to aggressively and quickly withdraw regulations that are facially unlawful in light of recent Supreme Court precedent, and agencies should redouble their efforts in this area, as set out in greater detail in Section II below. In other cases, however, deregulation will involve the development of a record, including reasoned decision making, potential consideration of tradeoffs and alternatives, and the forms of public participation required by the Administrative Procedure Act (APA) or agency organic statutes.

The goal of this Memorandum is to offer guidance to the agencies as to how to bolster, streamline, and speed **both (1)** the deregulation of facially unlawful prior government regulations **and (2)** those types of deregulatory activity that will continue to require the development of more extensive agency record-building. Additionally, this Memorandum establishes new presumptive timelines and guidelines for review by the Office of Information and Regulatory Affairs (OIRA) to make OIRA your partner in the deregulation agenda.

I. GENERAL PROVISIONS DESIGNED TO SPEED AND STREAMLINE OIRA REVIEW

A. *Counteracting the Ossification of Rulemaking by Speeding up the OIRA Review Period*

Administrative law is highly complex. One area of administrative law scholarship relevant to deregulation is known as “ossification” — the idea that rulemaking is overly burdened with too many procedural requirements.¹ It is imperative for the Administration to recognize and be prepared to minimize the significant costs associated with the ossification of the regulatory process, which slows down agency action and ultimately places significant burdens on this Administration’s agenda.

The sometimes rigid and burdensome procedural requirements characteristic of the rulemaking process can result in significant procedural delay, ultimately disincentivizing agency action. OIRA is well aware of this issue, and is committed to streamlining this process to pave the way for deregulation.

While OIRA may still need to take more time for technically complex or highly impactful reviews that deregulate entire sectors of the economy or for rulemakings that can be expected to generate significant litigation, **OIRA is imposing a presumptive maximum 28-day OIRA review period for deregulatory actions that are executed with factual records (see part III infra) and a presumptive maximum 14-day OIRA review period for facially unlawful rules (see part II infra).**²

As always, OIRA reminds agencies that submitting complete regulatory packages facilitates the timely interagency review of any form of regulatory action, including the analysis and discussion adhering to both the principles of this Memorandum, as well as the principles of EO 12866. By contrast, incomplete submissions will frustrate moving

¹ See, e.g., Richard J. Pierce, Jr., *Rulemaking Ossification Is Real: A Response to “Testing the Ossification Hypothesis,”* 80 GEO. WASH. L. REV. 1493, 1498 (2012) (“Every study of economically significant rulemakings has found strong evidence of ossification — a decisionmaking process that takes many years to complete and that requires an agency to commit a high proportion of its scarce resources to a single task.”); Aaron L. Nielson, *Optimal Ossification,* 86 GEO. WASH. L. REV. 1209, 1209 (2018) (“One of the dirtiest words in administrative law is ‘ossification’ — the term used for the notion that procedural requirements force agencies to take too long to promulgate rules . . .”). The flip-side of the problem of ossified regulation (*i.e.*, the process burdens placed on **deregulation**) can be even worse: “Imagine that in a given time period, an agency promulgates a rule. And imagine further that in a later period, a new administration comes into power and concludes that the rule is bad policy. It thus seeks to eliminate the rule and, while doing so, stays it so that regulated parties do not have to comply with it. Yet soon afterwards, a reviewing court decides that the rule nonetheless must go into effect — even though the current agency leadership does not want the regulation, and even though the regulation, if it were proposed as legislation, certainly would not be enacted by the current Congress.” Nielson at 1224 (going on to explain how this precise scenario happened in connecting with President Trump’s efforts in his first term to revise methane regulation).

² The status quo under EO 12866 provides that OIRA shall review regulatory actions within 90 days (or 45 days as to actions based on largely unchanged information that OIRA had previously received and reviewed), with the ability once to extend that period for 30 days upon the written approval of the OMB Director or at the request of the agency head. See EO 12866, Section 6(b)(2)(B).

deregulatory rules (especially those requiring detailed factual records) through the centralized review process this rapidly.

B. Streamlining Compliance with Executive Orders That Impose Extensive Regulatory Processes on Agencies

Many Executive Orders governing the regulatory system were issued to ensure that particular interests were taken into account before agencies engage in positive regulation; they were not designed with deregulation specifically in mind. These requirements tend not be as relevant when agencies deregulate. Accordingly, in these cases, OIRA is authorizing agencies to streamline their compliance. OIRA is establishing in this guidance some presumptions for how to efficiently combine compliance with several overarching administrative processes applying to both consultation and deregulatory analysis.

For example, EOs on Federalism ([13132](#)), Tribal Consultation ([13175](#)), and Takings ([12630](#)) call for agencies to engage in specific consultations on rules with potential impacts imposed on state and local governments, as well as tribes. Additionally, agencies are required to consider whether new regulation of the national economy will take private property unconstitutionally. Agencies should consider deregulatory actions as presumptively not triggering these consultation or substantive analytic requirements. If there exists a particular reason for specific government-to-government consultations, then agencies should also presume that any consultations should take place as part of the normal opportunity for stakeholder participation in EO 12866 review and the Administrative Procedure Act commenting process. And as to takings analysis, deregulatory activities will relieve burdens on property rights, not impose new ones.

As two other examples, longstanding EOs on the Energy Supply ([13211](#)) and Small Entity considerations ([13272](#)) were issued to address concerns arising when regulations imposing costs could have a disproportionate impact on these areas of the economy. Agencies can appropriately presume that deregulatory rulemakings either do not trigger these EOs' analytical responsibilities, or that any such obligations can be handled through the standard review and analysis required by EO 12866 and the Regulatory Flexibility Act.

Furthermore, agencies should not consider these examples as exhaustive and should presumptively consider the OIRA review process and APA notice and comment procedures as adequate for compliance with any other consultation and analysis EOs that are analogous to the ones covered in this section of the Memorandum. Agencies should thus consolidate and streamline these requirements as much as possible.

Accordingly, as a point of emphasis, any waiver of procedural requirements granted as to deregulatory actions will likely apply to all other ancillary requirements for regulatory analysis. For instance, beyond the previous examples used (EOs [13132](#), [13175](#), and [12630](#)), other examples of EOs imposing ancillary requirements include [EO](#)

[13609](#) (Promoting International Regulatory Cooperation) and [EO 12372](#) (Intergovernmental Review of Federal Programs).

C. Engaging in Early and Substantive Discussions with OIRA on Deregulatory Actions

OIRA encourages agencies to work with OMB, the public, and the interagency community to identify, preview, and develop deregulatory actions that adhere to the requirements of EO 14192. As always, a thorough and transparent Regulatory Agenda, adequate public solicitation of deregulatory ideas initiated through GSA, use of Policy Coordination Committees (“PCCs”), and development of a strong regulatory record are examples of actions that will lead to long-lasting and successful deregulation of the economy, as well as an increase of economic freedom and liberty for American businesses and the American people.³

II. PROVISIONS DIRECTED AT REPEALING FACIALLY UNLAWFUL REGULATIONS

In EO 14219 and the April 9 Memo, President Trump directed federal agencies to review their regulations, identify any unlawful regulatory requirements, and repeal facially unlawful regulations “without notice and comment” under the Administrative Procedure Act’s “good cause” exception. To date, agencies do not appear to be fully maximizing their energy in carrying out these directives. Accordingly, in this section of the Memorandum, guidance is provided to agencies on their obligations under EO 14219 and April 9 Memo as they relate to (1) evaluating the applicability of the APA’s “good cause” exception when repealing unlawful regulations; and (2) determining whether a regulation is unlawful.

A. The APA’s “Good Cause” Exception and Direct Repeal of Unlawful Regulations

This Administration is committed to deregulating at an unprecedented scale and ensuring that the regulations it retains and promulgates are lawful. In furtherance of these objectives, federal agencies are required to ensure that existing regulations are consistent with the law and to repeal unlawful regulations expeditiously. The April 9 Memo listed ten Supreme Court decisions to guide this review and directed the repeal of any “facially unlawful regulations” “without notice and comment, where doing so is consistent with the ‘good cause’ exception in the Administrative Procedure Act.”

The APA’s good cause exception provides that compliance with notice and comment rulemaking may be bypassed when an “agency for good cause finds” that doing so would be “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(4)(B). The APA’s plain language and logic confirm that facially unlawful regulations satisfy the bar. Indeed, where a regulation is unlawful under the plain language of the controlling statute, the Constitution, or prevailing Supreme Court precedent, the agency lacks discretion and authority to retain it, even during the pendency

³ <https://www.regulations.gov/deregulation>

of notice and comment proceedings and notwithstanding that the regulation might have engendered reliance interests or made good policy sense at adoption. Because the regulation is contrary to law and nothing that might emerge during the comment period can cure the regulation's unlawfulness or overcome the agency's non-discretionary inability to retain or enforce it, notice and comment are superfluous and "unnecessary" within the meaning of the APA. Likewise, where notice and comment would delay a repeal that is legally required and necessitate expenditure of resources and taxpayer dollars in service of retaining a regulation that is inconsistent with controlling law and cannot be lawfully enforced, they are "contrary to the public interest" under that separate prong of the APA's "good cause" exception as well.

Courts have applied the good cause exception in cases ranging from those involving emergent safety or security concerns to minor technical amendments to legal compulsions or administrative necessity. *See, e.g., Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877 (3d Cir. 1982) (upholding the agency's reliance on good cause because the statute imposed a deadline that did not afford time for notice and comment); *United States Steel Corp. v. EPA*, 605 F.2d 283 (7th Cir. 1979) (same). Repealing unlawful regulations is most closely analogous to compliance with a statutory deadline or directive. Where a regulation contravenes a duly-enacted statute, the Constitution, or prevailing Supreme Court precedent, Congress cannot have intended for agencies to delay repeal in favor of a futile notice and comment process.

The April 9 Memo endorses this view and directs agencies to apply the "good cause" exception where appropriate. Those directives reflect the reasoned judgment that reflexive adherence to the APA's default process requirements is improper for facially unlawful regulations. All agencies should be adhering to the plain text of the APA and the President's directives.

We also flag for your attention 5 U.S.C. § 553(d)(1), which allows "substantive rule[s]" to become effective without waiting for the 30-day period to elapse where "a substantive rule ... grants an exemption or relieves a restriction." For rules that are entirely deregulatory, the APA thus opens up a path to make rules effective more rapidly and agencies should take advantage of this benefit wherever possible.

B. Determining Whether a Regulation Is Unlawful

Before determining the appropriate process for repealing a regulatory requirement, agencies must determine whether a regulation is unlawful. In conducting this inquiry, it is important to bear in mind that you should not set the bar for unlawfulness so high as to render the President's April 9 Memo a nullity. To start with the obvious: this review will not be useful if your agency sets the bar for unlawfulness at regulations that a court has already ruled are unlawful. To be sure, agencies should repeal regulations without notice and comment under such circumstances, but such repeals are ministerial and only a small part of what the EO 14219 and April 9 Memo contemplate and direct.

The real target of this review is regulations that are, in the agency’s current view, facially unlawful — that is to say, where the unlawfulness is apparent to the agency after reviewing the text of the relevant regulation, the statute it implements, and other sources of law, such as the ten Supreme Court cases identified in the April 9 Memo. If the regulation is unlawful, as — for example — where the rule is inconsistent with the “single, best meaning” of the statute under *Loper Bright*, direct repeal under the APA’s “good cause” exception is appropriate. Or, if someone challenging the merits of the rescission would be relying on pure legal arguments for their challenge (*e.g.*, arguing that the prior regulation did, in fact, reflect the best meaning of the statute), that fact reinforces the appropriateness of bypassing notice and comment.

Another example of a facially unlawful regulation is where a rule violates the major questions doctrine explicated in *West Virginia v. EPA*, 597 U.S. 697 (2022). The major questions doctrine requires especially clear statutory text delegating authority to an agency the power to issue a rule in an area of vast economic and political significance before an agency can plausibly claim such authority. *See id.* at 721. Hence, an agency concluding that it has current regulations on its books rooted in statutory ambiguity but which resolve questions of that high a level of significance can act to immediately repeal such regulations because they flunk the major questions doctrine.

In short, your agency should identify and rescind regulations where (a) the question is clearly one of lawfulness or unlawfulness under the ten Supreme Court cases listed by in the April 9 Presidential Memorandum, and (b) where the agency has determined that the best interpretation is that the regulation is unlawful. Where the agency is convinced that the regulation is unlawful and that position has a reasonably good chance of success on the merits, the regulation should be repealed. Nevertheless, the agency should provide a *brief* statement of why the identified regulation is unlawful and good cause exception applies.

It is true that once the agency has identified a regulation that is unlawful as a matter of law, there might be additional policy or fact-bound arguments one could advance as to why a rule should be repealed. Indeed, it is often the case that something that is illegal would also represent bad policy or be impracticable for one or more factually related reasons. If the agency wishes to preserve these additional arguments, then it would typically need to afford notice and an opportunity to comment to flesh out the wisdom of those judgments. Agencies have the Supreme Court’s full endorsement to use the interim final rule process to put out rules having legal effectiveness first and then proceed to address comments later. The Supreme Court stressed that such situations would be reviewed deferentially applying the rule of prejudicial error contained in the APA’s 5 U.S.C. § 706. *See generally Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 684 (2020).

Consistent with the remainder of this Memorandum, we would also urge agencies to engage in robust cost-benefit analysis (where such quantification is conceptually possible and useful data exists) as a way to buttress records in facially illegal deregulatory situations. But, as a general matter, it is a policy question for the agency

whether the delay entailed by undergoing notice and comment procedures is worth the gain of this additional defense against litigation.

Surely, however, where the purely legal argument is the principal ground for repeal and likely to prevail in litigation, the dictates of efficient government, fidelity to the law, and the President's directives all point toward moving as expeditiously as possible on legal grounds to bypass notice and comment under the APA's "good cause" exception.

III. PROVISIONS DIRECTED AT DEVELOPING BETTER DEREGULATORY RECORDS WHERE NECESSARY OR VOLUNTARILY OPTED FOR BY AGENCIES

A. *The Benefits of Deregulation*

"An 'EO 13771 deregulatory action' is an action that has been finalized and has total costs less than zero." [Memorandum for Regulatory Policy Officers at Executive Departments and Agencies, etc. from Dominic J. Mancini, OIRA, Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs."](#)

While [OMB Circular A-4](#) encourages agencies to quantify and monetize impacts, it also allows for the consideration of qualitative impacts, if there are important decision-making advantages to doing so. As just one example, consider that the reestablishment of freedom of choice in the marketplace may not be fully captured by marginal economic impacts, but could nevertheless prove a very important qualitative advantage of deregulation in a variety of circumstances.

By the same token, agencies should not eschew quantification when quantification is possible, and attempt to rely only on qualitative grounds for repealing rules. Doing so would not be consistent either with specific demands for cost-benefit analysis contained in many agency statutes themselves or with the emphasis the Supreme Court has placed on cost quantification. *See, e.g., Michigan v. EPA*, 576 U.S. 743, 749, 759 (2015) ("**The Agency must consider cost**—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary.") (emphasis added). *Michigan* also stresses considering all relevant factors, which obviously includes considering benefits. *Id.* at 750.

Most importantly, the President stressed adherence to these principles in his April 9 Memo. Indeed, meaningful compliance with Section 3 of EO 14192 necessitates agencies engaging in cost-benefit quantification, as that EO requires a quantitative netting of regulatory vs. deregulatory rules.⁴

⁴ *See, e.g., id.* Section 3 "*Regulatory Cap for Fiscal Year 2025*"; *id.* Section 3(b) ("For fiscal year 2025, which is in progress, the heads of all agencies are directed to ensure that the total incremental cost of all new regulations,

Consulting with OIRA early and often can help agencies to decide when (1) quantified cost-benefit analysis is required (potentially as further supplemented by qualitative analysis) versus when (2) only qualitative analysis is possible. For instance, a regulation concerning pesticide disposal is a paradigmatic example of a rule that requires quantitative cost-benefit analysis because the costs of disposal can be readily calculated and compared to the benefits of avoiding the harm pesticides cause when not properly disposed of. (It is also a type of rule that would not seem to call for weighing very much in the way of qualitative variables.) By contrast, a regulation concerning use or misuse of the American flag on wine or spirit beverage labels would likely implicate only dignitarian interests and thus be appropriate for an exclusively qualitative approach to cost-benefit analysis.

B. The Uniqueness of Deregulation and Its Benefits

Deregulation has important, unique impacts that could be given weight in decision making, which agencies often do not consider. For example, although deregulatory actions at a high level of abstraction are subject in court to the same “arbitrary and capricious” standard of review under the APA as regulatory actions, looking deeper, it is elementary that deregulation is different than regulation in various dimensions. Agencies are encouraged to take into account the following when building their deregulatory records:

- ***Private-Conduct Liberty Benefits.***

Deregulation increases the scope of private freedom, which can sometimes be quantified (and thus should be, whenever possible), but in other cases the value of deregulation can only be assessed qualitatively. In both situations, moreover, deregulation will leave more individuals and firms free to pursue their own self-defined interests, unfettered by regulation.

- ***Aggregated Impacts.***

The collective value of a group of deregulatory actions and the synergies between deregulation across multiple areas of the law and across the entire web of ensuing causal effects as they spread throughout the national economy may be greater than the sum of its parts. For instance, deregulating the energy sector will not simply make driving cars and use of electricity to power our homes less costly, it also benefits America’s tech sector, increasing AI innovation and improving the development of new cryptocurrency assets — benefits that in turn would further profit consumers in a virtuous cycle.

including repealed regulations, being finalized this year, shall be significantly less than zero, as determined by the Director of the Office of Management and Budget (Director), unless otherwise required by law or instructions from the Director.”); Section 3(a) & (c) (providing, to support the 10-for-1 requirement that “In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”). *See also id.* Section 3(d) (providing issuance of implementing guidance, which has been issued); [Memorandum for Regulatory Policy Officers at Executive Departments and Agencies, etc. from Jeffrey B. Clark Sr., OIRA, Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.”](#)

- ***Past Regulation Is Always Inherently Imposed Under Conditions of Uncertainty.*** Regulations are almost always implemented under uncertain conditions. Indeed, by definition, the analysis made to propose and then finalize rules must inherently be prospective. Whenever agencies can see that the predictions of costs and benefits it made when it once stood at the door to new regulation have not been borne out by experience, and that this experience shows that costs exceed benefits or that costs plus qualitative decision-making factors exceed benefits, it can make a powerful case for deregulation.
- ***Deregulation Viewed as a Codification, in Effect, of Voluntary Enforcement Priorities.***

“To begin with, when the Executive Branch elects not to arrest or prosecute, it does not exercise coercive power over an individual’s liberty or property, and thus does not infringe upon interests that courts often are called upon to protect.” *United States v. Texas*, 599 U.S. 670, 678 (2023) (emphasis in original). By deregulating, the agency essentially codifies an enforcement policy as to a defined class or set of cases. Courts have generally been more deferential to agency enforcement decisions made under resource constraints, and may consider a reasoned enforcement rationale to carry weight. This circles back, as well, to avoiding the dangers of ossification, as there are obvious interactions between agency choices of procedural mode (rulemaking vs. adjudication) — where that choice can properly be exercised — especially where rulemaking is afflicted with ossification. Additionally, enforcement history under the regulatory regime being departed from can always be consulted and, if that history shows few (if any) violations, a reasonable case can be made that the regulation was unnecessary from the outset.

Agencies should consider in any of their deregulatory actions it chooses to support with factual records whether its rationales and record-building can make use of one or more of the four categories of pro-deregulatory considerations set out above.

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE
FISCAL YEAR 2025 BUILD PROGRAM

This agreement is between the United States Department of Transportation (the “USDOT”) and the [insert full name of applicant] (the “Recipient”).

This agreement reflects the selection of the Recipient to receive a BUILD Grant for the [insert project name].

The parties therefore agree to the following:

ARTICLE 1
GENERAL TERMS AND CONDITIONS.

1.1 General Terms and Conditions.

- (a) In this agreement, “General Terms and Conditions” means the content of the document titled “General Terms and Conditions Under the Fiscal Year 2025 BUILD Program: FRA Projects,” dated November 4, 2025, which is attached to this agreement. The General Terms and Conditions reference the information contained in the schedules to this agreement. The General Terms and Conditions are part of this agreement. For convenience, the General Terms and Conditions are also available at <https://www.transportation.gov/BUILDgrants/grant-agreements>, but if there are any differences between the version attached to this agreement and the version available at that hyperlink, only the version attached to this agreement is applicable.
- (b) The Recipient states that it has knowledge of the General Terms and Conditions.
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, terminating of the BUILD Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the USDOT the BUILD Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2
SPECIAL TERMS AND CONDITIONS.

[Choose the appropriate one of these two alternatives.]
[Alternative #1: If there are no special terms and conditions, then use the following:]

There are no special terms for this award.

TEMPLATE; NOT INTENDED FOR EXECUTION WITHOUT MODIFICATION
Revised 2025-11-04

[**Alternative #2:** If there are special terms and conditions, repeat and modify the following as needed:]

2.1 [Special Term Title].

[special term text]

**SCHEDULE A
ADMINISTRATIVE INFORMATION**

1. Application.

Application Title: [insert full title of submitted application]

Application Date: [insert the date in box 3 of the SF-424]

Commented [USDOT1]: Additional Information. For additional context on how the term "Application" is used, see the definition of "Technical Application" in section 29.5 in the General Terms and Conditions and the use of the term "Technical Application" throughout the General Terms and Conditions.

2. Recipient's Unique Entity Identifier.

See section 28.3 of the General Terms and Conditions.

3. Recipient Contact(s).

Name
Title
Agency
Mailing Address
Phone Number
Email Address

Commented [USDOT2]: Additional Information. For additional context on how Recipient Contacts are used and when the Recipient is required to update these contacts, see sections 17.2, 20.3, and 20.4 in the General Terms and Conditions.

4. Recipient Key Personnel.

None.

5. USDOT Project Contact(s).

Name
Title
Agency
Mailing Address
Phone Number
Email Address

Commented [USDOT3]: Additional Information. For additional context on how USDOT Project Contacts are used, see sections 6.1, 20.2, and 23.2 in the General Terms and Conditions.

Commented [USDOT4]: Drafting Instruction: This is typically the USDOT OA Program Manager for the specific grant.

6. Payment System.

USDOT Payment System: Delphi eInvoicing System

7. Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: None

8. Federal Award Identification Number.

See section 28.2 of the General Terms and Conditions.

**SCHEDULE B
PROJECT ACTIVITIES**

1. General Project Description

[Insert text from decision memo with any necessary corrections.]

Commented [USDOT5]: Drafting Instruction: This is OST's description of the project. This description is included in the USDOT selection memo (not necessarily the same as the fact sheet description).

2. Statement of Work.

I. BACKGROUND

Instructions: This section also provides high-level overview information regarding the project and applicant/Recipient. Approximately 3–4 paragraph in length.

[if applicable:] All necessary planning, preliminary engineering (PE) and National Environmental Policy Act (NEPA) requirements have been completed.

II. OBJECTIVE

Instructions: This section is intended to provide a clear description of the purpose, underlying transportation problem that the project will address; the work that will be accomplished under the agreement; the end-state of the project, and the public benefits that the project is intended to achieve.

III. PROJECT LOCATION

Instructions: This section of the SOW is intended to provide information related to the geographic scope of the project, as well as to identify important related intercity corridors or service. The project location should be specific and detailed. Planning projects should note where the project is likely to be deployed.

IV. DESCRIPTION OF WORK

Instructions: This section breaks the scope of work for the project into discrete and delineable tasks. If the project funded under this agreement is part of a larger effort, describe that larger effort, but link tasks specifically to the BUILD-funded portion of the project. Be clear regarding the work to be done in each task and be sure tasks can be linked to deliverables and timelines. Use the guidance below to develop this section.

Task 1: Detailed Project Work Plan, Budget, and Schedule

The Recipient shall prepare a Detailed Project Work Plan, Budget, and Schedule for the following tasks, which may result in amendments to this Agreement. The Detailed Project Budget will be consistent with the Approved Project Budget but will provide a greater level of detail. The Detailed Project Work Plan will describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work. The Detailed Project Work Plan will also include information about the project management approach (including team organization, team decision-making, roles and responsibilities and interaction with FRA), as well as address

quality assurance and quality control procedures. In addition, the Detailed Project Work Plan will include the Project Schedule (with Recipient and agency review durations), a detailed Project Budget, **[if applicable:** and the environmental class of action.] Similarly, the Detailed Work Plan should include agreements governing the construction, operation and maintenance of the Project. The FRA will review and approve the Detailed Project Work Plan, Budget, and Schedule.

Unless expressly permitted by pre-award authority in section 5 of schedule D of this agreement, The Recipient shall not begin work on subsequent tasks until (1) the Recipient has completed and submitted to FRA the Detailed Project Work Plan, Budget (including estimated costs for Alternate Task, if provided) and (2) the FRA provides the Recipient with written approval to proceed with subsequent tasks. The FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

Task 1 Deliverables:

- Detailed Project Work Plan, Budget, and Schedule
- Project Agreements (if applicable)

Task 2: [insert task name]

[insert a description of the task and the deliverables that will be completed under the task]

Task 2 Deliverables:

- [insert names of required deliverables to be completed under this task]
-

Alternate Task: [insert task name]

The Recipient shall not perform this task unless (1) all other work under this Agreement is complete and (2) the FRA provides the Recipient with written approval to proceed with this Alternate Task.

[insert a description of the task, the deliverables, and estimated budget for work that is in addition to the other Tasks in the SOW, that is within the scope of the Technical Application, and that Recipient [will/may] accomplish, depending on the available funds, if all other Tasks in this SOW are completed under budget.]

Alternate Task Deliverables:

- [insert names of required deliverables to be completed under this task]
-

Task 3: [insert task name]

[insert a description of the task and the deliverables that will be completed under the task]

Task 3 Deliverables:

- [insert names of required deliverables to be completed under this task]
- Final Performance Report (the final deliverable listed in the “description of work” section of the SOW must be the Final Performance Report. The Recipient shall submit this report as required by section 7.2 of the General Terms and Conditions, and the report should describe the cumulative activities of the project, including a complete description of the Recipient’s achievements with respect to the project objectives and milestones)

V. PROJECT COORDINATION

Instructions: This section identifies all the project partners, and other entities that possess responsibility for the implementation of the project. Per Task 1 guidance, the coordination strategy may evolve and require updating over time. Use the format below to discuss project coordination:

The Recipient shall perform all tasks required for the Project through a coordinated process, which will involve affected railroad owners, operators, and funding partners, including:

- [list parties other than the Recipient]
-
- FRA

VI. PROJECT MANAGEMENT

Instructions: This section identifies all actions the Recipient will perform to ensure the effective management and oversight of the project. Use the guidance below to develop a project management approach.

The Recipient shall facilitate the coordination of all activities necessary for implementation of the Project. Upon award of the Project, the Recipient shall monitor and evaluate the Project’s progress through regular meetings scheduled throughout the period of performance. The Recipient shall:

- Participate in a project kickoff meeting with FRA
- Complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary
- Hold regularly scheduled Project meetings with FRA
- Inspect and approve work as it is completed
- Review and approve invoices as appropriate for completed work
- Perform Project close-out audit to ensure contractual compliance and issue close-out report
- Submit to FRA all required Project deliverables and documentation on-time and according to schedule, including periodic receipts and invoices

- Comply with all FRA Project reporting requirements, including, but not limited to:
 - a. Status of project by task breakdown and percent complete
 - b. Changes and reason for changes in and updated versions of Detailed Project Work Plan, Budget, and Schedule
 - c. Description of unanticipated problems and any resolution since the immediately preceding progress report
 - d. Summary of work scheduled for the next progress period
- Read and understand the Terms and Conditions of this Agreement
- Notify FRA of changes to this Agreement that require written approval or modification to the Agreement
- [list any other project management activities that may be necessary for the Project]

3. Documents Describing Mitigation Activities.

[Choose the appropriate one of these alternatives.]

[Alternative #1: Insert applicable environmental compliance language here, unless it is covered completely in a funded task above.]

[Alternative #2: If there are mitigation requirements in the NEPA document or the SHPO MOA/other correspondence:]

Document Description	Date
[insert environmental documentation type]	[insert date of decision]
[insert applicable MOA/other correspondence with SHPO]	[insert date of MOA/correspondence]

[Alternative #3:]

None.

Commented [USDOT6]: Additional Information. For additional context on how this section 3 of schedule B is used, see section 27.4(g) in the General Terms and Conditions.

**SCHEDULE C
AWARD DATES AND PROJECT SCHEDULE**

1. Award Dates.

Budget Period End Date:[Choose the appropriate one of these two alternatives.]

[Alternative #1: If all funds are being obligated at once:]
Budget Period End Date: MM/DD/YYYY

[Alternative #2: If funds are to be obligated in multiple project phases:]
Base Phase Budget Period End Date: MM/DD/YYYY
Option Phase 1 Budget Period End Date: MM/DD/YYYY
Option Phase 2 Budget Period End Date: MM/DD/YYYY

Period of Performance End Date: See section 28.5 of the General Terms and Conditions

Commented [USDOT7]: Additional Information. For the definition of Budget Period, see section 28.4 in the General Terms and Conditions. See also its use in sections 4.3, 5.3, and 18.3.

Commented [USDOT8]: Additional Information. For the definition of Period of Performance, see section 28.5 in the General Terms and Conditions. See also its use in sections 5.3 and 19.1.

2. Estimated Project Schedule.

Milestone	Schedule Date
Planned Preliminary Engineering/NEPA Completion Date:	[insert date]
Planned Final Design Completion Date:	[insert date]
Planned Construction Start Date:	[insert date]
Planned Construction Substantial Completion Date:	[insert date]

Commented [USDOT9]: Additional information. See article 5 and section 17.1 of the General Terms and Conditions for context on how this schedule is used in the agreement and may affect the availability of BUILD funds for the project.

Commented [USDOT10]: Drafting Instruction: If any of the dates in section 2 differ from the dates in the application, each difference must be described in schedule E.

3. Special Milestone Deadlines.

[Choose the appropriate one of these two alternatives.]
[Alternative #1: If the only critical dates are completion dates, then use the following:]

None.

[Alternative #2: If there are additional critical dates, use this table and insert a row for each date. The milestone must be described in enough detail that there is no ambiguity about when it is met. Each of these milestones is intended to establish a clear trigger for USDOT to terminate the award or amend the terms of this agreement.]

Milestone	Deadline Date
[Insert milestone]	[insert date]

**SCHEDULE D
 AWARD AND PROJECT FINANCIAL INFORMATION**

1. Award Amount.

BUILD Grant Amount: **[\$XXX]**

2. Federal Obligation Information.

Federal Obligation Type: Single

3. Approved Project Budget.

Project Budget by Task

Task #	Task Name	BUILD Funds	Other Federal Funds	Non-Federal Funds	Total Cost
1		\$	\$	\$	\$
Total		\$	\$	\$	\$

Project Budget by Source

Funding Source	Project Contribution Amount	Percentage of Total Project Cost
BUILD Funds	\$	%
Other Federal Funds		
Non-Federal Funds	\$	%
Total Eligible Project Costs	\$	100%

Commented [USDOT11]: Drafting Instruction: If any of the sources or amount of funds differ from the sources and amounts in the Application, each difference must be described in schedule E.

Commented [USDOT12]: Additional Information. See also sections 1.1, 3.2, and 5.4 of the General Terms and Conditions for context on how this budget information is used in the agreement.

Commented [FT(13): Drafting Instructions: If there are no Other Federal Funds, place 0 within this column.

Commented [FT(14): Drafting Instructions: If there are no Other Federal Funds, place 0 within this row.

In ¶ 11 of the agreement cover sheet, the amount listed in the “Federal” column is the “BUILD Funds” amount in this schedule D

4. Cost Classification Table.

Omitted. The Recipient shall provide a project budget by FRA standard cost category with the detailed project budget that is part of Task #1, as described in section 2 of schedule B.

5. Approved Pre-award Costs

[Choose the appropriate one of these two alternatives.]
 [Alternative #1: If pre-award authority has not been approved by OST:]

None. The USDOT has not approved under this award any pre-award costs under 2 CFR 200.458. Because unapproved costs incurred before the date of this agreement are not allowable costs under this award, the USDOT will neither reimburse those costs under this award nor consider them as a non-Federal cost sharing contribution to this award. Costs incurred before the date of this agreement are allowable costs under this award only if approved in writing by USDOT before being included in the Project costs and documented in this section 5. See section 18.3(b) of the General Terms and Conditions.

[Alternative #2: If pre-award authority has been approved by OST:]

On [insert date], the USDOT approved [Recipient's] request to allow the following pre-award costs.

Task #	Task Name	BUILD Funds	Other Federal Funds	Non-Federal Funds	Total Cost
1		\$	\$	\$	\$
Total		\$	\$	\$	\$

Commented [FT(15): Drafting Instruction: If there are no Other Federal Funds, place 0 within this column.

The above pre-award costs were necessary for efficient and timely performance of the scope of work in schedule B and were incurred directly pursuant to the negotiation and in anticipation of this agreement.

**SCHEDULE E
CHANGES FROM APPLICATION**

Scope:

[If the activities described in schedule B differ from the scope presented in the application, describe the changes here and explain the need for those changes. If there are no changes, state that there are no changes.]

Schedule:

[If any dates listed in sections 2–3 of schedule C differ from the estimated schedule presented in the application, describe the changes here and provide an explanation of the cause of those changes. If there are no changes, state that there are no changes and remove the milestone table below.]

The table below compares the Project milestone dates.

Milestone	Application	Schedule C
Planned Preliminary Engineering/NEPA Completion Date:	[insert date]	[insert date]
Planned Final Design Completion Date:	[insert date]	[insert date]
Planned Construction Start Date:	[insert date]	[insert date]
Planned Construction Substantial Completion Date:	[insert date]	[insert date]

Commented [USDOT16]: Drafting Instruction: If there are interim milestones that have shifted (e.g., contract award or start of construction), and the explanation above references those interim milestones, add rows for those interim milestones. If there are multiple components, the text in the milestone column should be clear about which component is being referenced.

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Revised 2025-11-04

Budget:

[If any amounts listed in sections 3–4 of schedule D differ from the budget presented in the application, describe the changes here and provide an explanation of the cause of those changes. If there are no changes, state that there are no changes and remove the budget table below. This section should also identify Department approved budget changes that occurred after application submittal and prior to award announcement.]

The table below provides a summary comparison of the Project budget.

Fund Source	Application		Schedule D	
	\$	%	\$	%
Previously Incurred Costs				
Federal Funds				
Non-Federal Funds				
Total Previously Incurred Costs				
Future Eligible Project Costs				
BUILD Funds				
Other Federal Funds				
Non-Federal Funds				
Total Future Eligible Project Costs				
Total Project Costs				

Other:

[If there are notable changes in aspects of the Project other than scope, schedule, and budget (e.g., recipient changes), then describe those changes here. If there are not, then state that there are no other notable changes from the application.]

Commented [USDOT17]: Drafting Instructions: If there are no funds for a particular row or column, please indicate as such with 0.

Commented [USDOT18]: Drafting Instruction: The Application columns should reflect the budget submitted with the application for consideration. Please note that this budget may differ from the budget at the time of the award.

**SCHEDULE F
BUILD PROGRAM DESIGNATIONS**

1. **Urban or Rural Designation.**

Urban-Rural Designation: [Urban] [Rural]

Commented [USDOT19]: Additional Information. For additional context on how the urban-rural designation is used, see section 14.1 in the General Terms and Conditions.

2. **Capital or Planning Designation.**

Capital-Planning Designation: Capital

Commented [USDOT20]: Additional Information. Do not change the content of this section 2; it is fixed for all capital project awards. For additional context on how the capital-planning designation is used, see article 8 in the General Terms and Conditions.

3. **Historically Disadvantaged Community/Area of Persistent Poverty Designation.**

HDC/APP Designation: [Yes] [No]

Commented [USDOT21]: Additional Information. For additional context on how the HDC or APP designation is used, see section 14.2 in the General Terms and Conditions.

4. **Funding Act.**

Funding Act: [IIJA]

Commented [USDOT22]: Additional Information. For additional context on how the funding act is used, see sections 4.2 and 19.2 in the General Terms and Conditions.

5. **Security Risk Designation.**

Security Risk Designation: [Low] [Elevated]

Commented [USDOT23]: Additional Information. For additional context on how the Security Risk Designation is used, see section 13.1 in the General Terms and Conditions.

**SCHEDULE G
BUILD PERFORMANCE MEASUREMENT INFORMATION**

Study Area: [Insert description of area to be studied]

Baseline Measurement Date: [insert date]

Baseline Report Date: [insert date]

Table 1: Performance Measure Table

Performance Measure	Unit Reported
[Insert the selected Performance Measure]	[Insert the Unit Reported associated with the selected performance measure]
[Insert the selected Performance Measure]	[Insert the Unit Reported associated with the selected performance measure]

Commented [USDOT24]: Additional Information. See section 8.1 of the General Terms and Conditions for context on how the Baseline Measurement and Report dates are used to establish pre-construction reporting requirements.

Commented [USDOT25]: Drafting Instruction: This Baseline Measurement date should be as current as possible before the project begins construction.

Commented [USDOT26]: Drafting Instruction: This Baseline Report Date should reported prior to construction.

Commented [USDOT27]: Additional Information. See article 8 of the General Terms and Conditions for context on how this table is used to establish the data collection and reporting requirements.

Commented [USDOT28]: Drafting Instruction: USDOT is looking for at least 2-4 performance measures.

Please select from the performance measures listed in *Table 1: RAISE Performance Measures* of the [RAISE Performance Measures Update- 2023](#).

**SCHEDULE H
LABOR AND WORK**

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with "X" in the following table are accurate:

<input type="checkbox"/>	The Recipient or a project partner promotes robust job creation by supporting good-paying jobs directly related to the project with free and fair choice to join a union. <i>(Describe robust job creation and identify the good-paying jobs in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will invest in high-quality workforce training programs such as registered apprenticeship programs to recruit, train, and retain skilled workers, and implement policies such as targeted hiring preferences. <i>(Describe the training programs in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will partner with high-quality workforce development programs with supportive services to help train, place, and retain workers in good-paying jobs or registered apprenticeships including through the use of local and economic hiring preferences, linkage agreements with workforce programs, and proactive plans to prevent harassment. <i>(Describe the supportive services provided to trainees and employees, preferences, and policies in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will partner and engage with local unions or other worker-based organizations in the development and lifecycle of the project, including through evidence of project labor agreements and/or community benefit agreements. <i>(Describe the partnership or engagement with unions and/or other worker-based organizations and agreements in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner will partner with communities or community groups to develop workforce strategies. <i>(Describe the partnership and workforce strategies in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i>
<input type="checkbox"/>	The Recipient or a project partner has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take relevant actions described in schedule B. <i>(Identify the relevant actions from schedule B in the supporting narrative below.)</i>
<input checked="" type="checkbox"/>	The Recipient or a project partner has not taken actions related to the Project to improve good-paying jobs and strong labor standards and will not take those actions under this award.

2. Supporting Narrative.

[Insert supporting text, as described in the table above.]

Commented [USDOT29]: Additional Information. NOFO section F.2.b. require project to sufficiently consider job quality and labor rights, standards, and protections in their planning, as determined by the Department, before receiving funds for construction. The purpose of this schedule is to document DOT's basis for determining the considerations were sufficient for this project.

Commented [USDOT30]: Drafting Instruction: If this row is marked, schedule B must describe relevant activities that will be completed before construction begins. If it is the only row marked and this is a capital project, a critical milestone for completing those activities should be proposed at section 3 of schedule C.

Commented [USDOT31]: Additional Information. USDOT does not anticipate executing an agreement if this box is checked.

Commented [USDOT32]: Drafting Instruction: For each row checked in the preceding table, add a heading here and, below that heading, add narrative text that is only as long as necessary to address the italicized prompt for that row.

This content is from the eCFR and is authoritative but unofficial.

Title 49 –Transportation

Subtitle B –Other Regulations Relating to Transportation

Chapter VI –Federal Transit Administration, Department of Transportation

Part 673 Public Transportation Agency Safety Plans

Subpart A General

§ 673.1 Applicability.

§ 673.3 Policy.

§ 673.5 Definitions.

Subpart B Safety Plans

§ 673.11 General requirements.

§ 673.13 Certification of compliance.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

Subpart C Safety Committees and Cooperation With Frontline Transit Worker Representatives

§ 673.17 Cooperation with frontline transit worker representatives.

§ 673.19 Safety Committees.

Subpart D Safety Management Systems

§ 673.21 General requirements.

§ 673.23 Safety Management Policy.

§ 673.25 Safety Risk Management.

§ 673.27 Safety Assurance.

§ 673.29 Safety Promotion.

Subpart E Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Authority: 49 U.S.C. 5329, 5334; 49 CFR 1.91.

Source: 89 FR 25738, Apr. 11, 2024, unless otherwise noted.

Subpart A—General

§ 673.1 Applicability.

- (a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53.

- (b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311 unless it operates a rail fixed guideway public transportation system.

§ 673.3 Policy.

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA's Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

§ 673.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Assault on a transit worker means, as defined under 49 U.S.C. 5302, a circumstance in which an individual knowingly, without lawful authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the transit worker is performing the duties of the transit worker.

CDC means the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Direct recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Emergency means, as defined under 49 U.S.C. 5324, a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which the Governor of a State has declared an emergency and the Secretary has concurred; or the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

FTA means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Injury means any harm to persons as a result of an event that requires immediate medical attention away from the scene.

Investigation means the process of determining the causal and contributing factors of a safety event or hazard, for the purpose of preventing recurrence and mitigating safety risk.

Joint labor-management process means a formal approach to discuss topics affecting transit workers and the public transportation system.

Large urbanized area provider means a recipient or subrecipient of financial assistance under 49 U.S.C. 5307 that serves an urban area with a population of 200,000 or more as determined by the most recent decennial Census.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53.

Near-miss means a narrowly avoided safety event.

Operator of a public transportation system means a provider of public transportation.

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Potential consequence means the effect of a hazard.

Public transportation means, as defined under 49 U.S.C. 5302, regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include:

- (1) Intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (or a successor to such entity);
- (2) Intercity bus service;
- (3) Charter bus service;
- (4) School bus service;
- (5) Sightseeing service;
- (6) Courtesy shuttle service for patrons of one or more specific establishments; or
- (7) Intra-terminal or intra-facility shuttle services.

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Recipient means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under 49 U.S.C. chapter 53.

Roadway means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles, excluding station platforms.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and this part.

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities for the management of safety.

Safety Management System (SMS) means the formal, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing hazards and safety risk.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a quantifiable level of performance or condition, expressed as a value for the measure, related to safety management activities, to be achieved within a specified time period.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk means the composite of predicted severity and likelihood of a potential consequence of a hazard.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risk.

Safety risk management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the severity and/or likelihood of a potential consequence of a hazard.

Safety set-aside means the allocation of not less than 0.75 percent of assistance received by a large urbanized area provider under 49 U.S.C. 5307 to safety-related projects eligible under 49 U.S.C. 5307.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and (k) and the regulations set forth in 49 CFR part 674.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

Transit agency means an operator of a public transportation system that is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 or a rail transit agency.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Transit worker means any employee, contractor, or volunteer working on behalf of the transit agency.

Urbanized area means, as defined under 49 U.S.C. 5302, an area encompassing a population of 50,000 or more that has been defined and designated in the most recent decennial census as an urban area by the Secretary of Commerce.

Subpart B—Safety Plans

§ 673.11 General requirements.

- (a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:
 - (1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by—
 - (i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or
 - (ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.
 - (2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart D of this part.

- (3) The Public Transportation Agency Safety Plan must include annual safety performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. Safety performance targets for the safety risk reduction program are only required for large urbanized area providers.
- (4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.
- (5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.
- (6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan:
 - (i) An emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of transit worker responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area;
 - (ii) Any policies and procedures regarding rail transit workers on the roadway the rail transit agency has issued; and
 - (iii) The transit agency's policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.
- (7) The Public Transportation Agency Safety Plan of each large urbanized area provider must include a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must, at a minimum:
 - (i) Address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles that includes safety risk mitigations consistent with § 673.25(d)(3);
 - (ii) Address the reduction and mitigation of assaults on transit workers that includes safety risk mitigations consistent with § 673.25(d)(4);
 - (iii) Include the safety performance targets set by the Safety Committee pursuant to § 673.19(d)(2) for the safety risk reduction program performance measures established in the National Public Transportation Safety Plan. These targets must be set—
 - (A) Based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD);
 - (B) For all modes of public transportation; and
 - (C) Based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

- (iv) Include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).
- (b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.
- (c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart E of this part.
- (d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.
- (e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency Safety Plans for those modes of service.

§ 673.13 Certification of compliance.

- (a) Each direct recipient, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.
- (b) On an annual basis, a direct recipient or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

- (a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.
- (b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

§ 673.17 Cooperation with frontline transit worker representatives.

- (a) Each large urbanized area provider must establish a Safety Committee that meets the requirements of § 673.19.
- (b) Each transit agency that is not a large urbanized area provider must:

- (1) Develop its Public Transportation Agency Safety Plan, and subsequent updates, in cooperation with frontline transit worker representatives; and
- (2) Include or incorporate by reference in its Public Transportation Agency Safety Plan a description of how frontline transit worker representatives cooperate in the development and update of the Public Transportation Agency Safety Plan.

§ 673.19 Safety Committees.

- (a) **Establishing the Safety Committee.** Each large urbanized area provider must establish and operate a Safety Committee that is:
 - (1) Appropriately scaled to the size, scope, and complexity of the transit agency; and
 - (2) Convened by a joint labor-management process.
- (b) **Safety Committee membership.** The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.
 - (1) The labor organization that represents the plurality of the transit agency's frontline transit workers must select frontline transit worker representatives for the Safety Committee.
 - (2) If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.
- (c) **Safety Committee procedures.** Each large urbanized area provider must include or incorporate by reference in its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:
 - (1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;
 - (2) How meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded and maintained;
 - (3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;
 - (4) The compensation policy established by the agency for participation in Safety Committee meetings;
 - (5) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;
 - (6) How the Safety Committee will reach and record decisions;
 - (7) How the Safety Committee will coordinate and communicate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

- (8) How the Safety Committee will manage disputes to ensure it carries out its operations. The Safety Committee may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or a different process that the Safety Committee develops and agrees upon, but the Accountable Executive may not be designated to resolve any disputes within the Safety Committee; and
 - (9) How the Safety Committee will carry out its responsibilities identified in paragraph (d) of this section.
- (d) **Safety Committee responsibilities.** The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:
- (1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates as required at § 673.11(a)(1)(i);
 - (2) Set annual safety performance targets for the safety risk reduction program as required at § 673.11(a)(7)(iii); and
 - (3) Support operation of the transit agency's SMS by:
 - (i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;
 - (ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and
 - (iii) Identifying safety deficiencies for purposes of continuous improvement as required at § 673.27(d), including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

Subpart D—Safety Management Systems

§ 673.21 General requirements.

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

- (a) Safety Management Policy as described in § 673.23;
- (b) Safety Risk Management as described in § 673.25;
- (c) Safety Assurance as described in § 673.27; and
- (d) Safety Promotion as described in § 673.29.

§ 673.23 Safety Management Policy.

- (a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of Safety Management Policy that includes the transit agency's safety objectives and a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives.
- (b) A transit agency must establish and implement a process that allows transit workers to report safety concerns, including assaults on transit workers, near-misses, and unsafe acts and conditions to senior management, includes protections for transit workers who report, and includes a description of transit worker behaviors that may result in disciplinary action.
- (c) The Safety Management Policy must be communicated throughout the transit agency's organization.
- (d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals or groups within its organization, as they relate to the development and management of the transit agency's SMS:
 - (1) **Accountable Executive.** The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the transit agency's SMS is effectively implemented throughout the transit agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the transit agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.
 - (i) The Accountable Executive of a large urbanized area provider must implement safety risk mitigations for the safety risk reduction program that are included in the Agency Safety Plan under § 673.11(a)(7)(iv).
 - (ii) The Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations recommended by the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).
 - (2) **Chief Safety Officer or Safety Management System (SMS) Executive.** The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.
 - (3) **Safety Committee.** A large urbanized area provider must establish a joint labor-management Safety Committee that meets the requirements of § 673.19.
 - (4) **Transit agency leadership and executive management.** A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of a transit agency's SMS.
 - (5) **Key staff.** A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, Safety Committee, or SMS Executive in developing, implementing, and operating the transit agency's SMS.

§ 673.25 Safety Risk Management.

- (a) **Safety Risk Management process.** A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: hazard identification, safety risk assessment, and safety risk mitigation.
- (b) **Hazard identification.**
- (1) A transit agency must establish methods or processes to identify hazards and potential consequences of the hazards.
 - (2) A transit agency must consider, as a source for hazard identification:
 - (i) Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;
 - (ii) Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and
 - (iii) Safety concerns identified through Safety Assurance activities carried out under § 673.27.
- (c) **Safety risk assessment.**
- (1) A transit agency must establish methods or processes to assess the safety risk associated with identified hazards.
 - (2) A safety risk assessment includes an assessment of the likelihood and severity of the potential consequences of identified hazards, taking into account existing safety risk mitigations, to determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.
- (d) **Safety risk mitigation.**
- (1) A transit agency must establish methods or processes to identify safety risk mitigations or strategies necessary as a result of the transit agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. For large urbanized area providers, these methods or processes must address the role of the transit agency's Safety Committee.
 - (2) A transit agency must consider, as a source for safety risk mitigation:
 - (i) Guidance provided by an oversight authority, if applicable, and FTA; and
 - (ii) Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.
 - (3) When identifying safety risk mitigations for the safety risk reduction program related to vehicular and pedestrian safety events involving transit vehicles, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments.
 - (4) When identifying safety risk mitigations for the safety risk reduction program related to assaults on transit workers, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must

consider deployment of assault mitigation infrastructure and technology on transit vehicles and in transit facilities. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

- (5) When a large urbanized area provider's Safety Committee, as part of the transit agency's safety risk reduction program, identifies and recommends under § 673.19(c)(6) safety risk mitigations, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, based on a safety risk assessment conducted under § 673.25(c), the transit agency must include or incorporate by reference these safety risk mitigations in its ASP pursuant to § 673.11(a)(7)(iv).
- (6) When a large urbanized area provider's Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program, and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive must prepare a written statement explaining their decision, pursuant to recordkeeping requirements at § 673.31. The Accountable Executive must submit and present this explanation to the transit agency's Safety Committee and Board of Directors or equivalent entity.

§ 673.27 Safety Assurance.

- (a) **Safety Assurance process.** A transit agency must develop and implement a Safety Assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its Safety Assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its Safety Assurance process the requirements in paragraphs (b) and (d) of this section.
- (b) **Safety performance monitoring and measurement.** A transit agency must establish activities to:
 - (1) Monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance;
 - (2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended. For large urbanized area providers, these activities must address the role of the transit agency's Safety Committee;
 - (3) Conduct investigations of safety events to identify causal factors; and
 - (4) Monitor information reported through any internal safety reporting programs.
- (c) **Management of change.**
 - (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.
 - (2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.
- (d) **Continuous improvement.**
 - (1) A transit agency must establish a process to assess its safety performance annually.
 - (i) This process must include the identification of deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets required in § 673.11(a)(3).

- (ii) For large urbanized area providers, this process must also address the role of the transit agency's Safety Committee, and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program required in § 673.11(a)(7).
 - (iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.
- (2) A large urbanized area provider must monitor safety performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7).
 - (3) A large urbanized area provider that does not meet an established annual safety performance target set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7) must:
 - (i) Assess associated safety risk, using the methods or processes established under § 673.25(c);
 - (ii) Mitigate associated safety risk based on the results of a safety risk assessment using the methods or processes established under § 673.25(d). The transit agency must include these mitigations in the plan described at § 673.27(d)(4) and in the Agency Safety Plan as described in § 673.25(d)(5); and
 - (iii) Allocate its safety set-aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the safety performance target in the future.
 - (4) A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment as described in this section.

§ 673.29 Safety Promotion.

(a) *Competencies and training.*

- (1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.
- (2) Large urbanized area providers must include maintenance transit workers in the safety training program.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the transit agency's organization that, at a minimum, conveys information on hazards and safety risk relevant to transit workers' roles and responsibilities and informs transit workers of safety actions taken in response to reports submitted through a transit worker safety reporting program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives as described at § 673.17(b) or the Safety Committee activities described in § 673.19.

Subpart E—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS, and results from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the transit agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by FTA or other Federal entity, or a State or State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.