



## Office of the Secretary of Transportation

### 49 CFR Part 13

[Docket No. DOT-OST-2020-0229]

RIN 2105-AE97

### Procedures for Considering Environmental Impacts

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Notification of denial of request for extension of comment period.

**SUMMARY:** This document denies the request to extend the comment period on the U.S. Department of Transportation (DOT) notice of proposed rulemaking (NPRM) on Procedures for Considering Environmental Impacts. This NPRM contains the Department's procedures implementing the National Environmental Policy Act and outlines the Department's internal policies and procedures for environmental reviews of DOT's actions. The NPRM was published in the Federal Register on November 23, 2020.

**DATES:** The closing date for comments on the notice of proposed rulemaking published on November 23, 2020 (85 FR 74640), remains December 23, 2020.

**ADDRESSES:** You may review the petitions to extend the public comment period and other comments under Docket Number DOT-OST-2020-0229 through the Federal Regulations website at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** April Marchese, Director, Infrastructure Permitting Improvement Center, 202-366-2074, [april.marchese@dot.gov](mailto:april.marchese@dot.gov), or Krystyna Bednarczyk, Office of the General Counsel, 202-366-5283, [krystyna.bednarczyk@dot.gov](mailto:krystyna.bednarczyk@dot.gov).

**SUPPLEMENTARY INFORMATION:** On November 23, 2020, the U.S. Department of Transportation (DOT or Department) issued a notice of proposed rulemaking (NPRM)

(85 FR 7460) to codify the Department's procedures implementing the National Environmental Policy Act (NEPA). This NPRM would codify internal policies applicable to the Department's performance of environmental reviews. The NPRM would direct the Department's Operating Administrations to update their procedures consistent with regulations issued by the Council on Environmental Quality (CEQ), 40 CFR parts 1500-1508, and the Department's own implementing procedures, when finalized. The Department's existing procedures, which are contained in an internal order, have not been updated since 1985 and are inconsistent with current practice, and thus, modifications and changes are needed to make DOT's regulations consistent with intervening statutory and policy changes. This NPRM would codify existing processes and policies and ensure consistency with CEQ regulations published in July 2020 and effective as of September 14, 2020 (85 FR 43304 (July 16, 2020)).

To date, DOT has received four petitions to extend the comment period, each asking for different lengths of an extension. Petitioners note that the comment period for the NPRM coincides with the holiday season. In addition, petitioners cite the coronavirus disease (COVID-19) public health emergency as an unprecedented circumstance necessitating the extension of the comment period.

While DOT appreciates the concerns raised by the petitioners, we decline to extend the comment period for this rulemaking. The changes proposed by the NPRM would incorporate best practices, codify internal processes, provide conforming updates based on CEQ regulations, and provide consistency across the Department. The NPRM does not propose major discretionary changes to the way the Department analyzes the effects of proposed actions or ranges of alternatives; nor would the NPRM modify any analyses done in the Section 4(f) analysis.

DOT believes there is a strong interest in the timely issuance of these procedures to allow for the DOT Operating Administrations to issue their own procedural updates in

accordance with the CEQ regulations. CEQ regulations at 40 CFR 1507.3(b) require Federal agencies to develop or revise, as necessary, procedures to implement the CEQ regulations, including eliminating any inconsistencies with the CEQ regulations by September 14, 2021. Before that date, DOT must review comments received on this pending NPRM and, based on the comments received, develop a final rule that would set the minimum standard for all of the Department's procedures to follow. Once this NPRM is finalized, DOT Operating Administrations can begin to update their own procedures, many of which will also require notice and an opportunity for public comment before they can also be finalized. Individuals will have the opportunity to comment further on these implementing procedures, which will be more detailed than this NPRM and specifically tailored to the unique environmental programs overseen by each DOT Operating Administration.

The Department further acknowledges that DOT administrative policy provides that "*Generally, absent special considerations, the comment period for . . . significant DOT rules should be at least 45 days*" (emphasis added) (49 CFR 5.13(i)(3)). For the reasons cited above, DOT found special considerations exist that necessitate a comment period less than 45 days for this NPRM, which was designated significant by the Office of Management and Budget. DOT therefore denies the petitions to extend the comment period.

Issued in Washington, D.C., on December 18, 2020, under authority delegated in 49 CFR 1.23:

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Steven G. Bradbury,

General Counsel (and performing the functions and duties of Deputy Secretary).

