

# **Fact Sheet on the Federal Highway Administration's Update to the Regulations Implementing the Procedural Provision of the National Environmental Policy Act**

**Effective Date: July 3, 2025**

## **Introduction**

On July 3, 2025, the Federal Highway Administration (FHWA), in conjunction with the Federal Rail Administration (FRA) and the Federal Transportation Authority (FTA), published the interim Final Rule to update its regulations for the implementation of the National Environmental Policy Act (NEPA) found in Title 23, Code of Federal Regulations, Part 771 (23 CFR 771) in the Federal Register. The updates are effective for all NEPA environmental documents accepted or prepared after July 3, 2025.

The purpose of this Fact Sheet is to provide a high-level overview of the changes to FHWA NEPA regulations, so that Districts starting new NEPA reviews can incorporate these changes as applicable into their environmental review process. The Division of Environmental Analysis will continue to update its forms, templates, and guidance documents, including the applicable chapters of the Standard Environmental Reference to reflect the updated regulations. Reference to the section number is provided below, as applicable. A copy of the Final Rule as well as a “redline” version of the regulations can be found on the [Federal Regulations website](#) for further reference.

## **Background**

Executive Order 14154, *Unleashing American Energy*, was published in the Federal Register on January 29, 2025. Executive Order 14154 revoked several previously published Executive Orders, including Executive Order 11991, *Relating to Protection and Enhancement of Environmental Quality*, which had been in effect since 1977. This Order directed the Council on Environmental Quality (CEQ) to issue NEPA regulations that were located in the Code of Federal Regulations (40 CFR 1500-1508).

With the revocation of Executive Order 11991, the authority for the CEQ to issue NEPA regulations was removed. As a result, the CEQ published an interim final rule in the Federal Register on February 25, 2025, to remove their NEPA implementing regulations, effective April 11, 2025. Following this, the Federal Department of Transportation (USDOT) updated and revised Order 5610.1D, *Procedures for Considering Environmental Impacts* on July 1, 2025 and the FHWA NEPA regulations (23 CFR 771) on July 3, 2025. The NEPA regulations revisions included NEPA amendments from the Fiscal Responsibility Act of 2023 and amendments regarding efficient environmental reviews included in the Infrastructure Investment and Jobs Act of 2021. A summary of those changes is shown below. NOTE: The term “Administration”

refers to 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.

## General Change to Language and Terminology

- Removes references to CEQ regulations 40 CFR parts 1500-1508 throughout.
- Incorporates by reference the definitions and terminology from NEPA (42 U.S.C. 4336e) throughout.
- Modifies the definition of “applicant” to include “the applicant may also be the project sponsor” (§ 771.107).
- Adds “reasonably foreseeable” to description of social, economic and environmental impacts throughout.
- Adds the following definitions (§ 771.107):
  - “*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 [EA], finding of no significant impact, notice of intent, environmental impact statement [EIS], or record of decision [ROD].”
  - “*Finding of no significant impact (FONSI)* – A final determination by the Administration that the proposed action does not require the issuance of an environmental impact statement.”
  - “*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.”
  - “*Special expertise* - Statutory responsibility, agency mission, or related program experience.”
- Excludes “extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside the jurisdiction of the United States” from category of a major federal action subject to NEPA (§ 771.109).

## **Changes to Coordination Requirements**

- Stipulates that the purpose and need, alternatives development and screening, and other relevant analyses, studies, and work products may be incorporated into early phases of the NEPA process as appropriate (§ 771.111).

## **Changes to the Agency Policy and Review Processes under NEPA**

- Clarifies policy to use a “single environmental document” to reflect environmental reviews conducted to the maximum extent practicable. (§ 771.105(a))
- Adds language that “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.” (§ 771.115)
- Removes parenthetical text "Class I," "Class II," and "Class III" from classes of actions descriptions. (§ 771.115)
- Changes actions that “significantly affect the environment” to “have a reasonably foreseeable significant effect on the quality of the human environment” in determining classes of action. (§ 771.115)
- Confirms that signature of lead agency on the EA, draft EIS, final EIS or combined EIS/ROD, provides certification that the environmental document complies with the implementing regulations and applicable statutes (§ 771.138(c)(1)).

## **Changes to Use of Categorical Exclusions (CE)**

- See the Reliance and Adoption section.

## **Changes to Use of Environmental Assessments (EA) and Findings of No Significant Impact (FONSI)**

- Specifically allows for the preparation of an EA when a proposed action is not likely to have reasonably foreseeable significant effects, or significance of effects is unknown, but is not categorically excluded (§ 771.119).

## **Changes to Use of Environmental Impact Statements (EIS)**

- Clarifies that the scoping process may begin prior to the publication of a notice of intent (§ 771.123(b)(1)).
- 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 (§ 771.123(b)(2)). NOTE: 23 U.S.C. 139, *Efficient environmental reviews for project decisionmaking and One Federal Decision*, applies to all projects, including major projects, for which an EIS is prepared, or as requested by a project sponsor and to the extent determined by lead agency, to other projects for which an environmental document is prepared.

## Changes to Use of Reevaluations

- Adds clarification that for tiered EAs and EISs, the Federal agency 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. (§ 771.129).

## Reliance and Adoption

- Reliance
  - Specifically allows the Administration to rely upon another Federal agency's determination that a CE applies to a proposed action if the action covered by the original CE determination and the Administration's proposed action are substantially the same (§ 771.141(a)(3)).
  - Allows the Administration to rely upon another Federal agency's existing environmental document not prepared in accordance with 23 U.S.C. 139 (typically an EA) for a proposed action if the action covered by the original environmental document and the Administration's proposed action are substantially the same and the environmental issues were adequately identified and addressed (§ 771.141(a)(2)).
  - Allows a Federal agency to rely upon or use another Federal agency's environmental document prepared in accordance with 23 U.S.C. 139 (typically an EIS but could be an EA if the 23 U.S.C. 139 process was followed) to the same extent such Federal agency could adopt or use a document prepared by another Federal agency (§ 771.141(a)(1)).
- Adoption
  - 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 (§ 771.141(b)(1)).
  - However, it specifically states that States carrying out assigned responsibilities under 23 U.S.C. 326 or 327 **may not** establish a new categorical exclusion through adoption (§ 771.141(b)(2)).

- Establishes a process for FHWA, FRA, or FTA to establish the new categorical exclusion (§ 771.141(b)(3)).

## Page Limits and Time Limits

The regulations incorporate a new section 771.138 *Timelines, Page Limits, and Certifications* with the following criteria:

- Page Limits
  - The text of an EA shall be no more than 75 pages, not including citations or appendices. (§ 771.138(b)(2)).
  - The text of an EIS shall be 200 pages or fewer to the maximum extent practicable (150 pages for projects not following the 23 U.S.C. 139 process) and, for projects of extraordinary complexity, 300 pages or fewer, not including citations or appendices (§ 771.138(b)(1)).
  - **NOTE:** 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. See [USDOT Order 5610.1D](#), Sections 10(h) and 13(h) for additional information on page limits.
- Time Limits
  - EAs shall be completed within one year, which is measured from the date of the decision to prepare an EA to the publication of the EA or the FONSI. EAs that are major projects must be completed within a schedule consistent with an agency average of not more than two years. (§ 771.138(a)(2)).
  - EISs shall be completed within 2 years, and for major projects, within a schedule consistent with an agency average of not more than two years, which is measured from the date of the notice of intent to the date the ROD or combined final EIS/ROD is signed (§ 771.138(a)(1)).
  - Adds a provision for the Administration, in consultation with the applicant, to extend the above timelines to provide “only so much additional time as necessary to complete the EIS or EA, as applicable” (§ 771.138(a)(3)).