

National Environmental Policy Act Procedures: U.S. Department of Transportation Announces Two Interim Policies



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The United States Department of Transportation (“DOT”) published an August 23rd Federal Register Notice announcing the availability of two interim policies for public comment. See 84 Fed. Reg. 44351.

The two policies are denominated:

1. *Page Limits for National Environmental Policy Act Documents and Focused Analyses*
2. *Application of the One Federal Decision Process to DOT Projects*

The National Environmental Policy Act (“NEPA”) requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to their actions. The statute requires federal agencies (including DOT) to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from action forcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an Environmental Assessment (“EA”) or EIS in certain defined instances. As a result, NEPA does not require an agency to pick a certain alternative or meet a particular standard. Nevertheless, the preparation and detail involved in preparing both an EA or an EIS can be substantial.

In issuing the interim policy addressing NEPA DOT states that it will improve the quality of environmental documentation while reducing their length. As to the One Federal Decision policy, the objective is to provide direction on how and when to apply this process to DOT projects.

The DOT states that the interim policy addressing length would require that text of draft in final EIS’s should be limited to 150 pages unless they are “of unusual scope or complexity.” EA’s are limited to 75 pages. Also discussed are what are described as “best practices” to comply with the page limits.

The One Federal Decision process is a response to Executive Order 13807 which mandated federal agencies use a One Federal Decision process for major federal infrastructure projects. The Executive Order had directed federal agencies that have major infrastructure projects to prepare a permitting timetable to be tracked through the Federal Permitting Dashboard. This interim policy is stated to provide

DOT NEPA practitioners the processes and procedures to implement the Executive Order and related documents.

A copy of the Federal Register Notice can be downloaded [here](#).