CHAPTER 2: NATIONAL ENVIRONMENTAL POLICY ACT AND IMPLEMENTING REGULATIONS

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2.0 NATIONAL ENVIRONMENTAL POLICY ACT AND IMPLEMENTING REGULATIONS

Transportation projects must comply with a wide range of federal and state environmental laws, regulations, permits, reviews, notifications, consultations, and other approvals. This chapter provides an introduction to major regulations and guidelines that are applicable to transportation projects in Colorado.

The National Environmental Policy Act (NEPA) and implementing regulations discussed in this chapter mandate that transportation decisions involving federal funds adhere to these regulations. In addition, CDOT has committed to complying with the intent and requirements of NEPA for all transportation activities, regardless of whether or not they are federally funded.

NEPA contains three important elements:

- Declaration of national environmental policies and goals
- Establishment of action-forcing provisions for federal agencies to implement those policies and goals
- Establishment of CEQ in the Executive Office of the President

2.1 *National Environmental Policy Act*

NEPA was developed in 1969 and signed into law on January 1, 1970 [NEPA, 42 United States Code (USC) § 4321 – 4347]. NEPA requires that federal agencies use a systematic, interdisciplinary approach to decision-making when actions may affect the quality of the human environment. The purpose of NEPA is to declare a national policy that will:

- Encourage productive and enjoyable harmony between man and his environment
- Promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man
- Enrich the understanding of the ecological systems and natural resources important to the Nation
- Establish a Council on Environmental Quality (CEQ)

NEPA is implemented through supporting federal regulations developed by the CEQ (CEQ, 40 Code of Federal Regulations [CFR] § 1500 – 1508) and regulations established by other federal agencies. The CEQ regulations establish requirements to be followed for any project that is "financed, assisted, conducted, or approved by a federal agency." Prior to initiating a project, it is important to determine whether or not a federal action is involved and if and how NEPA is applicable to the project.

CEQ's website http://www.whitehouse.gov/ceq/

CEQ NEPA Task Force's website http://ceq.hss.doe.gov/nepa/nepanet.htm

The Federal Highway Administration (FHWA) is the primary lead federal agency for roadway projects in Colorado and works as a partner with CDOT and local agencies to implement NEPA on federally aided or approved projects. The Federal Transit Administration (FTA) is the primary lead federal agency for transit projects. Guidance for projects with FTA involvement is included in Chapter 10.

2.2 *Council on Environmental Quality – Regulations for Implementing the National Environmental Policy Act*

In 1978, CEQ published the implementing regulations for NEPA, which are still in effect and apply to all federal agencies (CEQ, 40 CFR § 1500 – 1508). The CEQ regulations indicate that each federal agency should then develop its own more specific implementing regulations for NEPA. The first section of the CEQ regulations, 1500.1 and 1500.2, brings forth the essence of the law. The CEQ purposely left many parts of the mandated procedure flexible so each federal agency could develop specific procedures for applying the law and regulations to its own mission and needs.

In 1981, CEQ issued the guidance document, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, to answer frequently asked questions related to the CEQ regulations (CEQ, 1981). Since that time, CEQ has issued additional guidance and other information covering a variety of issues relevant to the NEPA process. This guidance is available on the CEQ website. Key portions of the CEQ regulations are presented below.

CEQ – Regulations for Implementing NEPA:

- Part 1500 – Purpose, Policy, and Mandate
- Part 1501 – NEPA and Agency Planning
- Part 1502 – Environmental Impact Statement
- Part 1503 – Commenting
- Part 1504 – Pre-decision Referrals to the Council of Proposed Federal Actions Determined to be Environmentally Unsatisfactory
- Part 1505 – NEPA and Agency Decision-making
- Part 1506 – Other Requirements of NEPA
- Part 1507 – Agency Compliance
- Part 1508 – Terminology and Index

2.2.1 1500.1 Purpose

(a) NEPA is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of NEPA. The President, the federal agencies, and the courts share responsibility for enforcing NEPA so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and

public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

2.2.2 1500.2 Policy

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the US in accordance with the policies set forth in NEPA and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decision-makers and the public, to reduce paperwork and the accumulation of extraneous background data, and to emphasize real environmental issues and alternatives. Environmental Impact Statements (EIS) shall be concise, clear, and to the point and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of NEPA and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

CEQ. 1981. Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process. Subject: Questions and Answers about the NEPA Regulations. March 16.

FHWA Technical Advisory T 6640.8A. 1987. Guidance for Preparing and Processing Environmental and Section 4(f) Documents. October 30.

2.2.3 When Does the National Environmental Policy Act Apply to Your Project?

Under federal law, NEPA applies to any proposed action or transportation project that has a federal nexus, including but not limited to instances where:

- Federal funds or assistance will be used at some phase of project development
- Federal funding or assistance eligibility must be maintained
- Federal permits or approvals are required (Clean Water Act – Section 404 Individual Permit, US Department of Transportation [USDOT] Act – Section 4(f), Endangered Species Act – Biological Opinion for Section 7, etc.)
- There will be new or revised access to the interstate system, which requires FHWA approval

CDOT's Policy Directive 1904.0 establishes the CDOT NEPA Manual as the method that CDOT and consultants working for CDOT shall use for maintaining compliance with NEPA standards.

2.3 *Joint Federal Highway Administration/ Federal Tranist Administration – Environmental Impact and Related Procedures*

To address the NEPA responsibilities established by CEQ, the FHWA and FTA jointly issued regulations, *Environmental Impact and Related Procedures* (FHWA and FTA, 23 CFR 771 § 771.101 – 771.131). FHWA guidance, complementing the regulations, was issued in the form of a Technical Advisory (T 6640.8a), *Guidance for Preparing and Processing Environmental and Section 4(f) Documents* (FHWA, 1987). The Technical Advisory was developed by FHWA to provide guidance to its field offices and applicants regarding the types of information needed to comply with NEPA, Section 4(f) of the US Department of Transportation (USDOT) Act of 1966 (USDOT Act, 49 USC § 303), and other environmental requirements. The Technical Advisory provides detailed information on the contents and processing of environmental documents. The FTA issues guidance, often in the form of circulars, to provide grantees with direction on program specific issues and statutory requirements. Guidance for projects with FTA involvement is included in Chapter 10.

FTA's website
http://www.fta.dot.gov/

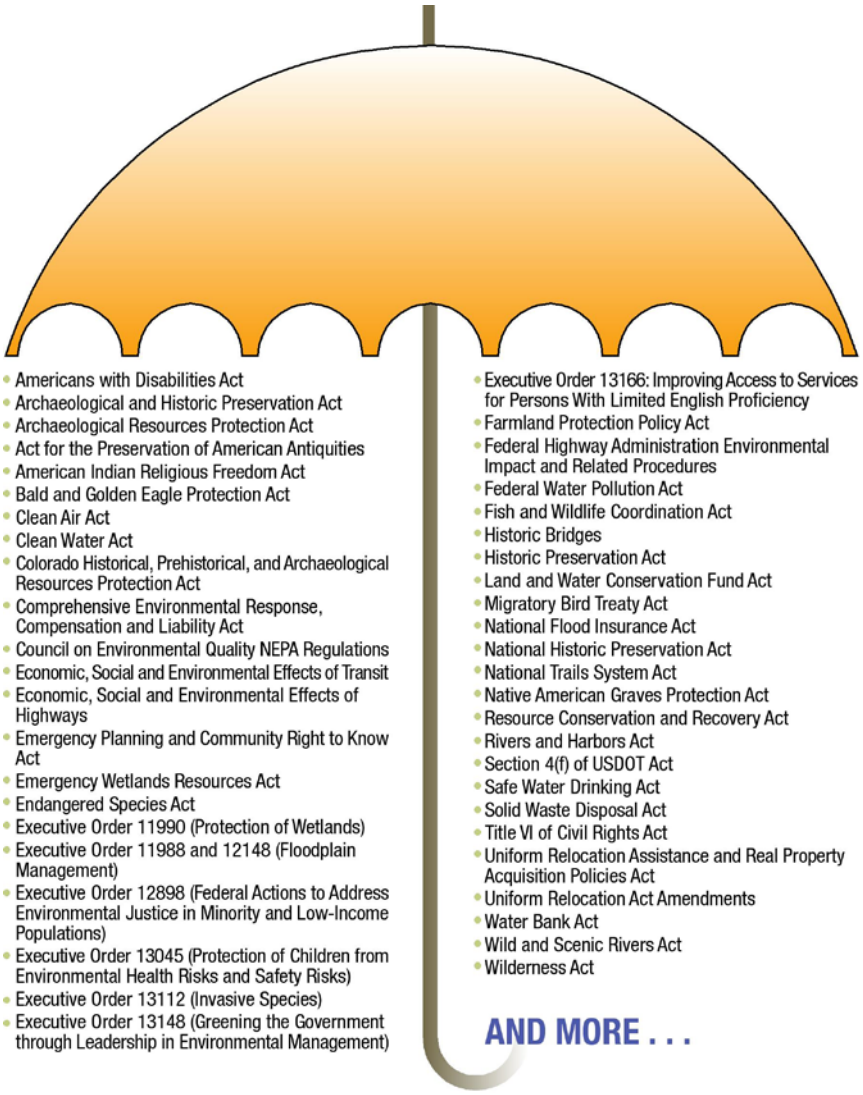
USDOT's website
http://www.dot.gov/

FHWA and FTA adopted the policy of managing the NEPA project development and decision-making process as a coordinated process or "umbrella," under which all applicable environmental laws, executive orders, and regulations are considered and addressed prior to the final project decision and document approval. Figure 2-1 depicts the NEPA "umbrella" and related environmental laws, executive orders, regulations, etc.; specific

discussion of the relevant laws, executive orders, and regulations can be found in Chapter 9. Conclusion of the NEPA process results in a decision that addresses multiple concerns and requirements. The FHWA and FTA NEPA process allows transportation officials to make project decisions that balance engineering and transportation needs with social, economic, and natural environment factors. During the process, a wide range of stakeholders, including the public, businesses, interest groups, and agencies at all levels of government provide input into project and environmental decisions.

Prior to implementing NEPA compliance for a specific project, please check online to be certain there are no recent regulatory changes. At a minimum, check the CEQ website, the CDOT environmental website, and the FHWA environmental website.

Figure 2-1 NEPA Umbrella



2.4 Classes of Action

Transportation projects vary in type, size, complexity, and potential to affect the environment. Transportation project effects can vary from very minor to significant impacts on the human and natural environment. To account for the variability of project impacts, there are three basic "classes of action" that prescribe the level of documentation required in the NEPA process:

- Class I – EIS
- Class II – Categorical Exclusion (CatEx)
- Class III – Environmental Assessment (EA)

The class of action determines how compliance with NEPA is carried out and documented.

The three classes of action are shown in Table 2-1. Additional information on each of the classes of action is presented in Chapters 4, 5, and 6. The NEPA process is outlined in Figure 2-2.

If there are any changes to the project that may affect the classification determination, the CDOT project team and FHWA jointly reconsider the appropriate classification and FHWA approves the revised classification determination. FHWA is the ultimate decision-maker for federal project classification. If no federal action is anticipated, CDOT can make the determination for classification without FHWA consultation.

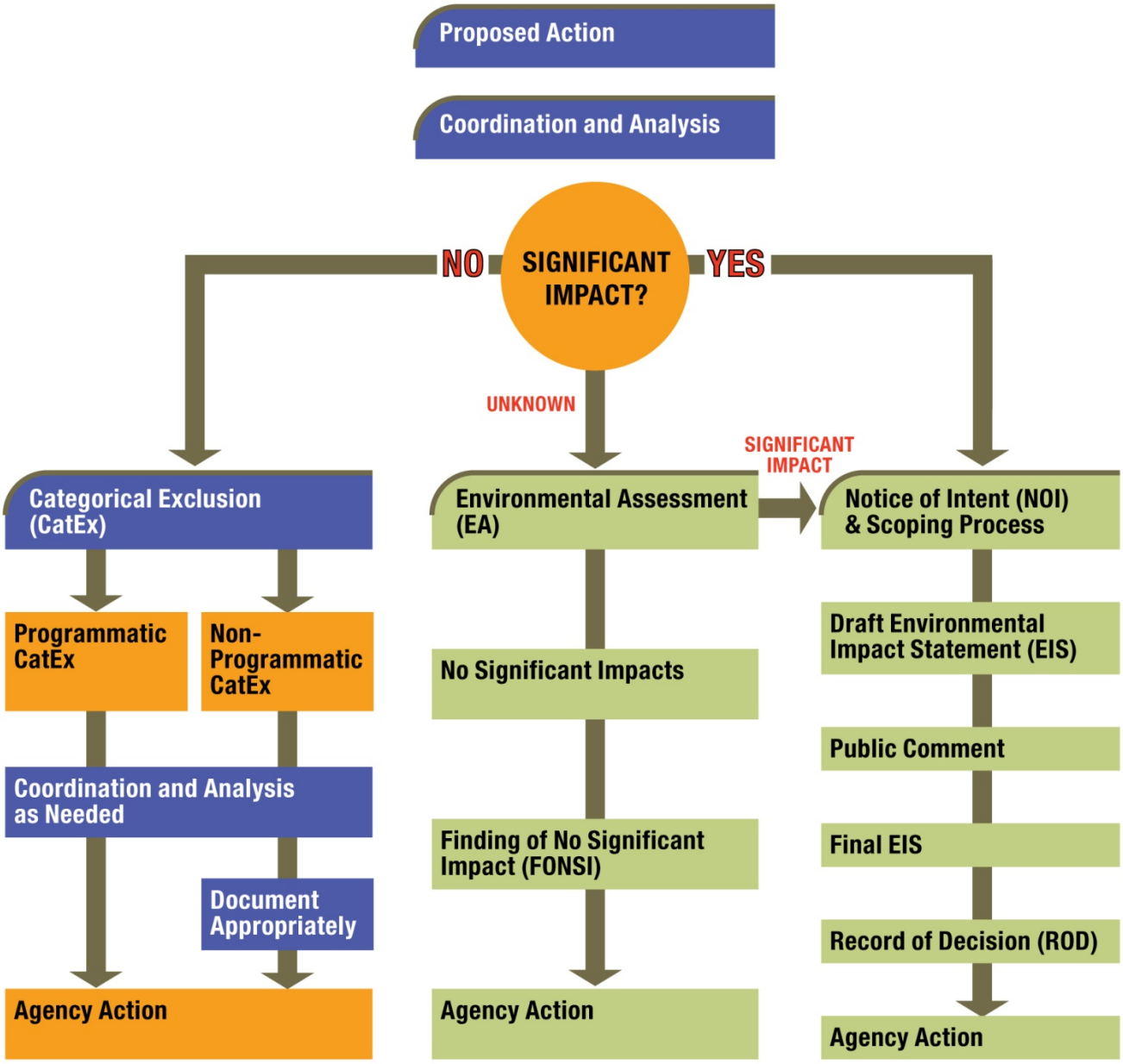
As documented in CDOT's *Environmental Stewardship Guide*, CDOT recognizes that the interdisciplinary approach that NEPA advocates is key to the development and evaluation of successful transportation concepts. This approach has been adopted for all CDOT projects, including projects that require CDOT approvals, reflecting CDOT's environmental ethic and commitment to meeting both the intent and requirements of NEPA.

Table 2-1 NEPA Classes of Action

Class I	Class II	Class III
Environmental Impact Statement (EIS) – Chapter 4	Categorical Exclusion (CatEx) – Chapter 5	Environmental Assessment (EA) – Chapter 6
Required for actions likely to have significant environmental effects that cannot be mitigated.	Required for actions that do not individually or cumulatively have a significant environmental effect. Necessary environmental studies and compliance with all applicable requirements are still required for the project.	Required for actions that do not qualify as CatEx, but where there is insufficient information to determine whether the project's impacts warrant an EIS. An EA may also be a useful tool in that it incorporates environmental considerations with project design and can aid in NEPA compliance when an EIS is not required.
Examples include: ▪ A new, controlled-access freeway ▪ A highway project of four or more lanes in a new location ▪ New construction or extension of fixed rail transit facilities	Examples include: ▪ Pedestrian facilities ▪ Landscaping ▪ Routine maintenance, including resurfacing, bridge replacement and rehabilitation, and minor widening	Examples include: ▪ Actions that are not clearly Class II (CatEx) ▪ Actions that are not clearly Class I (EIS) ▪ New construction of highway interchange
Upon completing the EIS, FHWA signs a Record of Decision (ROD) that presents the basis for the determination, summarizes any mitigation measures to be incorporated in the project, and documents any Section 4(f) approval.	CDOT or FHWA approval is required on all CatEx projects. In Colorado, FHWA has programmatically approved some CatExs.	In coordination with FHWA, CDOT determines whether a Finding of No Significant Impact (FONSI) is appropriate or if further study is required in an EIS.

According to the CEQ regulations (40 CFR § 1500–1508), the determination that a project will have a "significant impact" is a function of both context and intensity of the anticipated impacts. Context means that the significance of the potential impact must be analyzed in several perspectives such as society as a whole (human, national), the affected region, the affected interests, and the locality. Intensity refers to the severity of impact. Significance of the impact will vary with the setting of the proposed action and the surrounding area (including residential, industrial, commercial, and natural sites).

Figure 2-2 NEPA Process Options (Classes of Actions)



CEQ regulations call for consideration of the following in determining significance:

- Degree of effect on public health or safety
- Presence of unique characteristics of the project area such as proximity to resources or protected areas
- Degree to which effects on the quality of the human environment are likely to be highly controversial
- Degree to which possible effects are uncertain or involve unique or unknown risks
- Degree to which the action would set a precedent for future actions with significant effects
- Contribution to cumulatively significant effects
- Degree to which there may be adverse effects to properties or districts on, or eligible for, listing on the National Register of Historic Places
- Degree to which there may be adverse effects on an endangered or threatened species or its critical habitat
- Conflict with federal, state, or local laws for the protection of the environment
- Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial

To determine significance, the severity of the impact must be examined in terms of:

- Type, quality, and sensitivity of the resource involved
- Location of the proposed project
- Duration of the effect (short- or long-term)
- Other considerations of context

2.5 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

In August 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users was signed into law (known as SAFETEA-LU) (SAFETEA-LU, 23 USC § 1001 - 11167). SAFETEA-LU authorizes the federal surface transportation programs for highways, highway safety, and transit for the 5-year period 2005 to 2009. SAFETEA-LU was extended past 2009 because MAP-21 was not put in place until October 2012. SAFETEA-LU incorporates changes aimed at improving and streamlining the environmental process for transportation projects. These changes, however, come with some additional steps and requirements on transportation agencies.

SAFETEA-LU represents the largest surface transportation investment in US history and builds on the foundation of previous transportation laws (Intermodal Surface Transportation Efficiency Act [ISTEA, 23 USC § 1001 – 8005] and Transportation Equity Act for the 21st Century [TEA-21, 23 USC § 1101 – 9012]) to refine, among other things, the transportation planning and project development processes. SAFETEA-LU retains and increases funding for the environmental programs of TEA-21 and adds new programs focused on the environment. SAFETEA-LU requirements play an integral role in the development of the NEPA process for transportation projects. A brief discussion of these requirements is presented in **Table 2-2** below.

Table 2-2 SAFETEA-LU Requirements

Section[1]	Title	Description of Section
Section 6001	Transportation Planning	Section 6001 revises regulations governing the development of metropolitan transportation plans and programs for urbanized areas, state transportation plans and programs and the regulations for congestion management systems. Changes to the metropolitan and statewide transportation planning requirements extended the planning update cycles and integrated big-picture environmental considerations.
Section 6002	Efficient Environmental Reviews for Project Decision-Making	Section 6002 prescribes a new environmental review process for transportation projects, which is mandatory for Environmental Impact Statements (EIS) and optional for Environmental Assessments (EA), at the discretion of the Federal Highway Administration (FHWA) Division Office. The process includes new obligations to create enhanced opportunity for coordination with the public and promotes efficient project management by lead agencies. Section 6002 defines the roles and responsibilities of lead, cooperating, and, a new category "participating agency." In this section, Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) also sets forth various requirements for engaging broad agency and public input throughout the development and approval processes.

Section[1]	Title	Description of Section
		Section 6002 requires notice and comment periods for purpose and need statements and the range of reasonable alternatives prior to circulation of the draft EIS. The law also provides a 180-day statute of limitations on legal actions following publication of a Federal Register notice that the final environmental approval or permit has been issued for a project. (This is separate from the notice of availability for a Record of Decision [ROD] or Finding of No Significant Impact [FONSI]).
Section 6003	State Assumption of Responsibilities for Certain Programs and Projects	Section 6003 establishes a pilot program under which, during the first three years after enactment, the Secretary may allow up to five states to assume environmental responsibilities (including National Environmental Policy Act [NEPA] and Section 4[f]) for Recreational Trails and Transportation Enhancement projects.
Section 6004	State Assumption of Responsibility for Categorical Exclusions	After entering into a Memorandum of Understanding (MOU) with the Secretary, each state may assume responsibility for Categorical Exclusions (CatEx), with FHWA in a programmatic monitoring role. Another provision calls for the Secretary to establish a CatEx, to the extent appropriate, for activities that support the deployment of intelligent transportation infrastructure and systems.
Section 6005	Surface Transportation Project Delivery Pilot Program	Section 6005 establishes a project delivery pilot program for five states (specified as Alaska, Ohio, Oklahoma, Texas, and California), allowing them to apply to the US Department of Transportation (USDOT) to assume all USDOT environmental responsibilities under NEPA and other environmental laws (excluding the Clean Air Act and transportation planning requirements). This delegation authority is limited to highway projects and could be for specific projects within a state or a programmatic delegation.
Section 6006	Environmental Restoration and Pollution Abatement Guidance	Section 6006 provides for added National Highway System eligibility for retrofits to projects undergoing reconstruction, rehabilitation, resurfacing, or restoration, if both National Highway System and Surface Transportation Program funds could be used for stand-alone projects for retrofits to address water pollution or environmental degradation caused wholly or partially by a transportation facility. Section 6006 makes activities for the control of noxious weeds and the establishment of native species eligible for federal-aid funds.
Section 6007	Exemption of Interstate System	Section 6007 acts in general to exempt the bulk of the Interstate Highway System from consideration as a historic property under existing Section 4(f) requirements. It effectively excludes the vast majority of the 46,700 mile Dwight D. Eisenhower System of Interstate and Defense Highways (Interstate System) from review as an/a historic property under both Sections 106 and 4(f). Only distinct elements of the system, which meet the National Register of Historic Places criteria for national or exceptional significance, will continue to be treated as historic properties under both authorities. When designated by FHWA, elements such as certain bridges, tunnels, and rest stops, shall be excluded from the general exemption.
Section 6008	Integration of Natural Resource Concerns into Transportation Project Planning	Section 6008 mandates the integration of natural resource concerns into transportation planning.

Section[1]	Title	Description of Section
Section 6009	Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites	Section 4(f) of the USDOT Act prohibits projects on publicly owned parks, recreation areas, wildlife and waterfowl refuges, or historic sites unless there is no feasible and prudent alternative and all possible mitigation is used. Under SAFETEA-LU, the Secretary can comply with Section 4(f) in a streamlined manner by finding that the program or project will have a "de minimis" impact on the area – i.e., there are no adverse effects of the project and the relevant State Historic Preservation Officer (SHPO) or other official with jurisdiction over a property concurs.
Section 6010	Environmental Review of Activities that Support Deployment of Intelligent Transportation Systems	Section 6010 calls for the Secretary to establish a CatEx, to the extent appropriate, for activities that support the deployment of intelligent transportation infrastructure and systems.
Section 6011	Transportation Conformity	Transportation conformity ("conformity") is a provision of the Clean Air Act that ensures that federal funding and approval goes to those transportation activities that are consistent with air quality goals. Conformity applies to transportation plans and projects funded or approved by the FHWA or the Federal Transit Administration (FTA) in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or nitrogen dioxide. The air quality conformity process is improved with changes in the frequency of conformity determinations and conformity horizons.

NOTE:
(1) SAFETEA-LU Sections 6012 to 6018 include the Federal Reference Method, air quality monitoring data influenced by exceptional events, federal procurement of recycled coolant, clean school bus program, special designation, increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete, and use of granular mine tailings, which are not relevant to the changes aimed at improving and streamlining the environmental process for transportation

2.6 *Moving Ahead for Progress in the 21st Century Act*

In July 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law. MAP-21 authorizes the funding of surface transportation programs for federal fiscal years 2013 and 2014 and is the first long-term highway authorization enacted since SAFETEA-LU in 2005. MAP-21 has been extended through May 2015. MAP-21 extended current law for the remainder of FY 2012; new provisions for 2012 and beyond took effect on October 1, 2012. Not all MAP-21 provisions took effect immediately. Some provisions went into effect on October 1, 2012; however, other provisions have specific timeframes in the language of the provision that require rulemaking from USDOT, which can take a year or longer. Therefore, this Manual update does not include all final MAP-21 provisions. Once rulemaking is complete, the Manual will be revised to reflect the most current MAP-21 provisions.

MAP-21 guidance is available on the FHWA website: http://www.fhwa.dot.gov/map21/

MAP-21 transforms the policy and programmatic framework for investments to guide the growth and development of the country's vital transportation infrastructure. MAP-21 creates a streamlined, performance-based, and multimodal program to address the many challenges facing the US transportation system. These challenges include improving safety, maintaining infrastructure condition, reducing traffic congestion, improving efficiency of the system and freight movement, protecting the environment, and reducing delays in project delivery.

MAP-21 establishes a new core formula program structure that includes the National Highway Performance Program (NHPP), Surface Transportation Program (STP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), Highway Safety Improvement Program (HSIP), Railroad-Highway Crossings (set-aside from HSIP), and Metropolitan Planning. Two new formula programs were created, including Construction of Ferry Boats and Ferry Terminal Facilities and Transportation Alternatives. The Tribal High Priority Projects (THPP) was also created, which is a new discretionary program. Many of the discretionary programs were eliminated, but the eligible projects are now covered elsewhere within MAP-21.

Table 2-3 provides a broad overview of the MAP-21 requirements that are relevant to accelerating the project delivery process.

Table 2-3 MAP-21 Requirements

Section	Title	Description of Section
1301*	Declaration of Policy and Project Delivery Initiative	Section 1301 is a statement of policy similar to procedures or practices currently being implemented by USDOT under existing regulation or through programs. "…it is in the national interest to expedite delivery of surface transportation projects by substantially reducing the average length of the environmental review process" Also directs that "Each federal agency shall cooperate with [DOT] to expedite the environmental review process …"
1302	Advance Acquisition of Real Property Interests	Section 1302 broadens the ability for states to acquire or preserve right-of-way prior to completion of the NEPA review process.
1303	Letting of Contracts	Section 1303 authorizes contracting agencies to use the Construction Manager/General Contractor (CM/GC) project delivery method for preconstruction (including scheduling, cost engineering, constructability, cost estimating, and risk identification) and construction services.
1304	Innovative Project Delivery Methods	Section 1304 promotes the use of innovative technologies and practices that increase the efficiency of construction, accelerate construction, improve the safety, improve the quality, reduce congestion from construction, and extend the service life of highways and bridges. Includes a federal share (up to 100%) for these innovative technologies and practices.

Section	Title	Description of Section
1305*	Efficient Environmental Reviews for Project Decisionmaking	Section 1305 requires FHWA/FTA to initiate rulemaking to allow for the use of programmatic approaches to conduct environmental reviews. Includes a new category of "participating agencies" for Federal, State, and local agencies, and tribal nations that have an interest in the project. The Lead Agency must establish a coordination plan for agency and public participation and comment. Participating agencies and the public will have the opportunity to comment on the Purpose and Need and Range of Alternatives. FHWA is developing a notice of proposed rulemaking (NPRM) on programmatic agreements and CatExs.
1306**	Accelerated Decisionmaking	Section 1306 amends Chapter 1 of Title 23, United States Code, as amended by Section 139(h). This provision applies to projects that require an EIS. The provision establishes a framework for setting deadlines for decision-making and includes the following provisions 1) the USDOT may convene a meeting 30 days after a DEIS is issued with resource agencies and others to ensure all are on schedule to meet deadlines for project decisions. 2) Establishes a process for issue resolution that may be initiated by USDOT 3) Establishes financial penalties for agencies that fail to make a decision in the specified timeframe. This provision applies to environmental laws beyond NEPA.
1307*	Assistance to Affected Federal and State Agencies	Section 1307 amends Chapter 1 of Title 23, United States Code, as amended by Section 139(j). When federal funds are to be used to dedicate staffing at an affected federal agency, an MOU must be established between the state and federal agencies to identify how the federal funds will be used to expedite environmental reviews and permitting processes.
1308*	Limitations on Claims	Section 1308 amends Chapter 1 of Title 23, United States Code, as amended by Section 139(l) and shortens the time period to file a lawsuit to 150 days after the release of a Final EIS.
1309**	Accelerating Completion of Complex Projects within 4 Years	Section 1309 amends Chapter 1 of Title 23, United States Code, as amended by Section 139 and includes provisions for certain projects involved in EIS preparation to receive technical assistance (e.g., provide additional staff, training, or supplying outside assistance) from the USDOT to resolve outstanding issues and project delays.
1310	Integration of Planning and Environmental Review	Section 1310 includes changes in the environmental review process – providing earlier coordination, greater linkage between planning and environmental review processes, using a programmatic approach where possible, and environmental document consolidation.
1311	Development of Programmatic Mitigation Plans	Section 1311 amends Chapter 1 of Title 23, United States Code Section, as amended by Section 1310(a) and adds the provision for allowing statewide or metropolitan planning organizations to develop programmatic mitigation plans to address potential environmental impacts of future projects.
1312	State Assumption of Responsibilities for Categorical Exclusions	Section 1312 amends 23 United States Code Section 326. This provision allows states to choose to assume federal authority for determining whether specific activities are CatExs. The amendment specifies that the USDOT shall not require states to forego project delivery methods that are "otherwise permissible for highway projects" as a condition of allowing states to assume responsibility for CatEx determinations.

Section	Title	Description of Section
1313	Surface Transportation Project Delivery Program	Section 1313 amends Chapter 1 of Title 23, United States Code Section 327. This is an amendment to an existing pilot program that allows states to assume FHWA's role in the NEPA process if program conditions are met. The provision makes the pilot program permanent, allows all states to participate, and expands the program to include NEPA responsibilities with respect to one or more railroad, public transportation, or multimodal projects within the state.
1314	Application of Categorical Exclusions for Multimodal Projects	Section 1314 expands the authority for use of Categorical Exclusions (CatExs) to a variety of other projects and includes multi-modal projects. Section 1314 does not require rulemaking. Detailed guidance is currently being developed.
1315	Categorical Exclusions in Emergencies	Section 1315 expands the authority for use of CatExs for the repair or reconstruction of any road, highway, or bridge that is in operation or under construction when damaged under certain declared emergencies or disasters. The FHWA/FTA joint Final Rule was published in the Federal Register on February 19, 2013, which added a new CatEx action to 23 CFR Part 771 (c)(9), and includes: "(i) Emergency repairs under 23 U.S.C. 125, and (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, or bridge, tunnel, or transit facility…including ancillary transportation facilities…that is 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."
1316	Categorical Exclusion for Projects within the Right-of-Way	Section 1316 expands the authority for use of CatExs for projects within existing operational right-of-way. The FHWA/FTA joint Final Rule was published in the Federal Register on January 13, 2014, which added a new CatEx action to 23 CFR Part 771, defined as "Any project (as defined in 23 U.S.C. 101(a)) within an existing operational right-of-way. The definition of operational right-of-way, as included in Section 771.117 (c) (22) is as follows: projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This are includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way." Per the Final Rule, to qualify for this new CatEx action, "…the action must comply with NEPA requirements relating to connected actions and segmentation."

Section	Title	Description of Section
1317	Categorical Exclusions for Projects with Limited Federal Funding	Section 1317 expands the authority for use of CatExs for projects with limited federal assistance. The FHWA/FTA joint Final Rule was published in the Federal Register on January 13, 2014, which added a new CatEx action to 23 CFR Part 771, defined as "any project (as defined in 23 U.S.C. 101(a)) that receives less than $5,000,000 of Federal funds or with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost, respectively. Per the Final Rule, to qualify for this new CatEx action, "…the action must comply with NEPA requirements relating to connected actions and segmentation."
1318	Programmatic Agreements and Additional Categorical Exclusions	Under Section 1318, the USDOT must (1) review projects processed as CatExs since 2005 and survey state agencies to solicit new CatEx designations to add to the regulatory list. (2) USDOT must also propose a rulemaking to move some activities from subsection (d) to subsection (c) of CFR 771.117. (3) conduct rulemaking to propose to reclassify three categories of actions currently in the [d] list and (4) Directs the Secretary to seek opportunities to enter into programmatic agreements, including agreements that would allow a State to determine, on behalf of FHWA, whether a project is categorically excluded. NPRM on programmatic agreements and CatExs issued on September 19, 2013.
1319*	Accelerated Decisionmaking in Environmental Reviews	Statement of practices similar to procedures or practices currently being implemented by USDOT under existing regulation or through programs. FHWA/FTA issued joint interim guidance in January 2013.
1320*	Memoranda of Agency Agreements for Early Coordination	Under Section 1320, the USDOT and federal resource agencies must provide technical assistance to states or MPOs, when requested. Also, the lead agency may establish MOAs with other agencies if requested by states or MPOs. Statement of practices similar to procedures or practices currently being implemented by USDOT under existing regulation or through programs.
1321	Environmental Procedures Initiative	Section 1321 establishes "an initiative to review and develop consistent procedures for environmental permitting and procurement requirements"
1322	Review of State Environmental Reviews and Approvals for the Purpose of Eliminating Duplication of Environmental Reviews	Section 1322 requires a review of state environmental laws that are similar to federal environmental laws and the identification of the frequency and cost of duplicative review processes. The result of this research will be submitted in a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate no later than two years of enactment of MAP-21.
1323	Review of Federal Project and Program Delivery	Section 1323 requires USDOT to review the completion times of CatExs, EAs, and EISs

NOTE:

* Provisions that state national policies or priorities similar to procedures or practices currently being implemented to streamline the environmental review process by the USDOT under existing regulation or through programs such as Every Day Counts.

** Provisions that may lead to appreciable changes in the NEPA environmental review process.

2.7 References

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