

§313.3

decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to §313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing 42 U.S.C. 6362, particularly in connection with proposed actions which do not require notice and hearing as a prerequisite to decision under the Statute. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross-examination.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

§313.3 Definitions.

As used in this part:

(a) *Energy efficiency* means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(b) *Energy statement* is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(c) *Major regulatory action* is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to §313.4 of this part.

(d) *NEPA* means the National Environmental Policy Act of 1969.

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(e) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43529, Aug. 22, 1995]

§313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Statute or other law;

(2) The inclusion of an energy statement is not practicable because of time