§ 313.2 Policy.

(a) General. It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of Chapter 77 of Title 42 as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 40101 of the Statute. To the extent practicable and consistent with DOT's authority under the Statute and other law, energy conservation and efficiency are to be weighed in the decision-making process just as are DOT's traditional policies and missions.

(b) Implementation. Implementation of this policy is through the integration of energy findings and conclusions into 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.
§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.

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

§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 precedent 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 constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

(d) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.