

Letters soliciting comments on the scope of the EIS, the purpose, need, and potential alternatives have been sent to appropriate Federal, State, and local agencies, and Tribes. Two meetings were held to identify the scope of issues to be addressed, the major impacts, and the potential alternative. Both meetings were conducted on June 28, 2001, at the Mountaineers Club, Olympus Room 300 Third Avenue West, Seattle, Washington. The first meeting, from 1 to 4 p.m., focused on input from agencies and Tribes. The second meeting from 5 to 8 p.m. was primarily for the public. In addition, a public hearing will be held following circulation of the draft EIS.

Comments and questions concerning this action and the EIS should be directed to FHWA, WSDOT, or the City of Seattle at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: September 19, 2003.

Mary E. Gray,

Environmental Program Specialist, Olympia, Washington.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2002-14095]

National Environmental Policy Act Implementing Procedures

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed order; request for comments.

SUMMARY: The FMCSA is publishing for public comment its draft Order on agency procedures for implementing the National Environmental Policy Act of 1969 (NEPA). Now that the FMCSA is a separate agency within the Department of Transportation (Department or DOT), it has developed its own draft procedures for complying with NEPA, other pertinent environmental regulations, Executive Orders, statutes, and laws to ensure that it actively incorporates environmental considerations into informed decisionmaking.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-2002-14095 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final FMCSA environmental Order at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. LaKisha R. Pearson or Mr. David R. Miller, Office of Policy, Plans, and Regulations (MC-PR), FMCSA, U.S. Department of Transportation, 400

Seventh St. SW., Washington, DC 20590-0001. Telephone: (202) 366-6408.

SUPPLEMENTARY INFORMATION:

Background

The FMCSA was established within the Department on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Public Law No. 106-159, 113 Stat. 1748 (December 9, 1999)). The FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. FMCSA activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies, the motor carrier industry, labor organizations, safety interest groups, and others.

The majority of the functions FMCSA inherited from the FHWA are safety-related functions that were transferred from the former Interstate Commerce Commission (ICC) to the Department when it was established in 1966 (49 U.S.C. 102 and 102 note). Additional functions inherited from the FHWA relating to registering motor carriers operating in interstate and foreign commerce were carried out by the ICC before 1996 and by the FHWA from 1996-1999.

When the FHWA assumed authority over motor carrier licensing in 1996, it did not adopt the ICC's environmental regulations because the FHWA had its own. The FHWA's environmental impact regulations at 23 CFR part 771, which are primarily geared to highway and urban mass transportation construction projects, contain a categorical exclusion (CE) for the promulgation of rules, regulations, and directives (23 CFR 771.117(c)(17)).

Implementation of FMCSA's NEPA Order

It is necessary for FMCSA to issue its own implementing procedures for carrying out its responsibilities under NEPA, 42 U.S.C. 4321, *et seq.*, as amended. FMCSA is soliciting public comments on the draft procedures before making this environmental procedures Order final. Except for most of the appendices, the full text of the draft Order is being published for public

comment. Proposed Appendix 2 relating to categorical exclusions is being published in full text because of its potential interest to the public. An electronic version of the complete proposed Order including all proposed appendices is available at <http://dms.dot.gov>. Reference the docket number at the heading of this document. To request a copy of the draft Order by mail, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

The proposed FMCSA NEPA Order would establish a process for assessing environmental impacts, and for the preparation of Environmental Assessments (EAs), Findings of No Significant Impacts (FONSIs), and Environmental Impact Statements (EISs) for FMCSA actions. The FMCSA proposes to use this Order in conjunction with NEPA, the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508, DOT Order 5610.1C, as amended, and other pertinent environmental regulations, Executive Orders, statutes, and laws for consideration of environmental impacts of FMCSA actions. It will also be used, to the fullest extent possible, to conduct analyses and consultations required by the environmental authorities noted above in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

This proposed FMCSA Order supplements DOT Order 5610.1C, as amended. It is important that persons using the proposed FMCSA Order refer to those sections of the DOT Order 5610.1C, as amended, cross-referenced in this document. Reference to the DOT Order will provide a wider perspective on the issues, as well as provide details that may prove applicable to certain projects and actions.

The proposed FMCSA Order would apply to all FMCSA actions including the decision to conduct research activities, promulgate regulations, award grants, and conduct major acquisitions.

An area of particular significance is Appendix 2 that contains FMCSA's proposed "categorical exclusions." As defined by the CEQ, a "categorical exclusion" or "CE" means a category of actions which do not individually or cumulatively have a significant effect on the environment and for which, therefore, neither an EA nor an EIS is required. In Appendix 2, the FMCSA has provided a detailed description of FMCSA actions and activities that FMCSA believes should be entitled to a "categorical exclusion" from NEPA review. The use of a CE is intended to

reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs.

In developing FMCSA's list of proposed CEs, the FMCSA has collected certain documentation over a period of time showing that these actions do not typically have the potential to create significant environmental impacts. This supporting documentation consists of the following:

1. Motor carrier historical perspective explaining how no environmental documentation was required for years in motor carrier licensing proceedings or rulemakings with no potential for significant environmental impacts.

2. Copies (or data) of rulemaking actions published in the **Federal Register** where the public had *no objection* to their implementation based on environmental grounds.

3. CE determinations by other modal administrations, explaining the reasons why similar actions were so classified.

4. Written statements from FMCSA staff indicating that these actions should be classified as CEs.

5. Other pertinent environmental assessments, studies, etc.

Many of FMCSA CE determinations are based on the evaluations of similar actions of the former ICC and other current and former DOT modal administrations, such as, the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Highway Administration. The FMCSA's use of categorical exclusions will reduce excessive and needless paperwork for agency actions that have proven to have no potential for significant environmental impacts.

The following is a brief description of the appendices that are not published in full text in this document:

1. Proposed Appendix 1 contains an environmental checklist designed to help FMCSA officials determine the proper level of NEPA analysis and to identify areas of potential problems and concern.

2. As stated, proposed Appendix 2, FMCSA Categorical Exclusions, is set forth in full text in this notice.

3. Proposed Appendix 3 lists the FMCSA regulatory actions that are typically subject to an environmental assessment.

4. Proposed Appendix 4 contains the sample format of the document FMCSA will use to give public notice of a categorical exclusion determination.

5. Proposed Appendix 5 is a sample format for an environmental assessment cover sheet.

6. Proposed Appendix 6 is a sample format for an environmental assessment document.

7. Proposed Appendix 7 is a sample format for a Finding Of No Significant Impact.

8. Proposed Appendix 8 is a sample format for an FMCSA notice of intent to prepare an environmental impact statement.

9. Proposed Appendix 9 is a sample format for a cover sheet for an FMCSA Environmental Impact Statement.

10. Proposed Appendix 10 is a sample format for an FMCSA notice used when a draft, supplemental, or final Environmental Impact Statement is published in full text in the **Federal Register**.

11. Proposed Appendix 11 is a sample format for a notice announcing the availability of a draft, supplemental, or final Environmental Impact Statement.

12. Proposed Appendix 12 is a sample format for an FMCSA Record of Decision notice announcing that FMCSA has published a Final Environmental Impact Statement.

13. Proposed Appendix 13 contains instructions for a Department statement under section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)). This section requires DOT to make special effort to preserve the natural beauty of the countryside, public parks, and recreation lands, wildlife and waterfowl refuges, and historic sites. The proposed instructions would supplement the 4(f) requirements of Attachment 2 to DOT Order 5610.1(C).

14. Proposed Appendix 14 contains guidance on the appropriate level of air quality analysis needed for each FMCSA action.

15. Proposed Appendix 15 contains instructions on the CEQ requirements for distribution of environmental impact statements. The proposed appendix addresses draft, final, and supplemental EIS documents and notices of hearings and meetings related to those documents.

16. Proposed Appendix 16 contains a list of relevant environmental statutes and Executive Orders.

17. Proposed Appendix 17 contains a flow chart/decision tree depicting FMCSA's NEPA review process.

18. Proposed Appendix 18 contains information that supplements Chapter 2 of the proposed Order dealing with special areas (e.g., hazardous materials, endangered species, etc.) that must be considered when implementing NEPA.

The FMCSA encourages full public participation during the comment period. Comments submitted will be considered in preparing a final FMCSA environmental Order.

Proposed Order*U.S. Department of Transportation*Federal Motor Carrier Safety
Administration

Subject: National Environmental Policy Act Implementing Procedures and Policy For Considering Environmental Impacts.

Classification Code—M 5610.1
Office of primary interest—MC-PR
(Office of Policy, Plans, and Regulations)

1. *Purpose.* This Order establishes policy and prescribes responsibilities and procedures for the Federal Motor Carrier Safety Administration's (FMCSA's) implementation of the following:

(a) National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, as amended.

(b) 40 CFR parts 1500–1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as amended.

(c) DOT Order 5610.1C, Procedures for Considering Environmental Impacts, as amended on July 13, 1982 and July 30, 1985.

(d) Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

2. *Action.* The Offices of Administration, Research, Technology, and Information Management, Policy and Program Development, Enforcement and Program Delivery, Chief Counsel and Civil Rights, Field Operations Service Centers, and Field Division Offices must ensure that the provisions of this Order are followed in the consideration of environmental effects of Federal Motor Carrier Safety Administration actions. Program managers must submit draft program guidance for implementing this Order to the Administrator for review and concurrence to ensure consistency with this Order.

3. *Changes.* Recommendations and amendments for improvement of these Federal Motor Carrier Safety Administration NEPA implementing procedures must be submitted to the Regulatory Development Division, MC-PRR, Office of Policy Plans and Regulation.

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Chapter 1. Introduction*A. Purpose*

This Order provides information pertaining to environmental planning and establishes policy and procedures to ensure timely environmental review for appropriate Federal Motor Carrier Safety Administration (FMCSA) actions. Furthermore, this Order addresses the policies and responsibilities for FMCSA's implementation of the National Environmental Policy Act of 1969 (NEPA), as well as other pertinent environmental regulations, Executive Orders, statutes, and laws.

B. FMCSA Policies

1. NEPA establishes broad Federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The FMCSA is expected to manage those aspects of the environment affected by FMCSA activities, comprehensively integrating environmental policy objectives into planning and decisionmaking. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing FMCSA planners and decisionmakers. The FMCSA will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of FMCSA decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

2. The FMCSA will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. FMCSA personnel engaged in the NEPA process as participants, preparers, reviewers, and approvers will balance

environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of FMCSA operations. While carrying out its missions, the FMCSA will also encourage the wise stewardship of natural and cultural resources for future generations. Decisionmakers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

3. Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by Federal and DOT Orders, directives, and policy guidance. Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

4. The FMCSA will ensure NEPA compliance and will provide for levels and kinds of public involvement appropriate to the type of action and its likely effects, taking into account the recommendations as set forth in the CEQ regulations regarding public involvement.

a. The FMCSA will provide public notice of NEPA-related public meetings and hearings in the following manner:

(1) By publishing notice in the **Federal Register**, in local newspapers, newsletters, or by direct mailings of the availability of environmental documents so as to inform those persons and agencies who may be interested or affected;

(2) By posting notice on- and off-site in the area where the action is to be located; and

(3) By requesting comments on environmental documents to secure views either on the adequacy of the FMCSA action or the merits of the alternatives discussed or both. (See 40 CFR 1506.6).

b. When any other related authority provides specific procedures for public involvement, the responsible FMCSA official shall ensure that such procedures are addressed in the NEPA review process.

c. The FMCSA will involve the public in its decisionmaking and shall have as its purpose the full disclosure of FMCSA actions and alternatives to the public and giving the public a full opportunity to influence FMCSA decisions.

5. The FMCSA will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par

with the agency mission in project planning and decisionmaking. Efficiency will be promoted through the following:

a. Awareness and involvement of the decisionmaker and participants in the NEPA process.

b. NEPA technical and awareness training, as appropriate, at all decision levels of the FMCSA.

c. Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

d. Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision.

e. Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

f. Integration of the NEPA process into all aspects of FMCSA planning at an early stage, so as to prevent disruption in the decisionmaking process; ensuring that NEPA personnel function as team members, supporting the FMCSA planning process and sound FMCSA decisionmaking. All NEPA analyses will be prepared by an interdisciplinary team.

g. Partnering or coordinating with Federal, State, Tribal and local governmental agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

h. Oversight of the NEPA program to ensure continuous process improvement.

i. Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

6. The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for FMCSA decisions involving activities outside the United States will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), the DOT Order, and the requirements of this Order. An environmental planning and evaluation

process will be incorporated into FMCSA actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

C. Scope

1. The Federal Motor Carrier Safety Administration's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. Administration activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle (CMV) drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. To accomplish these activities, the FMCSA works with Federal, State, and local enforcement agencies; tribal governments; the motor carrier industry; labor safety interest groups; and others.

2. Any environmental impacts that result from FMCSA's oversight of motor carrier operations would most likely be in areas affecting air quality, noise, and hazardous materials transportation. Actions that may result in environmental impacts include, for example, the following:

a. Any action that may directly, indirectly, or cumulatively result in a significant increase in noise levels, either within a commercial motor vehicle's closed environment or upon nearby areas.

b. Any action that may directly, indirectly, or cumulatively result in a significant increase in the energy or fuel necessary to operate a commercial motor vehicle, including but not limited to the following: (1) Actions which may directly or indirectly result in a significant increase in the weight of a commercial motor vehicle; and (2) actions which may directly or indirectly result in a significant adverse effect upon the aerodynamic drag of a commercial motor vehicle.

c. Any action that may directly, indirectly, or cumulatively result in a significant increase in the amount of harmful emissions resulting from the operation of a commercial motor vehicle.

d. Any action that may directly, indirectly, or cumulatively result in a significant increase in either the use of or the exposure to toxic or hazardous materials in the manufacture, operation, or disposal of commercial motor vehicles or commercial motor vehicle equipment.

e. Any action that may directly, indirectly, or cumulatively result in a significant increase in the problem of solid waste, as in the disposal of commercial motor vehicles or commercial motor vehicle equipment.

f. Any action that may directly, indirectly, or cumulatively result in a significant depletion of scarce natural resources associated with the manufacture or operation of commercial motor vehicles or commercial motor vehicle equipment.

D. Applicability

1. This FMCSA Order applies to all FMCSA actions. Actions include: projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by FMCSA; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Actions do *not* include bringing judicial or administrative civil or criminal enforcement actions. See 40 CFR 1508.18(a). Examples of judicial or administrative civil or criminal enforcement actions would be regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

a. A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

b. To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

2. These environmental procedures also apply to all non-Departmental applications to FMCSA for a permit, grant, certification, award, license, approval, or other similar action. For major categories of FMCSA actions involving a large number of applicants, the appropriate Program Office shall prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide. The appropriate Program Office shall also begin the NEPA review and planning processes as early as possible after receiving an application for items described above, advising any potential

applicants to issues, such as the appropriate level and scope of any studies or environmental information that the agency may require to be submitted as part of the application, and the need to consult with appropriate Federal, tribal, State, regional, and local governments. See 40 CFR 1501.2(d) and 1507.3.

E. Legal Basis

1. National Environmental Policy Act of 1969 (NEPA)

NEPA sets forth a national policy that encourages and promotes productive harmony between humans and the environment. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment.

2. Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508)

The CEQ regulations establish policy requirements that are binding on all Federal agencies for implementing NEPA and related statutory requirements.

3. Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts

DOT Order 5610.1C sets the policy and procedures that supplement the CEQ regulations and applies them to DOT programs. The Federal Motor Carrier Safety Administration must comply with the CEQ regulations and the provisions of the DOT Order.

4. Other Relevant Environmental Statutes, Laws, and Executive Orders

Appendix 16 lists other relevant environmental statutes, laws, and Executive Orders that must be reviewed for compliance.

F. Common Environmental Acronyms

ACHP Advisory Council on Historic Preservation
AC&I Acquisition, Construction, and Improvement
CAA Clean Air Act
CBRA Coastal Barriers Resource Act
CD Consistency Determination
CE Categorical Exclusion
CED Categorical Exclusion Determination
CEQ Council on Environmental Quality

CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFR Code of Federal Regulations
CWA Clean Water Act
CZM Coastal Zone Management
CZMA Coastal Zone Management Act
DEIS Draft Environmental Impact Statement
DOT Department of Transportation
EA Environmental Assessment
EIS Environmental Impact Statement
E.O. Executive Order
ESA Endangered Species Act
FEIS Final Environmental Impact Statement
FEQA Field Environmental Quality Advisor
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSR Federal Motor Carrier Safety Regulations
FONSI Finding of No Significant Impact
FWPCA Federal Water Pollution Control Act (also commonly referred to as the Clean Water Act)
FWS Fish and Wildlife Service
FR Federal Register
HMR Hazardous Material Regulations
LESA Land Evaluation and Site Assessment
NAAQS National Ambient Air Quality Standards
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
NMFS National Marine Fisheries Services
NPDES National Pollutant Discharge Elimination System
NPS Non-Point Source
NRCS Natural Resources Conservation Service
NRHP National Register of Historic Places
NSPS New Source Performance Standard
PCB Polychlorinated Biphenyls
PL Public Law
PPR Project Proposal Report
RCRA Resource Conservation and Recovery Act
ROD Record of Decision
SDWA Safe Drinking Water Act
SEIS Supplemental Environmental Impact Statement
SHPO State Historic Preservation Officer
SIP State Implementation Plan
THPO Tribal Historic Preservation Officer
TSCA Toxic Substance Control Act
TSDF Treatment, Storage, and Disposal Facility
USACE U. S. Army Corps of Engineers (Former Acronym—COE)

U.S.C. United States Code

G. Use and Organization of this Order

1. Use

This Order will be used in conjunction with NEPA, the CEQ regulations, and as a supplement to DOT Order 5610.1C, as amended, for consideration of environmental impacts of FMCSA actions. It will also be used, to the fullest extent possible, to conduct analyses and consultations required by environmental laws other than NEPA, statutes, Executive Orders, and regulations in conjunction with NEPA implementation to reduce redundancy, paperwork, time, and cost.

2. Organization

Chapter 2 of this FMCSA Order implementing NEPA procedures and policies for considering environmental impacts supplements specific paragraphs in DOT Order 5610.1C, as amended. It is important that persons using this Order refer to those sections of the DOT Order 5610.1C, as amended, cross-referenced in this FMCSA Order. Reference to the DOT Order will provide a wider perspective on the issues as well as provide details that may prove applicable to certain projects and actions. Additional chapters and/or changes providing guidance in meeting new or changed requirements will be added to this Order as necessary.

Chapter 2. FMCSA Responsible Parties, Duties, and Instructions for Implementing NEPA

[Supplementary Instructions to DOT Order 5610.1C, 9/18/79, as amended 7/13/82 and 7/30/85]

A. Responsible Parties for NEPA Implementation

This FMCSA Order assigns the following NEPA implementation responsibilities:

1. Administrator, Federal Motor Carrier Safety Administration

a. *Responsibilities.* Acts on matters relating to NEPA implementation and is responsible for providing NEPA capabilities (40 CFR 1507.2) as follows:

(1) Establishes and maintains the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this Order. This capability can be provided through contract support, matrix (other modal) support, and permanent staff, with sufficient staff to ensure:

(A) FMCSA cognizance of the analyses and decisions being made; and
(B) Familiarity with the requirements of NEPA and the provisions of this

Order by every person preparing, implementing, supervising, and managing projects involving NEPA analysis.

(2) Ensures environmental responsibility and awareness among personnel to most effectively implement the goals and policies of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, and notification through Project and Program managers to MC-P, and training and education will NEPA goals be realized.

b. *Environmental Analyses and Documentation.* Approves all environmental analyses and documentation for Administration-initiated actions, unless delegated to another FMCSA responsible official or another Federal agency. The Administrator may enter into contracts with a State or private entity to conduct initial environmental analyses and documentation, but the Administrator must review and approve all such environmental analyses and documentation and remains responsible for its scope and contents (see Section D.7. of Chapter 2). The Administrator delegates the following:

(1) With the exception of highly controversial EISs (as defined by Section 11.d of DOT Order 5610.1C), approval authority to Field Operations Service Center Administrators for FMCSA DEISs, FEISs, and SEISs for actions that originate within, and having effects confined to, their respective area;

(2) Authority for the appropriate FMCSA Administrator-level Program Office to approve highly controversial EISs (see Section D.6.b.(4) of Chapter 2); and

(3) For all other FEISs (non-controversial), only a notice of approval will be made to DOT (P-1) by the responsible Administrator-level Program Office via the Administrator.

c. *Decisions on How to Proceed with FMCSA Actions.* The Administrator, or the Administrator's designee, has authority to decide whether or, at a minimum, how to proceed with every action the FMCSA undertakes. Thus, the Administrator (unless his/her authority is delegated) is the decisionmaker and the responsible FMCSA official. (Authority to sign EISs as the responsible official will be governed by Section D.14.a. of Chapter 2). The Administrator makes the following delegations:

(1) The NEPA Liaison will act as the senior decisionmaker and senior environmental advisor for NEPA

compliance and NEPA implementation of all FMCSA actions. The Administrator also delegates the responsibility to the NEPA Liaison to ensure accountability for implementation of the policies set forth in this Order. For Headquarters-originated actions, the Administrator delegates the responsibility to the NEPA Liaison to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) in consultation with the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation.

(2) The Field or Division Administrators or their delegated Federal, State, or Division Program Managers, in consultation with their FEQAs (see also Section D.13. of Chapter 2), will hold authority to determine whether to prepare an EA, EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9) for actions that originate within, and have effects confined to, their respective area. For Headquarters-originated actions, the NEPA Liaison makes this determination in consultation with the responsible FMCSA Program Manager.

2. NEPA Liaison—Associate Administrator for Policy and Program Delivery (MC-P)

a. Is the principal FMCSA environmental advisor and decisionmaker for the completion of the environmental analysis under NEPA, CEQ regulations, DOT and FMCSA Orders, and other environmental laws, statutes, and Executive Orders listed in Appendix 16. The Regulatory Development Division (MC-PRR), in the Office of Policy, Plans and Regulation is the Program Office that will assist the NEPA Liaison in carrying out these duties.

b. Is responsible for overseeing NEPA compliance and NEPA implementation of all FMCSA actions. The NEPA Liaison ensures accountability for implementation of the policies set forth in this Order and that all necessary NEPA analyses (CE, EA, and EIS) are completed before initiation of an FMCSA action.

c. Reviews all FMCSA proposed projects and advises the responsible FMCSA official (e.g., the FEQAs or Project Manager) on the appropriate level of environmental analysis and documentation needed for the proposal. For CEs, EAs and non-controversial EISs, the NEPA Liaison may direct the

FEQAs or program staff to determine the appropriate level of environmental analysis and documentation needed for the proposal.

d. Provides expert advice on NEPA-related matters to FMCSA Heads of Offices, Divisions, and Field Operations Service Center Units.

e. Acts as the intra-agency and interagency liaison and coordinates NEPA-related matters on a national basis, and is the principal contact for CEQ on all other FMCSA actions.

f. Provides and periodically updates this FMCSA Order, program guidance and policies after consultation with the Chief Counsel, Heads of Offices, Divisions, and Field Operations Service Center Units. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

g. Serves as FMCSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

3. Heads of Headquarters Offices and Divisions

a. Coordinate with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responsibility.

b. Serve as the responsible agency officials under NEPA and CEQ regulations for actions subject to their approval.

c. Ensure accountability for implementation of the policies set forth in this Order.

d. In consultation with the NEPA Liaison, ensure that FMCSA staff responsible for the supporting function of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out FMCSA's responsibilities.

e. Ensure completion of all environmental analysis and documentation for Headquarters Office-originated actions in consultation with environmental staff and the NEPA Liaison. This responsibility includes ensuring that the appropriate environmental planning, analyses, and documentation are completed for the respective programs and actions.

f. Notify the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

4. The Office of Administration (MC-M)

At the current time, the General Services Administration (GSA) is responsible for all building acquisition and construction projects to meet the needs of the FMCSA. The GSA is

currently responsible for, and is required to comply with, all statutory and regulatory requirements of NEPA for such projects. In the event the FMCSA is authorized by Congress or the GSA delegates authority for the purchase, lease, and/or acquisition of real property in the future, the FMCSA's Office of Administration will assume primary responsibility for all necessary environmental analyses and documentation needed for building acquisition and construction projects, in consultation with the FMCSA's Office of Chief Counsel. The FMCSA will coordinate such environmental analyses, as appropriate, with the interested general public, as well as other Federal, State, local, and Tribal government agencies.

5. The Office of the Chief Counsel

a. Responsible for legal interpretation of NEPA and related authorities, and represents FMCSA in litigation under such authorities.

b. Must approve the implementation of the procedures of FMCSA Environmental Orders in consultation with the NEPA Liaison, NEPA Field Environmental Quality Advisors (FEQAs), MC-PR, and MC-RIA (Office of Data Analysis and Information Systems that would be responsible for acquiring a contractor for environmental support), for actions originated by the Administrator.

c. Responsible for the review and approval of FMCSA and non-FMCSA environmental documents submitted for Associate Administrator level review. See Section D.6.b.(3) of Chapter 2 for information on legal review of Environmental Impact Statements (EISs).

d. Responsible for the review and approval of guidance and training concerning this Order, in consultation with the NEPA liaison and the Professional Development and Training division.

6. FMCSA Program Staff

a. For purposes of this FMCSA Order, this includes all FMCSA employees responsible for the management and implementation of program actions, such as, promulgating regulations, project planning and development, project management, and research.

b. Program staff are responsible for:

(1) Developing and maintaining a thorough understanding of NEPA requirements and the requirement of related authorities, and of the policies articulated in this FMCSA Order, DOT Order 5610.1C, as amended, as these pertain to their program areas with the

assistance of the NEPA Liaison and the FEQA.

(2) Ensuring that NEPA and related authorities are complied with, as early as possible in the planning of any action within their program areas.

(3) Coordinating their programs, activities, and projects with FEQAs and the NEPA liaison, as appropriate.

(4) Implementing all mitigation and other commitments resulting from NEPA compliance for actions under their authority.

(5) Initiating early consultations with Field Operations Service Center Units, the FEQAs, Heads of Offices and Divisions, the NEPA liaison, as appropriate if uncertain regarding the need for environmental analysis or documentation for any project. The Field Operations Service Center Administrator will promptly notify the Policy, Plans, and Regulations Office Director (MC-PR) and the NEPA Liaison if uncertainty for NEPA review persists.

(6) Notifying the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

7. Field Operations Service Center Administrators

a. Are accountable for execution of FMCSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

b. Serve as the "responsible agency official" under CEQ regulations (40 CFR 1506.5(c)) with respect to the environmental effects of actions under their jurisdiction.

c. Maintain FEQA within their staffs, augmented as necessary through interagency agreements and contracts, to ensure field interdisciplinary competence in environmental matters.

d. In consultation with the FMCSA NEPA Liaison, ensure that all field staff with responsibility for planning, approving, and implementing Commercial Vehicle Safety Plan grants, etc., receive training in how to carry out FMCSA's responsibilities under NEPA and related authorities.

e. Comply with all environmental laws. What may appear to be a good idea initially may not be environmentally acceptable. It is, therefore, important that alternatives to a proposed action be available. Coordination of FMCSA environmental analyses and documents with Federal, State, local, and tribal officials may be necessary. Questions concerning environmental matters should be

directed to the FEQA and appropriate Field Operations Service Center staff.

f. Notify the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

8. Heads of Units, Divisions, and Offices

a. Ensure that all environmental analyses and documentation for FMCSA actions (except building acquisition and construction actions) they initiate, or are directed by higher authority to initiate, are completed.

b. Ensure that a FEQA, Environmental Project Manager, and Environmental Specialists are available within the Field Operations Service Center territory.

c. Ensure that Field Operations Service Center Units and Field Division Offices are notified as soon as possible of any needed environmental analyses or documentation required for field proposed actions and projects.

d. Notify the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

9. The Field Environmental Quality Advisor (FEQA)

a. The Field Environmental Quality Advisor is the center of expertise maintained at the Field Service Unit in which knowledge in NEPA-related environmental matters and other related authorities, such as the National Historic Preservation Act, the Clean Air Act, and the Endangered Species Act, is vital.

b. The FEQA will be a collateral duty among others assigned to the employee.

c. The FEQA will be located at the Field Service Unit where it can influence decisionmaking early in FMCSA's planning or preparation for any project or action subject to review under NEPA and related authorities.

d. The FEQA is responsible for participating in FMCSA planning and decisionmaking, for advising the Administrator, the Office Heads, the Field Administrators, and other decisionmakers, and for providing training and technical assistance to all pertinent FMCSA employees and contractors.

e. Maintains interdisciplinary expertise in environmental matters, through the employment of qualified staff and/or by interagency agreement or under contract.

f. Reviews all documentary products of FMCSA NEPA analyses, and assists program staff in ensuring that such products, and the analyses they report, are adequate and defensible.

g. Maintains records of FMCSA NEPA compliance activities.

h. Routinely interacts with, and is assisted by, the NEPA Liaison.

i. Maintains needed guidance material, and recommends updates and/or changes to this FMCSA Order, as appropriate. Updates must comply with 40 CFR 1507.3 requirements for public notice and CEQ review.

j. Develops and maintains an up-to-date checklist for use in determining whether an action requires an environmental assessment or impact statement.

k. Notifies the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

10. Field Operations Service Center Program Staff

a. Ensure completion of all environmental analyses and documentation for FMCSA actions designated to them.

b. Assist Headquarters Units, where appropriate, with their implementation of the procedures set forth in this Order.

c. Coordinate these environmental analyses and documents with Federal, State, local, and tribal officials as necessary.

d. Maintain close coordination with appropriate Field Division Office elements during the execution of these tasks. Questions concerning environmental matters should be directed to appropriate Field Operations Service Center Unit staff and the FEQA.

e. Empower the FEQA to advise and assist in planning and decisionmaking on actions that could affect the human environment, in a way and at a time in the planning and decisionmaking process that maximizes the effectiveness of the FEQA's advice and assistance.

f. Ensure that all Field program staff involved in planning and decisionmaking about actions that could affect the human environment are made aware of FMCSA's responsibilities under NEPA and related authorities, are acquainted with this FMCSA Order, DOT Order 5610.1C, as amended, and other NEPA- or CEQ-related guidance, are held accountable for the quality of their actions and decisions, and are required to coordinate effectively with the FEQA.

g. Notify the Policy, Plans, and Regulations Office Director (MC-PR) through appropriate chains of command of all actions involved in the NEPA review. The notification must include electronically filed monthly updates, electronically filed checklists, etc.

B. FMCSA's Decisionmaking Process for NEPA Implementation (see Flow Chart in Appendix 17)

1. Normal Circumstances

Under normal circumstances, FMCSA's compliance with the procedural requirements of NEPA is handled as follows:

Step 1: Program staff determine a purpose and need for a particular action, and develop a preliminary description of the action.

Step 2: In consultation with, or at the direction of the FEQAs or NEPA Liaison, program staff determine the appropriate level of NEPA analysis and documentation required.

Step 3: Program staff and the FEQA, in consultation with the NEPA Liaison (or designee), arrange for necessary environmental analysis and documentation to take place, including public involvement for preparation of EAs and EISs [40 CFR 1501.4(b) and 1506.6]. Program staff make sure that there is written documentation of all environmental analyses in the FMCSA docket or record. When legal issues and/or public controversy are involved in the action or NEPA analysis, program staff must notify the FEQAs and Field Administrators, the NEPA Liaison, MC-PR, and Chief Counsel, to afford them an opportunity to participate.

Step 4: Program staff, in consultation with, or with oversight by, the FEQAs and the NEPA Liaison ensure that the appropriate analysis and documentation are completed, and that documents are circulated and filed in accordance with the requirements of law, the CEQ regulations, this FMCSA Order, DOT Order 5610.1C, as amended, any other NEPA-related guidance, statutes, Executive Orders, and related authorities.

Step 5: Program staff, assisted as needed by the FEQAs and the NEPA Liaison, provide the results of the NEPA review process to the relevant FMCSA decisionmaker(s).

Step 6: The decisionmaker(s) decides whether and how the action will proceed, and if it proceeds, what, if anything, will be done to mitigate adverse impacts.

Step 7: Program staff, as assisted by the FEQAs and the NEPA liaison, ensure that any required final public notifications of the environmental decision are issued.

Step 8: If the project or action has been approved by the decisionmaker, it proceeds, subject to whatever mitigation (if any) and monitoring activities have been chosen.

Step 9: If mitigation is to be performed, program staff, FEQAs, and the NEPA liaison monitor the activity to ensure that it is carried out.

The extent to which all of the above steps in FMCSA's environmental decisionmaking process can be carried out varies with the type of action under consideration (see Chapter 3).

2. Timing of Agency Action

a. FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. No decision on the FMCSA's proposed action shall be made or recorded (see 40 CFR 1505.2/RODs in cases requiring an EIS) by the agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a draft environmental impact statement (DEIS); and

(2) Thirty (30) days after publication of the notice by EPA described in 40 CFR 1506.10(a) for a final environmental impact statement (FEIS).

b. *Exceptions.* An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in subparagraph 2(a)(2) above and publish a decision on the final rule simultaneously with publication of the notice of the availability of the FEIS. See 40 CFR 1506.10(b)(2).

c. *Time Periods May Run Concurrently.* If the FEIS is filed within ninety (90) days after a DEIS is filed with the EPA, then the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to 40 CFR 1506.10(d), the FMCSA shall allow not less than 45 days for comments on draft statements.

d. *Request for Reasonable Extensions.* Requests for reasonable extensions of the review period for the draft EISs shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

e. *Reduction of Prescribed Periods.* Requests to reduce the prescribed periods for EIS processing based on compelling reasons of national security must be made via the Administrator to EPA.

f. *Emergency Circumstances.* In emergency situations (such as life-

threatening natural or human-caused disasters), where it is necessary to take an action with significant environmental impact without observing the provisions of CEQ regulations, the process outlined above (NEPA normal circumstance procedures) cannot be followed. CEQ regulations (40 CFR 1506.11) permit Federal agencies to consult with CEQ to discuss alternative arrangements. The FMCSA NEPA Liaison will consult with CEQ to discuss alternative arrangements in such emergency situations. This is only applicable to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review (40 CFR 1506.11). The FMCSA NEPA Liaison will also notify Cooperating Agencies in this regard.

(1) Program staff should always alert the FEQAs and the NEPA Liaison immediately when an emergency exists.

(2) FMCSA will limit such actions necessary to control the environmental impacts of the emergency.

(3) In emergency situations where it is necessary to take an action that does not have significant environmental impact without observing the provisions of CEQ regulations, and the process in this Order cannot be followed, the FMCSA NEPA Liaison will also consult with DOT's Office of the Assistant Secretary for Transportation Policy (P-1) to discuss alternative arrangements in such emergency situations.

C. Planning and Early Coordination

1. Scoping

The environmental checklist, located in Appendix 1, is a tool to assist in scoping, *i.e.*, identifying environmental requirements and potential consequences to consider in project planning efforts. Some consultation with Federal, State, tribal, or local expert agencies may be necessary to complete the environmental analysis checklist. The responsible official (the Office Director for the program sponsoring the action or the person with the delegated authority to issue the regulation) must maintain a written record of contacts made and responses received. For all FMCSA actions not categorically excluded (see Appendix 2), all known interested (including those that might not be in accord with the action on environmental grounds) or affected parties (Federal, State, tribal, and local) must be notified in writing and invited to participate in the NEPA process. Any other parties having regulatory involvement in the outcome of, or otherwise having expressed an interest in the action, will also be notified in writing. All other interested

parties may be informally contacted. For actions requiring preparation of an Environmental Impact Statement (EIS), the scoping process must be followed as described in 40 CFR 1501.7. Policy regarding public notice and involvement is presented in Sections A. and D.3. of Chapter 3 of this Order. The NEPA Liaison will identify other environmental review and consultation requirements so that FMCSA and cooperating agencies may prepare other required analyses and studies concurrently with preparation of the EA or EIS (40 CFR 1502.25).

2. Environmental Planning Process

Consideration of the environmental consequences of a given action (scoping) should begin early in the project planning process. This is necessary not only for documentation purposes, but also because environmental factors and compliance with Federal law may alter the design, layout, or timing of a given action. The word "action" is a comprehensive term used throughout this Order to cover all undertakings that may have environmental impacts. See Section D.1. of this chapter for examples. Environmental analysis and documentation for proposed actions are to be completed before initiation of the action.

For major actions, the EIS tiering as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate (*e.g.*, actions involving regulations on hours-of-service of drivers and hazardous materials). The first tier EIS would focus on broad issues, such as, general location, mode choice, area-wide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

D. Environmental Documentation

1. Actions Affected

This FMCSA Order applies to all FMCSA actions including the decision to conduct research activities (research, development, test, and evaluation); promulgate regulations; award grants and permits; change operations; conduct major acquisitions; and decommission FMCSA facilities or equipment (such as noise pollution or radioactive monitoring equipment).

2. Categorical Exclusions (CEs)

a. *Introduction.* As defined by the Council on Environmental Quality (CEQ), a "categorical exclusion" or "CE" means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and for which, therefore, neither an EA nor an EIS is required. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs. All CEs are subject to "extraordinary circumstances" (40 CFR 1508.4).

b. *FMCSA List of CEs.* A list of current FMCSA CEs can be found in Appendix 2 of this Order. The CEs listed in Appendix 2 are subject to review and any suggested modifications should be provided to the Administrator. Additional CEs should be suggested by the responsible FMCSA official when it becomes clear that the category of actions does not individually or cumulatively result in significant effects. For example, when through the preparation of EAs, FONSI result after numerous analyses of similar types of actions and monitoring confirms the FONSI are appropriate, a new CE should be proposed.

3. Limitations on Using Categorical Exclusions

a. Extraordinary circumstances that preclude the use of a categorical exclusion are when the proposed action:

(1) Has greater size or scope than is generally experienced for the category of action.

(2) Is reasonably likely to create controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative).

(3) Has highly uncertain effects on the environment that involve unique or unknown risks, or are scientifically controversial.

(4) Is reasonably likely to establish a precedent (or makes decisions in principle) for future or subsequent actions that would have a future significant effect.

(5) Is reasonably likely to have significant effects on public health, safety, or the environment.

(6) Is reasonably likely to be inconsistent with or cause a violation of any Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(7) Is reasonably likely to cause reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(8) Is reasonably likely to cause releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(9) Is reasonably likely to generate air emissions that would exceed *de*

minimis levels or otherwise require a formal Clean Air Act conformity determination.

(10) Has reasonable potential for degradation of already existing poor environmental conditions. Also, reasonable initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Is reasonably likely to have an unresolved effect on environmentally sensitive resources unless the impact has been resolved through another environmental process (*e.g.*, CZMA, NHPA, CWA, etc). Environmentally sensitive resources include:

(A) Proposed federally listed, threatened, or endangered species or their habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, park land, wetland, wild and scenic river, designated wilderness or wilderness study area, 100-year floodplain, sole source aquifer (potential sources of drinking water), ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). (Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the Department of Transportation (DOT) Act, which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or any historic site).

(12) Is considered together with other past, present and reasonably foreseeable future actions, and is likely to create cumulatively significant impacts.

(13) Has a reasonably disproportionate (high and adverse) effect on a minority or low income population, change in traffic patterns or an increase in traffic volumes (road and/or waterway) that could require rerouting of roads, waterways, or traffic.

b. The listed circumstances above and those in the DOT Order are addressed in the Environmental Checklist (Appendix 1). If a CE is *not* appropriate, an EA or an EIS must be prepared.

c. When the specific CE requires that a checklist be completed, an Environmental Checklist (Appendix 1) will be completed and used to substantiate the use of the CE. The checklist must be submitted with the proposal for the action. If a CE is not appropriate, the Environmental Checklist will be used for developing an EA or EIS. A written Categorical Exclusion Determination (CED) must be prepared when a CE will be relied on to

promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the requirements of this Order may be developed by subordinate commands for specific types of actions. Those documents must be approved by the Administrator before they are adopted for use.

d. Even though a CE is appropriate, that fact does not exempt the action from compliance with any other Federal law or any review or consultation requirements contained in any applicable agreement. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act (conformity requirements), etc., is always mandatory, even for actions that do not require an EA or EIS.

4. Environmental Assessment (EA)

An EA is a brief report that provides sufficient evidence and analysis to determine the significance of the potential environmental effects of the proposed action and its alternatives. The EA documents, in summary, set forth the agency's consideration of environmental effects in the planning stages of the action. The EA is the document used to determine whether to prepare an EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9).

a. An Environmental Assessment (EA) means a concise public document that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to provide:

(A) An Environmental Impact Statement; or

(B) A Finding of No Significant Impact.

(2) Aid an agency's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

b. All EAs shall include brief discussions of:

(1) The need for the proposal;

(2) The no action alternative and alternatives as required by section 102(2)(E) of NEPA;

(3) The environmental impacts of the proposed action and alternatives;

(4) The significance of effects:

(A) Context(s) in which effects may occur.

(B) Intensity of effects, using the Environmental checklist as an outline, and including mitigation measures

where they exist and are adequate to reduce effects below significance; and
(5) A listing of agencies and persons consulted.

The EA, supported by the necessary appendices, must be concise for meaningful review and use by the decisionmaker. Studies, technical data and other documents incorporated by reference should be readily available to the public.

c. Projects for which environmental assessments are normally completed include new or revised regulations, directives or policy guidance concerning activities that are not categorically excluded and it is uncertain whether they may have significant environmental effects.

5. Finding of No Significant Impact (FONSI)

A FONSI is a statement that a proposed action has been environmentally assessed (EA completed) and determined not to "significantly affect the quality of the human environment." The FONSI must briefly present the reasons why the action will not have a significant impact on the quality of the human environment.

a. The FMCSA is only required to circulate an EA if there is a special reason to do so. The CEQ regulations require an agency to make an EA available for 30 days [see 40 CFR 1501.4(e)(2)] if there is a precedent-setting or unique action. Thus, the EA will be made available to the public for review and comment for thirty (30) days and notice will be provided in accordance with 40 CFR 1501.4(e)(2) and 1506.6. Normally, the FONSI may be attached to the EA and combined into a single document. However, if the EA is developed on a "precedent-setting or unique action" as referred to in section 1501.4(e)(2), a copy of the EA shall be made available to the public for a period of not less than 30 days before the FONSI is made and the action is implemented.

b. If the FMCSA is engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, it may make a finding of no significant impact available for public review (including State and areawide clearinghouses) for thirty (30) days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an

environmental impact statement under the procedures adopted by the FMCSA pursuant to 40 CFR 1507.3, or

(2) The nature of the proposed action is one without precedent. See 40 CFR 1501.4(e)(2).

c. *Format.* For FMCSA purposes a FONSI should be a separate, one page document to which an EA is attached and which notes any other environmental document related to it. The format should be as outlined in Appendix 7.

d. *Coordination.* To ensure copies of the FONSI and the EA are available to the public upon request, the originator must forward one copy each to the Administrator and the responsible Associate Administrator program office, and retain one copy each in the office of the preparer and the appropriate program office. For actions involving a notice to be published in the **Federal Register** or where a docket has been established in the DOT Docket Management System (DMS), the originator must forward one single-sided copy suitable for black and white scanning to the staff responsible for the **Federal Register** notice or FMCSA docket. The staff person responsible for the FMCSA docket will forward the FONSI and EA to the appropriate docket for public viewing on the World Wide Web (www).

6. Environmental Impact Statement (EIS)

a. An EIS is prepared for actions significantly affecting the quality of the human environment. It describes in detail the nature and extent of the environmental impacts of the proposed action and each alternative. The EIS should discuss appropriate mitigation measures for any adverse impacts associated with the proposed action or alternative. FMCSA actions which normally require an EIS include the following:

(1) Actions assessed in an environmental assessment where a finding of no significant effect is not made.

(2) Actions which generate significant controversy because of effects on the human environment.

(3) Actions for which there is a clear need for an Environmental Impact Statement, such that it is unnecessary to first prepare an Environmental Assessment. These would include actions having a significant effect on the following:

- (A) Air quality.
- (B) Noise.
- (C) Hazardous materials.
- (D) Endangered species.

(E) Significant archaeological, cultural or historical resources.

(F) Wetlands.

(G) Property protected under section 4(f) of the DOT Act.

b. Preparation and Processing of EISs.

(1) *Preparation of EISs.* All draft, final, and supplemental EISs (DEISs, FEISs, SEISs) must be prepared as directed in 40 CFR part 1502. A template for the cover page of an FMCSA EIS is included in Appendix 9.

(2) *Circulation of EISs.* FMCSA is adopting the availability of, and the review process for, draft EISs as set forth at 40 CFR 1506.10. The originator of the draft EIS or the responsible Associate Administrator program office must forward copies of the DEIS, FEIS, and SEIS, as applicable, to the Administrator for distribution among Administrator level offices and DOT elements, as appropriate, and for filing 5 copies with the Environmental Protection Agency's (EPA's) Office of Federal Activities. The copies of the environmental documents should be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate.

When the State process for intergovernmental review provides that comments are obtained through a designated agency, the DEIS must be circulated to that agency. When there is no designated agency for intergovernmental review, the FMCSA project manager must obtain comments directly from interested State and local agencies.

Additionally, comments must be solicited from the affected and interested public, Federal agencies that have jurisdiction by law or expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards, and any other Federal agency that is affected by the proposed action or has requested a copy of the DEIS. The FEIS and SEIS will be circulated to all those who commented on the DEIS or requested copies of the FEIS, and to any other interested or affected organizations, agencies or individuals.

(3) *Legal Review.* The Headquarters Office of the Chief Counsel must provide final legal sufficiency review of all FMCSA DEISs, FEISs, and SEISs prepared for all actions.

(4) *Environmental Review and Approval.* As noted above, the Administrator has authority to approve all FMCSA DEISs, FEISs, and SEISs in conjunction with the responsible official in the originating program office. With the exception of highly controversial

EISs (as defined by Section 11.d. of DOT Order 5610.1C), this approval authority is delegated to the Headquarters Division Offices and Field Operations Service Center Administrators for FMCSA DEISs, FEISs and SEISs for actions that originate within, and have effects confined to, their respective area.

(A) *Highly controversial EISs.* The Administrator and the appropriate FMCSA Associate Administrator program office must approve highly controversial EISs. Before final FMCSA approval of a controversial FEIS, however, the Administrator will notify Secretary or Transportation's Office of the Assistant Secretary for Transportation Policy (P-1) and Office of the General Counsel (C-1) that a controversial FEIS is under review and will provide them a copy of the summary section contained in the FEIS. The Administrator as appropriate, will give DOT [(P-1) and (C-1)] two weeks notice before final approval of a highly controversial FEIS.

(B) *Non-controversial EISs.* For all other FEISs, only a notice of approval will be made to DOT (P-1) by the responsible Associate Administrator program office via the Administrator.

(5) *Records of Decision (40 CFR 1505.2).*

(A) A concise public Record of Decision (ROD) must be completed for projects requiring an EIS (See Appendix 12). As required by 40 CFR 1505.2, the record must do the following:

(i) State what the decision was.
(ii) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency must identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation.

(B) The ROD is the document that completes the EIS process and states whether and how to proceed with the proposed action. The Environmental Project Manager must forward 12 copies of the ROD (these can be submitted

along with the copies of the FEIS) through the appropriate chain of command to the Administrator. The twelve copies of the ROD must be forwarded to the Administrator in sufficient time for review and comment by Administrator level offices and DOT elements as appropriate. After the ROD is reviewed and signed by the responsible FMCSA official (*see* section D.14. of this chapter), signed copies will be forwarded to the Administrator for distribution among Administrator level offices and DOT elements as appropriate and for publication in the **Federal Register**. The responsible FMCSA official must distribute the ROD to appropriate agencies, organizations, individuals, and FMCSA dockets.

7. Agency Responsibility for Documents Prepared by Applicants or Proponents (See 40 CFR 1506.5)

a. The CEQ regulations allow for applicants or proponents (*e.g.*, a cooperating local government) to prepare environmental documents for a proposed action, but require that the FMCSA take an active guidance and evaluative role during EA/EIS preparation, and take final responsibility for the quality of the analysis and the resulting document. If the FMCSA permits an applicant to prepare an EA or EIS, the FMCSA:

- (1) Will assist the applicant by outlining the types of information required;
- (2) Will independently evaluate the information submitted and shall be responsible for its accuracy; or
- (3) Will make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental document (40 CFR 1506.5).

b. Local governments, other applicants, or cooperating agencies may conduct studies, etc., on FMCSA's behalf, but the FMCSA must oversee and approve the work. FMCSA staff will provide guidance to assist applicants in preparation of these documents.

8. Documents Prepared by Contractors

a. Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner that avoids, to the maximum extent possible, even the appearance of impropriety, including but not necessarily limited to, avoiding any conflicts of interest. Therefore, contractors must execute disclosure statements specifying that they have no financial or other interest in the outcome of the project or action. The contractor's efforts should be closely monitored throughout the contract to

ensure an adequate assessment/statement and also to avoid extensive, time-consuming, and costly analyses or revisions. FMCSA Action proponents and NEPA program managers must be continuously informed and involved. When selecting a contractor the following rules shall apply:

(1) A contractor shall be chosen solely by Federal agencies to avoid any conflict of interest.

(2) Agencies shall prepare disclosure statements for execution by contractors specifying that the contractor has no financial or other interest in the outcome of the action.

(3) The responsible Federal official shall independently evaluate the EIS and take responsibility for its scope and contents.

(4) All contractor-prepared documents must indicate the contractor's level of involvement in the following ways:

(A) If contractor involvement is minimal and only for a limited portion of the NEPA analysis process, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(B) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the "cover page" of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

b. *Types of Contracts and Agreements.* Most FMCSA NEPA-related work would normally be procured under Firm Fixed Price contracts (used when all elements of a task are well-defined), but this may not always be the most efficient kind of vehicle for the stated purpose. The type of contract used is a Contracting Officer's (CO) call. The FMCSA may also use other different contract types, such as:

(1) Indefinite Delivery (used when delivery requirements are not certain);

(2) Fixed Price with Economic Price Adjustment (used when market prices for labor and/or materials are likely to be unstable over the life of the contract);

(3) Fixed Price Award Fee (used when FMCSA wishes to provide an incentive award and evaluation standards exist);

(4) Fixed Price Prospective Redeterminable (used when the costs

can be estimated reliably only during the first year of performance);

(5) Fixed Price Incentive (used when a proposed cost-sharing formula would motivate a contractor to control costs);

(6) Cost Plus Fixed Fee (used when risks and requirements are highly uncertain);

(7) Cost Plus Incentive Fee (used when risks and requirements are highly uncertain);

(8) Cost Plus Award Fee (used when risks and requirements are highly uncertain);

(9) Cost or Cost Sharing (used when risks and requirements are highly uncertain); and

(10) Time and Materials (used when risks and requirements are highly uncertain).

c. Interagency Agreements.

(1) The FMCSA can use Interagency Agreements (IAAs) (or "Economy Act" Transfers, 31 U.S.C. 1535) to accomplish needed NEPA studies. For example, it may be possible to obtain data on the air quality standards for a particular region in the United States through agreement with the Environmental Protection Agency, or on endangered species through the U.S. Fish and Wildlife Service. Use of an IAA is a CO's call.

(2) IAAs can provide the FMCSA with the interdisciplinary team it needs to establish Statements of Work, the scope of NEPA analysis and obtain the expertise needed to carry it out, and to develop contracts for NEPA-related studies.

d. Statements of Work (SOWs).

(1) SOWs are used in formal contracting, and informal and formal agreements to guide the development of data and deliverables.

(2) The FMCSA shall develop a SOW specifically for each proposed action and the FMCSA and the consultant should have a specific understanding of the nature of an acceptable deliverable before finalizing any contract or agreement.

e. Role of the Contracting Officer, Subject Matter Expert, and Project Manager.

(1) The FMCSA's Contracting Officer is responsible for all phases of procurement, from initial distribution of the Request for Proposals or Quotations (RFP/RFQ) to approving the final payment for NEPA services.

(2) The subject matter expert (SME) is crucial to the success of the procurement, as this person must develop the SOW, the specific evaluation criteria, and review the deliverables along with the project manager at each stage of the NEPA process.

(3) The Project Manager, here used in the sense of the Contracting Officer's

Representative, is the officially designated person who, with the appropriate SMEs, evaluates the various contract deliverables and recommends payments and other specific actions to the Contracting Officer.

9. List of Preparers

The EA and the EIS must contain a list of preparers who assisted in the preparation of the analysis. The list may also include members of other government entities, such as the Department of Justice, the Department of Labor, OSHA, etc., when they are responsible for a particular analysis used in the preparation of the document. The list should provide the name, affiliation or organization, and qualifications of the preparer and identify the section(s) of the document containing their analysis. *See* 40 CFR 1502.17 and 1506.5.

10. Reducing Paperwork in Preparation of Environmental Documents

Reduce excessive paperwork by:

a. Reducing the length of documents by means such as page limits.

b. Preparing analytic rather than encyclopedic documents.

c. Discussing only briefly issues other than significant ones.

d. Writing documents in plain language.

e. Following a clear format for documents.

f. Emphasizing the portions of the document that are useful and reducing emphasis on background material.

g. Using the scoping process to identify significant issues, deemphasize insignificant issues, and to narrow the scope of the environmental process.

h. Summarizing the document and circulating the summary if the document is unusually long.

i. Using program, policy, or plan environmental documents and tiering to eliminate repetition.

j. Incorporating by reference.

k. Integrating NEPA requirements with other environmental review and consultation requirements.

l. Requiring comments to be specific.

m. Attaching and circulating only changes to the draft documents rather than the entire document when changes are minor.

n. Eliminating duplication with State and local procedures, by providing for joint preparation, and with other Federal procedures, by providing for adoption of environmental documents.

o. Combining environmental documents with other documents.

p. Using categorical exclusions.

q. Using findings of no significant impact.

11. Reducing Delays in Preparation of Environmental Documents

Reduce delays by:

a. Integrating the NEPA process into early planning.

b. Emphasizing interagency cooperation before the environmental documents are prepared, rather than submission of adversary comments on completed documents.

c. Insuring the swift and fair resolution of lead agency disputes.

d. Using the scoping process for an early identification of what are and what are not the real issues.

e. Establishing appropriate time limits for the NEPA process.

f. Preparing environmental impact statements early in the process.

g. Integrating NEPA requirements with other environmental review and consultation requirements.

h. Eliminating duplication with State and local procedures by providing for joint preparation.

i. Combining environmental documents with other documents—and describing the circumstances when this will be done.

12. Supplementation

FMCSA NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

a. Supplemental NEPA

documentation is required when:

(1) The FMCSA makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

b. This review requires a "hard look" to ascertain the adequacy of the previous analyses and documentation in light of the changes in project conditions listed above. If this review indicates no need for new or supplemental documentation, a statement to that effect should be prepared and attached to the documentation and included in the administrative record. Periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review.

c. In the event supplementation is required, the supplemental analysis and documentation should be prepared in accordance with 40 CFR 1502.9 and included in the administrative record for the proposed action.

13. Signing FMCSA NEPA Documents

Documentation resulting from FMCSA NEPA processes may require

the signature of the preparer/ environmental project manager, environmental reviewer, and/or the responsible FMCSA official. FMCSA documents which require signatures consist of the following:

- a. The Environmental Checklist (Appendix 1).
- b. The Categorical Exclusion Determination (Appendix 4).
- c. The cover page of an Environmental Assessment (Appendix 5).
- d. The Finding of No Significant Impact document for FMCSA-prepared, adopted, contractor, or applicant-prepared NEPA documents (Appendix 7).
- e. The cover page for an Environmental Impact Statement (EIS), (Appendix 9).
- f. The Record of Decision (ROD) for an EIS (Appendix 12).

14. Signature

Where a signature is required on each of the signature pages listed in Section D.12. of Chapter 2, above, the following policy applies.

a. *Signature of the Responsible Official.* The responsible official is the person with the authority for either making the decision or developing the final recommendation for a decision on the actions analyzed in the NEPA document. The purposes of the responsible official's signature are to:

- (1) Provide a means to monitor NEPA activity in the FMCSA; and
- (2) Demonstrate that relevant environmental information was considered by the decision-maker when the decision was made.

Typically, for Administrator-initiated actions, the responsible official is the Office Director for the program sponsoring the action. For Administrator-initiated regulations, the responsible official is the person with the delegated authority to issue the regulation.

b. *Signature of the Environmental Reviewer.* The environmental reviewer is the individual responsible for reviewing the environmental content of the document to ensure that the environmental analysis and documentation complies with NEPA, CEQ regulations, DOT, and FMCSA NEPA policies and procedures.

For Administrator-initiated actions, including those where document preparation has been delegated to the Field, the environmental reviewer must be a member of the FMCSA environmental staff in the Administrator's office.

For Administrator-initiated actions where document preparation has been delegated to the Field, the

Administrator may also delegate environmental review of the document to the Field. However, such delegation must be documented in formal correspondence between the Administrator and the applicable Field office.

For Field initiated actions, the environmental reviewer must be a member of the environmental staff in that organization. For actions initiated by Headquarters Units, Divisions, and Offices, the environmental reviewer must be a member of the FMCSA Headquarters environmental staff. In all cases, the environmental reviewer cannot be the same individual as the preparer of the NEPA document.

c. *Signature of the Environmental Project Manager.* For NEPA documents that are prepared with in-house staff, the FMCSA staff member coordinating the preparation of the environmental document is, and signs as, the "Environmental Project Manager." The Environmental Project Manager is responsible for the quality of the environmental and technical analysis and documentation.

(1) If contractor involvement is minimal and only for part of the NEPA document, then the contractor must be included in the list of preparers and the FMCSA Environment Project Manager will sign as the Environmental Project Manager.

(2) If the contractor has major involvement in the preparation of the NEPA document, or if the contractor and the FMCSA preparer have equal involvement in the preparation, then the "cover page" of the NEPA document will indicate that the CED and/or checklist, EA, and/or EIS was prepared by the contractor for the FMCSA and be signed by the contractor as preparer, or that the documentation was prepared by both the contractor and the FMCSA and be signed by the contractor and the FMCSA Environmental Project Manager as preparers.

d. *Signature of applicant, contractors, or other preparers.* Applicants, contractors, and other preparers must sign-off on environmental documents at the time they submit the documents to the FMCSA.

E. Special Areas of Consideration

See Appendix 18 for additional information on evaluating special areas of consideration, such as air quality, potential noise impacts, hazardous materials, endangered species, the National Historic Preservation Act, wetlands, and determinations under section 4(f) of the DOT Act.

Chapter 3. Public Involvement, Legislative, and Interagency Coordination

A. Citizen Involvement and Public Notice Process

In addition to the information in this Chapter, see Appendix 15, which contains information on distribution of EISs and notices of NEPA related hearings, meetings, and documents.

1. Public Involvement (40 CFR 1506.6)

a. The FMCSA will make diligent efforts to involve the public in preparing and implementing its NEPA procedures. The FMCSA will provide public notice of NEPA-related hearings and hold or sponsor public hearings or meetings whenever appropriate in accordance with statutory requirements applicable to FMCSA. The FMCSA will make environmental documents available to inform those persons and agencies who may be interested or affected. The FMCSA will provide:

(1) *Notice in All Actions.* In all cases mail notice to those who have requested it on an individual action.

(2) *Notice in Actions of National Concern.* In the case of an action with effects of national concern, provide notice to include publication in the **Federal Register**.

(A) In addition, the FMCSA will post notices and press releases on the FMCSA internet website.

(B) FMCSA will provide notice by mail to:

(i) News organizations and members of the public.

(ii) Federal, State, Tribal, and local government agencies that have jurisdiction by law or special expertise with respect to an environmental impact involved or that are authorized to develop and enforce environmental standards, or those agencies, organizations, and individuals that have expressed a concern in the matter.

(iii) Those who have requested it on an individual action; and

(iv) National organizations reasonably expected to be interested in the matter. If engaged in rulemaking, the FMCSA will provide notice by mail to national organizations who have requested that notice regularly be provided. The FMCSA shall maintain a list of such organizations.

(3) *Notice in Actions of Local Concern.* In the case of an action with effects primarily of local concern, the FMCSA will:

(A) Notify State and area wide clearinghouse pursuant to Executive Order 12372 entitled, "The President Intergovernmental Review of Federal

Programs.” (see 47 FR 30959; July 16, 1982).

(B) Publish notice in local newspapers (in papers of general circulation rather than legal papers).

(C) Publish notice in newsletters or provide notice through other local media (e.g., radio, television, etc.) that may be expected to reach potentially interested persons.

(D) Notify Indian tribes when effects may occur on reservations or impact tribal interests.

(E) Follow the affected State’s public notice procedures for comparable actions.

(F) Notify potentially interested community organizations including small business associations.

(G) Send direct mailings to owners and occupants of nearby or affected property.

(H) Post notice on- and off-site in the area where the action is to be located.

b. When deciding whether to hold or sponsor a public hearing or meeting, consider whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the proposed action supported by reasons why a hearing will be helpful.

(3) If a draft EIS is to be considered at a public hearing, the FMCSA shall make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

c. The FMCSA shall solicit appropriate information from the public.

d. The FMCSA shall explain in its public notice where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

e. The FMCSA shall make EISs (in addition to the distribution described in 40 CFR 1502.19), the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

2. Notice of Intent

As soon as the decision to prepare an EIS has been made, the responsible FMCSA official, via the Administrator, must approve and publish the required Notice of Intent (40 CFR 1508.22) in the **Federal Register**. Where there is a lengthy period between the decision to prepare an environmental impact statement and the time of actual preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. In addition to publishing the Notice of Intent in the **Federal Register**, the FMCSA will provide notices and press releases on the FMCSA internet website.

3. Intergovernmental Review

Responsible FMCSA officials will provide notice to other Federal, State, local, and tribal government agencies when proposed actions are likely to involve public interest. The EA or EIS must evidence this solicitation, and consideration of the comments received.

B. Proposals for Legislation

1. Preparation

The originating Associate Administrator program office must ensure completion of the environmental analysis and/or documentation for legislative proposals or reports on proposed legislation for which the FMCSA is primarily responsible.

2. Processing

An EIS, if necessary, must be processed as required in paragraph 15.b. of DOT Order 5610.1C, via the Administrator (See 40 CFR 1506.8).

C. Mitigating Measures

The responsible FMCSA official must assure the execution and monitoring of all mitigating measures committed to in any environmental document (i.e., EA, FONSI, EIS, SEIS, or FEIS) and/or record of decision for any FMCSA action. When implementing decisions, the FMCSA shall:

1. Include appropriate conditions in grants, permits, regulations or other approvals;

2. Condition funding or actions on mitigation;

3. Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted; and

4. Upon request, make available to the public the results of relevant monitoring.

D. Inter-Agency Coordination

1. Lead Agencies and Cooperating Agencies

The FMCSA will request the participation of each Cooperating Agency in the NEPA process at the earliest possible time. The FMCSA will coordinate and integrate State and Tribal processes early in the NEPA process. When FMCSA is a Lead Agency, it will use the environmental analysis and proposals of Cooperating Agencies with jurisdiction by law or special expertise, to the maximum extent possible.

a. *Lead Agency Designation*. For Field office actions, the program office in the Field will assume responsibility for maintaining FMCSA lead agency status. The Chief of the responsible Administrator-level program office will assume this responsibility for Administrator-originated actions. The Administrator will designate the responsible Field Administrator for maintaining FMCSA lead agency status in extraordinary circumstances (e.g., when an action transcends or involves more than one Field office, etc.).

b. *Proactively Soliciting Cooperating Agencies*. FMCSA will actively consider designation of Federal and non-Federal cooperating agencies in the preparation of its analyses and documentation required by NEPA, and will ensure that FMCSA actively participates as a cooperating agency in other agencies’ NEPA processes. Stakeholder involvement is important to ensure decisionmakers have the environmental information necessary to make informed and timely decisions efficiently. One of the benefits of Cooperating Agency participation in NEPA analyses includes enhancing agencies’ ability to adopt environmental documents by allowing adoption of an EIS without recirculating it as a draft EIS.

(1) *Cooperating Agency Designation*. FMCSA shall determine if Federal and non-Federal agencies are interested and appear capable of assuming the responsibilities of becoming a cooperating agency under 40 CFR 1501.6. If invited, Federal, State, Tribal and local agencies that elect *not* to be included as cooperating agencies, should still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on the NEPA documents.

(A) If the FMCSA determines that cooperating agencies will be useful in the development and preparation of EAs and EISs, it will notify, in writing, those Federal and non-Federal agencies that may be interested of assuming the

responsibilities of becoming a cooperating agency. The FMCSA may consider the following factors, as appropriate on a case-by case basis, for determining whether to invite, decline, or end cooperating agency status:

- (i) Whether the agency has jurisdiction by law (40 CFR 1508.15) (e.g., Does the agency have authority to approve, veto, or finance a proposal or portions of a proposal?);
- (ii) Does the cooperating agency have the special expertise (40 CFR 1508.26) needed to help the lead agency to:
 - (a) Meet a statutory responsibility;
 - (b) Carry out an agency mission;
 - (c) Meet related program expertise or experience; or
 - (d) Meet the objectives of regional, State, and local land use plans, policies and controls (40 CFR 1502.16(c))?
- (iii) Does the agency understand what cooperating agency status means and can it legally enter into an agreement to be a cooperating agency?
- (iv) Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?
- (v) Can the cooperating agency, in a timely manner, aid in:
 - (a) Identifying significant environmental issues, including aspects of the human environment (40 CFR 1508.14) and natural, social, economic, energy, urban quality, historic and cultural issues (40 CFR 1502.16)?
 - (b) Eliminating minor issues from further study?
 - (c) Identifying issues previously the subject of environmental review or study?
 - (d) Identifying the proposed action's relationship to the objectives of regional, State and local land use plans, policies and controls (40 CFR 1502.16(c))?
- (vi) Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?
- (vii) Can the cooperating agency provide resources to support scheduling and critical milestones, such as:
 - (a) Personnel? Consider all forms of assistance (e.g., data gathering, surveying; compilation; research).
 - (b) Expertise? This includes technical or subject matter expertise.
 - (c) Funding? Examples include funding for personnel, travel and studies.
 - (d) Models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.

(e) Facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

(viii) Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues, and analyses?

(ix) Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

(x) Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

(xi) Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating agency status. Agencies must be alert to situations where State law requires release of information.

(xii) Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

(B) Agencies responsible for NEPA analysis are urged to:

- (i) Set time limits;
- (ii) Assign milestones;
- (iii) Assign responsibilities for analysis and documentation;
- (iv) Specify scope and detail of the cooperating agency's contribution;
- (v) Establish other appropriate ground-rules addressing issues such as availability of pre-decisional information; and
- (vi) In appropriate cases, document their expectations, roles, and responsibilities (e.g., Memorandum of Agreement or Understanding, or correspondence).

(2) *Agencies That Decline Cooperating Agency Status.* Federal agencies that decline to accept cooperating agency status in whole or in part are obligated to respond to the request. A copy of their response should be provided to CEQ (40 CFR 1501.6(c)). If an agency refuses to participate, FMCSA shall provide the agency refusing to participate with a draft EIS for comment. Negative and/or controversial

comments may be referred to CEQ for resolution via the Administrator.

(3) *Declining an agency's request to participate.*

(A) If the FMCSA disagrees with the request by an agency to participate in the development of an EA or EIS, the Associate Administrator for Policy and Program Development (MC-PR) will contact the requesting agency's responsible official to have a meeting to discuss the matter and attempt to resolve the issues the FMCSA has against participating.

(B) If no agreement can be reached between the requesting agency and FMCSA:

(i) The Associate Administrator for Policy and Program Development will prepare a letter for the FMCSA Administrator's signature declining to participate with the requesting agency.

(ii) The letter will provide the specific reasons why the FMCSA believes it should not or cannot participate with the cooperating agency's request.

(iii) The FMCSA will coordinate its letter of declination with OST's Office of the Assistant Secretary for Transportation Policy (P-1) before the FMCSA Administrator signs and transmits this letter of declination to the cooperating agency and CEQ.

c. *CEQ Resolution.* Request for Council on Environmental Quality (CEQ) resolution concerning lead agency designation must be made via the Administrator. The Administrator will contact CEQ for resolution of environmental issues.

d. *Adverse Comments and Delays.* Matters to be discussed with the Council on Environmental Quality (CEQ) must be coordinated with the Administrator.

2. Distribution of Environmental Documents

a. FMCSA will provide a written notification to State, area-wide, regional, local, and tribal officials through the State process or otherwise, of any plan or project proposed in the State or locality. Where the effect of an action or rulemaking, etc., crosses State/tribal lines, the FMCSA will notify each entity of the proposal. Notification must take place at the earliest practicable time in project planning. The notification must contain all of the following:

- (1) Name of the organization proposing the project.
- (2) Geographic location of the project.
- (3) Brief description of the project that will ensure appropriate distribution.
- (4) Program to be supported by the project.
- (5) Date on which the actual development, construction, or other

activities involved in the physical implementation of the project is scheduled to begin.

b. In areas where no State clearinghouse process exists, forward the notification letter directly to affected State, area, regional, local, and tribal entities with instructions to review and coordinate the project.

c. It is recommended that interagency distribution of Environmental Assessments or Environmental Impact Statements be handled using a "Public Notice" type cover letter addressed to "All Interested Parties." It should announce the availability of the EA, EIS, or SEIS, describe the project, review environmental considerations, and solicit comments. This practice eliminates the need for individual distribution letters.

3. Adopting Environmental Documents Prepared by Other Agencies

a. Summary.

(1) Some FMCSA actions can be taken based on environmental documentation that has been prepared by another Federal agency. The CEQ Regulations (40 CFR 1506.3) encourage agencies to adopt the environmental documentation of other Federal agencies whenever possible to reduce costs and processing time of Federal actions. This adoption may be complicated due to difference in internal agency judgment.

(2) In order to adopt another agency's environmental documentation the FMCSA must be in agreement with the content and findings of the document.

b. *Specific Procedures.* The following procedures must be adhered to when adopting environmental documents produced by other agencies:

(1) *Environmental Assessments (EAs).* EAs produced by another agency may be adopted. The responsible FMCSA official must ensure that the EA prepared for, or by, the other agency is adequate for FMCSA's purposes. If the EA is in fact adequate from a NEPA standpoint and meets FMCSA requirements, the FMCSA may adopt the document. In doing so, the FMCSA accepts the EA and takes full responsibility for its scope and content.

Should review of the EA by the responsible FMCSA official conclude in a Finding of No Significant Impact (FONSI), a FONSI statement must be prepared and should follow the format provided in Appendix 7. The FONSI should be attached to the front of the EA. The use of Appendix 7 serves both as a statement adopting the lead agency's EA and as a Finding of No Significant Impact for the FMCSA. A separate adoption statement is not needed.

When the responsible FMCSA official determines that the lead agency's EA is *not* adequate, the EA must be supplemented or rewritten. This may be done by the lead agency at the request of the FMCSA. Should the lead agency be unable to do so, or refuse, the responsible FMCSA official must ensure that the EA is supplemented or rewritten, as appropriate. In this instance, the FMCSA does not adopt the lead agency's document. The lead agency's EA becomes the basis for the FMCSA's EA, and is incorporated in the FMCSA EA to the extent it is adequate.

(2) *Finding of No Significant Impact (FONSI).* A FONSI statement itself may not be adopted. However, an EA resulting in a FONSI may be adopted as discussed in Section D.4.b.(1) of Chapter 3.

(3) *Environmental Impact Statement (EIS).* The FMCSA may adopt the EIS of another agency if the EIS adequately addresses the impacts of the project within the FMCSA's area of jurisdiction and concern. The FMCSA may either adopt the entire EIS or just a portion of it, in accordance with the procedures described in 40 CFR 1506.3. When adopting the EIS of another agency, the responsible FMCSA official must state that the FMCSA has adopted another agency's EIS in the Record of Decision. A suggested format for the statement is as follows:

"After an independent review of (specify lead agency) Environmental Impact Statement, I have determined that the document adequately addresses the impacts of the (specify action(s)). Therefore, I hereby adopt the (specify entire EIS or portion thereof)."

4. Review of Environmental Statements Prepared by Other Agencies

Comments on Non-FMCSA EISs. In many instances, other Federal agencies will submit copies of their EIS to the FMCSA for review. One copy of all FMCSA comments must be sent to the Administrator and DOT (P-1).

5. Pre-Decision Referrals to the Council on Environmental Quality

DOT Lead Agency Proposals. Field Offices and Administrator-level program offices receiving a notice of intended referral from another agency must provide DOT (P-1) with a copy of the notice via the Administrator.

Appendix 2—FMCSA Categorical Exclusions (CE)

The following are actions that, unless consideration of the factors in Section D.3.a. of Chapter 2 triggers the need to conduct further analysis, are categorically excluded from further analysis and documentation in

an environmental assessment or environmental impact statement. These categories of activities have been found by FMCSA to not have the potential to significantly affect the quality of the human environment, except when "extraordinary circumstances" are involved. (**Note:** Where there is the potential for extraordinary circumstances, an environmental checklist must be completed to determine whether the circumstances warrant further analysis in an EA or EIS. Ordinarily, documentation of a decision regarding the applicability of a categorical exclusion and the basis for that decision should be limited to the space of one page. If more detailed justification is considered necessary, the decisionmaker should consider whether an environmental assessment is a more appropriate level of documentation.)

1. Administration

a. Preparation of guidance documents that implement decisions authorized by the applicable FMCSA's Office of Business Operations Directive or other Federal agency regulations, procedures, manuals, internal Orders, and other guidance documents not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

b. Routine intra-agency personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have environmental impacts, such as, hiring, recruiting, processing and paying of personnel, and recordkeeping.

c. Routine procurement and contract activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance in accordance with Executive Orders 13101, 13148, and other applicable Executive Orders and Departmental policies regarding "greening the government."

d. Decisions to set up or decommission equipment or temporarily discontinue use of facilities or equipment, such as:

(1) Noise pollution monitors used in enforcement of the Noise Control Act of 1972.

(2) Radioactive material detectors used in enforcement of the Hazardous Material Transportation Acts.

(3) FMCSA-owned commercial motor vehicles used in the:

(A) Office of Enforcement and Program Delivery;

(B) Office of Research and Technology; or

(C) Commercial Vehicle platform of the Intelligent Vehicle Initiative.

This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

e. Routine and permitted movement of agency personnel and equipment, and the routine movement, handling, and distribution of non-hazardous and hazardous materials and wastes incidental to the routine and permitted movement of personnel and equipment in accordance with applicable regulations. Examples would include moving personnel from the Boise, Idaho, Division Office to the Pierre, South Dakota, Division Office or moving the agency's Intelligent

Transportation System/Commercial Vehicle Operation Technology Truck working display from McLean, Virginia, to an awareness training venue in Oak Ridge, Tennessee.

f. Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes.

g. Financial assistance or procurements for motor carrier activities that do not commit the FMCSA or its applicants to a particular course of action affecting the environment.

h. Hearings, meetings, or public affairs activities held at locations developed for such activities.

2. Purchase, Lease, and Acquisitions

Lease of space in buildings or towers for a firm-term of one year or less when the intended use is in conformity with current uses.

3. Operations

Realignment of mobile assets, including motor vehicles, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new terminals or for repair and overhaul.

Note. If the realignment would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to protected species or habitats before use of the CE can be approved.

4. Data Gathering, Review of Environmental Tests, Studies, Analyses and Reports, and Research Activities

a. Data gathering, information gathering, and studies that involve no detectable physical change to the environment.

b. Research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the FMCSA's ability to manage its resources. Examples of these resources would include FMCSA's stored data, its assets, and its properties, including its Intelligent Transportation System/Commercial Vehicle Operation Technology Trucks and its Safety Trucks.

c. Environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed.

d. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on FMCSA-contracted property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

e. Planning and technical studies that do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define

the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

f. Establishment of Global Positioning System (GPS), intelligent transportation systems (ITS), or essentially similar systems that use overlay of existing procedures.

g. Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment.

5. Training

a. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

b. Training of an administrative or classroom nature. Examples would include training to inspect a commercial motor vehicle brake system or to learn more about NEPA and how to prepare and develop environmental analyses for Environmental Assessments (EAs) and Environmental Impact Statements (EISs).

6. Establishing the Following Types of Regulations

a. Regulations addressing Civil Rights procedures and guidance.

b. Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

c. Regulations concerning internal agency functions or organization or personnel administration, such as, funding or delegating authority.

d. Regulations concerning the training, qualifying, licensing, certifying, and managing of personnel.

e. Regulations to handle the processing of applications for operating authority and certificates of registration.

f. Regulations implementing the Motor Carrier Safety Assistance Program (MCSAP), that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs) for the following activities:

- (1) Driver/vehicle inspections;
- (2) Traffic enforcement;
- (3) Safety audits;¹
- (4) Compliance reviews;²

¹ A "safety audit" is an examination of motor carrier operations to provide educational and technical assistance on safety and the operational requirements of 49 CFR parts 100 through 178 and parts 350 through 399) and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls.

² A "compliance review" is an on-site examination of motor carrier operations (normally at the carrier's facility), such as driver's hours-of-service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accident involvement, hazardous materials, and other safety and transportation records to determine whether a motor carrier has systems, policies, programs,

(5) Public education and awareness; and

(6) Data collection; and provide reimbursement for:

- (A) Personnel expenses;
- (B) Equipment and travel expenses;
- (C) Indirect expenses for:

(i) Facilities (not including fixed scales, real property, land or buildings) used to conduct inspections or house enforcement personnel. Examples of facilities would include a motor vehicle trailer for inspection personnel to take cover while doing paperwork during a roadside inspection;

(ii) Support staff;

(iii) Equipment to the extent they are measurable and recurring (e.g., rent and overhead and maintenance and minor improvements);

(iv) Expenses related to data acquisition, storage, and analysis; and

(v) Clerical and administrative expenses.

g. Regulations implementing procedures to:

- (1) Promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs;

(2) Provide guidelines for a continuous regulatory review of State laws and regulations; and

(3) Establish deadlines for States to achieve compatibility with appropriate parts of the FMCSRs with respect to interstate commerce.

h. Regulations implementing procedures to collect fees that will be charged for motor carrier registration and insurance for the following activities:

- (1) Application filings;
- (2) Records searches; and
- (3) Reviewing, copying, certifying and related services.

i. Regulations implementing procedures for which motor carriers and brokers designate their agents (persons) for whom court process may be served, describing activities, such as:

- (1) The forms upon which the carrier can make the designations;
- (2) The eligible persons that can be agents, and how carriers shall make the designations in each State in which it is authorized to operate and for each State traversed during such operations, and
- (3) Where such designations must be made.

j. Regulations implementing uniform Single-State registration procedures for motor carriers registered with the Secretary of Transportation.

k. Regulations for all brokers³ of transportation by motor vehicles that describe the following activities:

- (1) The duties and obligations of a broker;
- (2) The records and accounts a broker must keep;

(3) The type of brokerage service the broker must perform; and

(4) The charges and compensation a broker is entitled to receive.

l. Regulations requiring every motor carrier to issue and keep a receipt or bill of lading (or record) for property tendered for

practices or procedures to ensure compliance with the applicable Federal safety regulations.

³ A "broker" is a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. The broker has accepted the shipments and is legally bound to transport them.

transportation in interstate or foreign commerce containing such information as:

(1) What must be contained on the receipt; and

(2) Who shall be given the original freight bill and who shall be given a copy, as well as how it can be transmitted to the payer.

m. Regulations implementing procedures applicable to the operations of household good carriers engaged in the transportation of household goods,⁴ for the following activities:

(1) The information that carriers must give to prospective shippers prior to holding themselves out to perform such service;

(2) How carriers are to estimate the shipping costs which the shippers will be required to pay for these shipments;

(3) How to determine the weight of the shipments prior to assessing any shipping charges;

(4) How to accept shipments and provides carrier notification of delay;

(5) The liability of carriers; and

(6) How to file complaints.

n. Regulations that apply to actions by motor carriers registered with the Secretary to transport property for the following:

(1) The leasing of equipment (e.g., a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire) with which to perform transportation regulated by the Secretary;

(2) The leasing of equipment to motor private carriers or shippers;

(3) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary;

(4) To provide written lease requirements for authorized carriers that do not own their transportation equipment; and

(5) To set forth requirements for carriers to obtain exemptions for lease arrangements.

o. Regulations that apply to the transportation by motor vehicle of C.O.D. shipments by all common carriers of property subject to 49 U.S.C. 13702, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and for such transportation that is performed by freight forwarders and on freight forwarder bills of lading for the following activities:

(1) Tariff filing requirements;

(2) Extension of credit to shippers;

(3) Presentation of freight bills; and

(4) Computing time for shipments.

p. Regulations that govern the processing of claims for overcharge, duplicate payment, or over-collection for the transportation of property in interstate commerce or foreign commerce by motor carriers for information concerning how to document and investigate claims, keep records, and dispose of claims.

q. Regulations implementing preservation of records procedures for motor carriers and brokers, and household freight forwarders for the types of records that must be retained and

the retention periods (e.g., until expiration or termination plus 3 years, 3 years, etc.).

r. Regulations implementing controlled substances and alcohol use and testing procedures designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles and apply to every person and all employers of such persons who:

(1) Operate a commercial motor vehicle (as defined in 49 CFR 382.107) in commerce in any State; and

(2) Are required by 49 CFR part 383 to possess a commercial driver's license (CDL).

(3) Examples of the topics covered include rules prescribing activities for:

(A) Pre-employment controlled substances test requirements;

(B) Random, post accident, reasonable suspicion, return to duty and follow-up alcohol and controlled substances testing procedures for employers and employees;

(C) Random testing rates,

(D) Requirements for drivers to report immediately to a specimen collection site; and

(E) An action required by employers if an employee has a positive test result, and recordkeeping.

s. Regulations intended to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner and provide for:

(1) A prohibition against a commercial motor vehicle driver having more than one commercial motor vehicle driver's license;

(2) A requirement for drivers to notify their current employer and State of domicile of certain convictions;

(3) A requirement for drivers to provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) A prohibition against an employer allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges; testing and licensing requirements for commercial motor vehicle operators;

(6) A requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard; and

(7) Requirements for the State-issued commercial license documentation.

t. Regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by:

(1) Including the minimum standards for the actions States must take to be in substantial compliance with each of the statutory requirements of 49 U.S.C. 31311(a); and

(2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the

qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license.

And, establish procedures for:

(1) Determining whether a State is in compliance with the rules of this part; and

(2) The consequences of State noncompliance.

u. Regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:

(1) A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and,

(2) To issue an appropriate Order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found.

v. Regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers of property and passengers operating motor vehicles in interstate, foreign, or intrastate commerce.

w. Regulations to enable States to enter into cooperative agreements with the FMCSA to enforce the safety laws and regulations of a State and the agency concerning motor carrier transportation by filing a written acceptance of the terms.

x. Regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for waivers, exemptions and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.).

y. Regulations implementing general applicability, definitions, general requirements, and information as they pertain to motor carriers and commercial motor vehicle drivers.

z. Regulations establishing:

(1) The minimum qualifications for persons who drive CMVs as, for, or on behalf of motor carriers; and

(2) The minimum duties of motor carriers with respect to the qualifications of their drivers.

aa. Regulations requiring a motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with, or in control of a CMV to comply with when they inspect, repair, and provide maintenance for that vehicle.

bb. Regulations concerning vehicle operation safety standards (e.g., regulations requiring: certain motor carriers to use approved equipment which is required to be

⁴ "Household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the FMCSA may provide by regulation.

installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (e.g. fire extinguishers and flares).

cc. Special local regulations issued in conjunction with a motor vehicle rodeo or motor vehicle parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

dd. Regulations concerning rules of the road, traffic services, and marking of intelligent transportation systems.

7. Recreational Activities and Events

a. Approval of recreational activities or events (such as an FMCSA picnic) at a location developed or created for that type of activity.

b. Approvals of motor vehicle rodeo and motor vehicle parade event permits for the following events:

(1) Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(2) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the FMCSA determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended [42 U.S.C. 4321, *et. seq.*]; the Council on Environmental Quality Regulations at 40 CFR Parts 1500–1508; DOT Order 5610.1C, as amended on July 13, 1982 and July 30, 1985; and 49 CFR 1.73.

Issued on: September 22, 2003.

Annette M. Sandberg,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being

requested and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railway Company

[Docket Number FRA–2003–15432]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks a waiver of compliance from certain sections of 49 CFR Parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification Of Locomotive Engineers, under § 211.51, Tests, to allow them to develop, implement, and test technology designed to prevent train authority violations, overspeed violations and accidents caused by passing restricted signals and open switches. The program will enable BNSF to demonstrate and validate Wabtec Railway Electronics technology, referred to as Electronic Train Management System (ETMS), before it is implemented on a larger scale.

ETMS is a non-vital safety overlay that works in conjunction with existing methods of operation and signal and control systems to protect against the consequences of human error. This approach provides a “safety net” for train operations while retaining the existing systems as a primary means of control. Because these systems continue in operation, a failure or deactivation of the ETMS has the effect only of suspending the safety enhancements associated with the ETMS, without compromising the underlying safety provisions of existing systems and operating rules.

The ETMS safety enhancements are achieved through a communication-based system that enforces movement authority and speed restrictions for ETMS equipped trains. Four segments work together to provide the enforcement: The location segment, the locomotive segment, the dispatcher system segment and the communications segment. The dispatcher segment delivers the enforceable authority and temporary speed limits for each train under ETMS

control. This information is delivered through the communications segment to the locomotive segment. Procedures are implemented to ensure the data received is complete and correct. Failsafe design dictates that an undelivered message will stop the train at the end of its active authority. The locomotive segment confirms the locomotive's location and enforces a train's movement and speed limits by monitoring the train's location and speed and applying the brakes to stop the train if necessary to prevent a violation.

The ETMS will be tested and demonstrated on the BNSF's Wichita Falls subdivision in the State of Texas between Fort Worth, milepost 0 and Valley Junction, milepost 118.4. In addition the system will be tested and demonstrated on the Brookfield subdivision in the State of Illinois between Galesburg, milepost 168 and West Bushnell, milepost 192.4. Finally, the system will be tested and demonstrated on the Beardstown subdivision in the State of Illinois and the Commonwealth of Kentucky between Bushnell, Illinois, milepost 159.6 and Paducah, Kentucky, milepost 239.0. The combined distance of the test territory is 439.3 miles. The present method of operation on the BNSF is by Track Warrant Control and Centralized Traffic Control. These methods of operation will not be affected during the ETMS test period.

ETMS testing may require temporary changes of a benign nature in operating practices, but only on ETMS equipped trains and only when a test is in progress. Such changes in operating practices will include ETMS initialization procedures, digital transmission and on-board display of text authorities and restrictions, on-board display of signal aspect, on-board display of monitored switches, enforcement limits of authority and speed limits/restrictions through automatic brake applications, and procedures for recovery following an enforcement action.

The waiver is requested for a testing period commencing August 1, 2003, and extending to the conclusion of the test phase. The testing period is not expected to exceed one year and will terminate August 1, 2004, unless BNSF notifies FRA of an earlier termination date.

The following are the current waiver requests and their justifications.

Section 216.13

Special notice for repairs—locomotive. Waiver is requested for ETMS locomotives to the extent that