

**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 final Order.

**SUMMARY:** The FMCSA is publishing its final 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 environmental 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.

**EFFECTIVE DATE:** March 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Office of Policy, Plans, and Regulations (MC-PR), (202) 366-6408, or Mrs. Elaine Walls, Office of the Chief Counsel (MC-CC), (202) 366-0834, FMCSA, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****Background**

The FMCSA was established within the Department on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 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). The FMCSA also inherited additional functions relating to registering motor carriers operating in interstate and foreign commerce that had been 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)).

**Draft Order**

On September 26, 2003, FMCSA published its proposal to implement environmental procedures for carrying out its responsibilities under NEPA (68 FR 55713). We also solicited public comments on the draft procedures.

Our NEPA Order establishes a process for assessing environmental impacts, and for the preparation of Environmental Assessments (EAs), Findings of No Significant Impacts (FONSI)s, and Environmental Impact Statements (EIS)s for FMCSA actions. We will 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. We will also use the Order, 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 FMCSA Order supplements DOT Order 5610.1C, as amended. It is important that persons using the FMCSA Order refer to those sections of the DOT Order 5610.1C, as amended, and the CEQ regulations, which are 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 FMCSA Order will apply to all our actions, including the decision to conduct research activities, promulgate regulations, award grants, and conduct major acquisitions.

**Comments to the Draft Order**

We received two sets of comments to our draft Order—comments from the Environmental Protection Agency (EPA) and comments signed by Public Citizen, International Brotherhood of Teamsters, California Labor Federation, and the Environmental Law Foundation. This latter comment will be referred to as the Public Citizen comment.

Public Citizen raised six issues concerning the draft Order's Appendix 14, Air Quality Analysis.

First, Public Citizen says Appendix 14 appears to be outdated. We have revised and updated Appendix 14, Air Quality Analysis, to reflect current EPA regulations and guidance as suggested by Public Citizen.

Second, Public Citizen stated that "rulemaking" is on the list of CEs with respect to general conformity determinations. Public Citizen states that under the Ninth Circuit holding in *Public Citizen v. DOT*, 316 F.3d 1002, 1030-31 (9th Cir. 2003), while the process of developing and issuing regulations is exempt, the outcome of the rulemaking process—the substantive result of the rule's implementation—is not exempt. In that case, the court held that FMCSA was required to prepare a conformity analysis for rules that it had promulgated. Although the Supreme Court has granted the government's petition for writ of certiorari in the case, Public Citizen notes that FMCSA did not ask the Supreme Court to review the rulemaking holding. Public Citizen believes FMCSA should clarify its guidance to include and explain the application of a requirement for conformity determinations in the context of this holding and its planned practices.

Under the regulations promulgated by the EPA, we understand "rulemaking" is not subject to the Clean Air Act (CAA) general conformity review requirement. See 40 CFR 93.153(c)(2)(iii). Appendix 14, therefore, lists rulemaking as an exempt activity (and not, as stated by Public Citizen, as a "categorical exclusion"). Moreover, EPA regulations establish threshold emission amounts for various pollutants, below which no conformity review is required (49 CFR 93.153(b)). The Ninth Circuit Court found that FMCSA did not properly analyze whether Presidential rescission of the moratorium against cross-border truck operations would exceed that threshold. The United States has sought Supreme Court review of that determination, as well as the Ninth Circuit's conclusion that the CAA general conformity review requirements apply to FMCSA rules implementing a

presidential foreign policy decision. The Supreme Court has agreed to review the determination.

In updating Appendix 14 of the Order, we have restated the EPA regulations regarding applicable exemptions to the general conformity review requirement. In the future, we will analyze the facts of a proposed action on a case-by-case basis and rely on all applicable laws, guidance, and rulings from the Courts and EPA in applying the EPA regulations. Our revised guidance in the Order conforms to EPA's general conformity rule and we will consider it to be our continuing responsibility to conduct general conformity review where warranted.

Third, Public Citizen states that the comparison for a conformity analysis is between the existing State Implementation Plan (SIP) (or in the absence of an SIP, a Federal Implementation Plan (FIP)) and the amended SIP (or FIP) to incorporate the Federal action.

We have revised Appendix 14 to document the procedures for determining conformity, as outlined in EPA guidance and regulations.

Fourth, Public Citizen stated its belief that the last factor in the list of factors of the draft Order is inconsistent with the agency's conformity responsibilities. The last factor was "the estimate(s) in tons per year for the year when the maximum emissions are expected to occur."

We have modified Appendix 14 so that when a conformity determination is necessary, emissions estimates will be developed in accordance with 40 CFR 93.159(d)(2).

Fifth, Public Citizen stated that it believes the first full paragraph on page 102 of the draft Order is inconsistent with the agency's conformity obligations insofar as it limits the analysis of mitigation measures or offsets necessary to achieve conformity to "the extent known." Public Citizen argues "the agency is required to identify mitigation measures or offsets and to ensure that they are incorporated into legally enforceable requirements in the relevant SIPs (or FIPs). Only after this has been accomplished may the agency action proceed consistently with the conformity requirements of the Clean Air Act."

We have revised the procedures for developing conformity determinations, and offsets or mitigation, to also reflect current EPA guidance and regulations.

Finally, Public Citizen stated its belief that throughout Appendix 14, the discussion was limited erroneously to carbon monoxide (CO). It argues that in

addition to other criteria pollutants, analysis of toxics should be included.

Public Citizen believes it is incorrect for the agency to assert that ozone "is not a concern at the Federal action level." It also asserts that FMCSA's analysis must include ozone, particulate matter, and all other relevant impacts.

We have revised Appendix 14 so that conformity analyses will be shown for all National Ambient Air Quality Standards criteria pollutants. The discussion should not be limited to carbon monoxide only.

#### *EPA Comments*

In reference to Order's Planning and Early Coordination scoping section (Chapter 2 section C.1.), EPA stated that the wording for affected parties published in the draft Order "may be misconstrued as limiting invitations to participate in the scoping process to governmental bodies only." EPA believes the wording "known affected private parties amongst the invitees" is more appropriate.

We have adopted EPA's suggestions concerning the list of affected parties who must be notified in writing and invited to participate in the NEPA process for all FMCSA actions not categorically excluded. We have changed the final Order to include the phrase "known affected private parties amongst the invitees."

In reference to the Order's Environmental Documentation section, EPA believes the wording is awkward. EPA suggested alternative wording for identifying extraordinary circumstances. FMCSA has changed the Order to include EPA's suggestion to describe extraordinary circumstances that preclude the use of a CE. We have also changed item 3.a.(2) to read "Has a reasonable likelihood of promoting controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative)."

In reference to the Order's Appendix 2, entitled "Categorical Exclusions," EPA requested clarification of proposed category section 4.f., which reads "Establishment of Global Positioning System (GPS), intelligent transportation systems (ITS), or essentially similar systems that use overlay of existing procedures." Second, EPA states that section 4.g., which reads "Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment" is unclear and would benefit from further clarification.

In response to EPA's request for clarification here, FMCSA has decided to remove the two CEs in sections 4.f.

and 4.g. Our justification for use of these two CEs was based on the approval of similar category of actions or activity by another agency. Because we have no additional experience, specifically FONSI's, to prove these actions meet the definition of a CE, we are, therefore, removing them from our final Order.

#### **Other Issues**

FMCSA has made a number of changes to section D of chapter 1 of the Order, which explains the applicability of the Order. In paragraph 1, we have added language from § 1508.18 of CEQ's NEPA regulations. This language supplements and clarifies language from § 1508.18 that appeared in the proposed Order, and explains that the Order does not apply to actions that the agency has no discretion to withhold or condition if those actions are in accordance with specific statutory criteria and the agency lacks control and responsibility over the effects of the actions. This language is modeled after similar language in NEPA regulations of other DOT administrations. (Changes have been made to sections B.1. (Step 2), and D.1. of Chapter 2, and to Appendix 17 to conform to this addition to the Order.) Finally, FMCSA has deleted the text citing rules of practice for certain agency proceedings as examples of enforcement actions that are not covered by the Order, because these rules of practice are covered more appropriately by a Categorical Exclusion.

FMCSA has changed paragraph 2 of section D of Chapter 1 to reflect the original intent of the agency in proposing this paragraph—to make it clear that the scope of the Order's coverage includes applications to FMCSA for grants and other similar actions, such as applications submitted to the agency by States pursuant to the Motor Carrier Safety Assistance Program. The broader language in the proposed Order, which was based on language from other agencies' NEPA Orders, went beyond the intended scope of the paragraph and included language that could have been construed as covering FMCSA actions to which the Order does not apply.

Any other edits FMCSA made to the Order were minor in nature and merely done to address changes in program roles and responsibilities, correct typographical errors, more fully define existing terms and concepts, and clarify the extent of the agency's jurisdictional parameters in certain subject matter areas. Overall, we believe that our final Order will ensure that FMCSA actively incorporates environmental considerations into its decisionmaking process.

## Implementation of FMCSA's NEPA Order

It is necessary for FMCSA to issue implementing procedures for carrying out its responsibilities under NEPA, 42 U.S.C. 4321, *et seq.*, as amended. You may access an electronic version of the Order including all appendices at <http://dms.dot.gov> by referencing the docket number at the heading of this document. To request a copy of the Order by mail, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** National Environmental Policy Act of 1969, 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: February 24, 2004.

**Warren E. Hoemann,**  
*Deputy Administrator.*

### FMCSA Order 5610.1

#### 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:** 5610.1.

**Date:** March 1, 2004.

**Office of Primary Interest:** MC–PR.

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; 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 will 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 rigorous 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, and any other interested parties.

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 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 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, including actions with effects that may be major and which are potentially subject to the agency's control and responsibility. 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 agency legislative proposals. Where FMCSA has no discretion to withhold or condition an action if the action is in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order. *See* 40 CFR 1500.6; 40 CFR 1508.18. Actions do *not* include bringing judicial or administrative civil or criminal enforcement actions. *See* 40 CFR 1508.18.

2. These environmental procedures also apply to all FMCSA actions in response to Motor Carrier Safety Assistance Program (MCSAP) applications or other similar requests to FMCSA for a grant, award, or other similar action. For major categories of FMCSA actions involving a large number of applicants, the appropriate Program Office must prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide. The appropriate Program Office must also begin the NEPA review and planning processes as early as possible after receiving an application for items described above, advising any potential applicants of 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 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  
 MCSAP Motor Carrier Safety Assistance Program

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  
 NSPS New Source Performance Standard  
 NRCS Natural Resources Conservation Service  
 NRHP National Register of Historic Places  
 PCB Polychlorinated Biphenyls  
 Pub. L. 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):

(1) With the exception of highly controversial EISs (as defined by Section 11.d of DOT Order 5610.1C), the Administrator delegates 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

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

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-RI (Office of Information Management), 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. Office of Research, Technology, and Information Management

a. Responsible for preparation and completion of all environmental analysis and documentation for all headquarters office- and Administrator-originated actions. Ensures that all required analysis is completed, and that it meets CEQ and DOT standards for quality and completeness. The Regulatory Evaluation Team (MC-RIA) within the Analysis Division is the program office that will carry out these duties.

b. Ensures the division is adequately staffed and has technical capabilities, through government employees, contractors, or some combination of the two, to complete all necessary analysis.

c. Coordinates actions and evaluations with program offices and NEPA Liaison, and ensure that relevant offices have an opportunity to review and comment on environmental analyses.

## 7. 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.

#### 8. 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.

#### 9. 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.

#### 10. 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.

#### 11. 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 whether a NEPA analysis is required and, if so, the appropriate level of NEPA analysis and documentation required.

*Step 3:* Program staff and the FEQA, in consultation with the NEPA Liaison (or designee) and the Office of Information Management (MC-RI), 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-P, and Chief Counsel, to afford them an opportunity to participate.

*Step 4:* Program staff and the Office of Information Management (MC-RI), 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 consult with DOT's Office of the Assistant Secretary for Transportation Policy (P-1) to determine if alternative arrangements are needed.

## 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 to which NEPA applies and that are 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, local, and private) must be notified in writing and invited to participate in the NEPA process. Any other known affected private parties amongst the invitees 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 that includes all undertakings that may have environmental impacts. See Section D of chapter 1 for examples. Environmental analysis and documentation for proposed actions are to be completed before initiation of the action.

For very broad actions, (e.g., actions that are regional in scope or involving regulations on hours-of-service of drivers and hazardous materials), the EIS tiering as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. 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 as described in section D of chapter 1, including the decision to conduct research activities (research, development, test, and evaluation); promulgate regulations; award grants; change operations; conduct major acquisitions; and decommission FMCSA facilities or equipment (such as noise pollution, radioactive monitoring equipment, and computers).

### 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) Has a reasonable likelihood of promoting 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 are reasonably likely to 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.

(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, or reasonably likely to initiate 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). (49 U.S.C. 303(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.

(14) May cause a 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. Complete an Environmental Checklist (Appendix 1) to substantiate the use of each 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) (Appendix 4) must be prepared as a part of the Rulemaking Support Paper<sup>1</sup> when a CE will be relied on to promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the

<sup>1</sup> Required by FMCSA Order 2100.1.

requirements of this Order may be developed by subordinate offices 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 prepare:

(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, including:

(A) The context(s) in which effects may occur; and

(B) The 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 uncertainty about 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 area-wide 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 addressed in an environmental assessment that concludes preparation of an EIS is necessary to discuss significant environmental impacts of the action(s), and where FMCSA cannot make a finding of no significant effect.

(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 the Secretary of 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.

(A) 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 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 official must distribute the ROD to appropriate agencies, organizations, individuals, and FMCSA dockets.

#### 7. Agency Responsibility for Documents Prepared by Applicants or Proponents

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 determination for the Contracting Officer (CO). 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 determination for the CO.

(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. The NEPA Liaison and the Office of Information Management must 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.13. 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 decisionmaker 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 as appropriate or expected to be interested in the action.

(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, "Intergovernmental Review of Federal Programs." (see 47 FR 30959; July 16, 1982).

(B) Publish notice in local newspapers as appropriate (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 affected 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.

c. 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).

d. The FMCSA must solicit appropriate information from the public.

e. The FMCSA must 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.

f. The FMCSA must 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 Web site.

#### 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 which originate with FMCSA.

##### 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 in 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))?
  - (e) Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?
  - (f) 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) FMCSA program offices responsible for NEPA analysis must:

- (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 the agency's 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.

## Appendices

Appendix 1—FMCSA Environmental Checklist

Appendix 2—FMCSA Categorical Exclusions (CE)

- Appendix 3—FMCSA Regulations Typically Subject to an Environmental Assessment
- Appendix 4—FMCSA Categorical Exclusion Determination (CED)
- Appendix 5—FMCSA Environmental Assessment Cover Sheet
- Appendix 6—FMCSA Environmental Assessment (EA)
- Appendix 7—FMCSA Finding of No Significant Impact (FONSI)
- Appendix 8—FMCSA Notice of Intent to Prepare an Environmental Impact Statement
- Appendix 9—FMCSA Environmental Impact Statement Model Cover Sheet
- Appendix 10—FMCSA Environmental Impact Statement (EIS)
- Appendix 11—FMCSA Notice of Availability of Environmental Impact Statement
- Appendix 12—FMCSA Record of Decision
- Appendix 13—Form and Content of 4(F) Statements

- Appendix 14—Air Quality Analysis Guidance
- Appendix 15—Distribution of Environmental Impact Statements
- Appendix 16—List of Relevant Environmental Statutes and Executive Orders
- Appendix 17—FMCSA's National Environmental Policy Act (NEPA) Review Process (Flow Chart)
- Appendix 18—Special Areas of Consideration When Implementing NEPA

**Appendix 1—FMCSA Environmental Checklist**

- Action Name:*  
(Give project name and FMCSA Docket No., and/or other ID codes);
- Action Location:*  
(List specific location of action [*i.e.*, border States]);
- Action Description:*  
(Describe the action);
- Action Category:*

(List the category into which you believe the action falls).

**Environmental Checklist**

**Note:** The decisionmaker in consultation with a HEADQUARTERS OR FIELD ENVIRONMENTAL QUALITY ADVISOR should complete this checklist. Please read the information on how to properly complete this checklist and make sure each question is answered using the accompanying explanations found on the following pages in this appendix. Attempting to answer these questions without reading the accompanying explanations may result in an incorrect or incomplete environmental analysis.

- \* Project Description:
- Activity Year:

(\* **Note:** Checklist preparer may want to attach additional descriptive information on the proposed action such as diagrams, site maps, and photographs.)

*Part I. Checklist Analysis*

	Yes	No	Need data
1. Is there greater size or scope than generally experienced for a particular category of action?			
2. Is the proposed action located near a site that involves a unique characteristic of the geographic area, such as a historic or cultural resource, park land, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)?			
3. Is there a likelihood that the proposed action would be highly controversial on environmental grounds?			
4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks?			
5. Will the action cause effects on the human or natural environment that may be precedent setting?			
6. Are the action's impacts likely to create cumulatively significant impacts when considered along with other past, present, and reasonably foreseeable future actions?			
7. Is the proposed action likely to have an impact on a district, site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource?			
8. Will the proposed action have a significant effect on species or habitats protected by the Endangered Species Act or other statute?			
9. Is there a likelihood that the proposed action would be inconsistent with or cause a violation of any Federal, State, local, or tribal law or requirement imposed for the protection of the environment?			
10. Is the action likely to have an impact that may be both beneficial and adverse? A significant impact may exist even if it is believed that, on balance, the effect will be beneficial such as likelihood that air emissions exceed <i>de minimis</i> levels or otherwise that a formal Clean Air Act conformity determination is required?			
11. Are there reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification in the vicinity of the proposed action?			
12. Are there reportable 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?			
13. Does the proposed action have the potential to degrade already poor environmental conditions? Does the initiation of degrading influence activity, or affect areas not already significantly modified from their natural condition?			
14. Does the proposed action have the potential to impact minority and/or low-income populations?			
Other environmental considerations not included on checklist.			

**Part II. Comments or Additional Information Related to Part I**

The following space is provided to discuss the "YES" responses to the above categories (identify by corresponding number), or to provide any supplemental information.

**Part III. Conclusions**

1. This proposed action is a CE and it requires no further environmental review. [ ]

*Comments:*

2. This proposed action is a CE, but it is recommended for further review under one or more of the environmental authorities noted below (list). [ ]

*Comments:*

3. An EA is recommended for this proposed action. [ ]

*Comments:*

4. An EIS is recommended for this proposed action. [ ]

*Comments:*

5. A SEIS is recommended for this proposed action. [ ]

*Comments:*

6. A FEIS is recommended for this proposed action. [ ]

*Comments:*

Date

\* Preparer/Environmental Project Manager

Title/Position

Date

\*\* Environmental Reviewer

Title/Position

\* The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA Environmental Quality Advisor signs for NEPA documents

prepared by an applicant, a contractor, or another outside party.

### Considering Environmental Consequences

The 14 questions listed in this appendix comprise the analysis portion of the Environmental Checklist. Each question calls for a judgment by you, the decisionmaker and/or the Environmental Protection Specialist, about the likelihood that a particular kind of environmental consequence will result from the proposed action. The purpose of this checklist is to serve as a tool for the decisionmaker and/or the Environmental Protection Specialist to determine the proper level of NEPA analysis with which to begin and to identify areas of potential problems and concern.

Clarification and lists of things to consider for each question are found below; however, these lists should not be considered exhaustive by any means. Every situation and proposed action will have a unique set of circumstances that you will need to take into account as you contemplate the potential consequences of the proposed action.

Based on an internal review, external review (where appropriate), and research, check "YES," "NO," or "NEED DATA" for each question. Attach documentation as needed to support your answer.

The checklist is not complete until all "Need Data" issues have been resolved and all blocks are checked either "YES" or "NO." Once you have done this, you need to go back, look at all the "YES" answers, and ask yourself, "Do any of these YES's indicate potential for *significant effects to the human environment*." Remember that the *human environment* includes both the natural and historic/cultural environment.

- If it is known that significant effects will occur which cannot be avoided or mitigated to a level of insignificance, then an EIS should be prepared.

- If it is unknown whether significant effects will occur or there is no appropriate categorical exclusion applicable to your action, an EA should be prepared with the potential for an EIS, as necessary.

**Note:** If an EA or EIS is necessary, then you must also consider the significance of impacts on the socioeconomic environment and environmental justice. Significant impacts in either of these two realms alone are NOT enough to trigger an EA or EIS. However, if an EA or EIS is prepared due to the potential for significant environmental impacts, then these documents should include discussion of any potentially significant socioeconomic or environmental

justice impacts as well. Please see the discussion for Question 12 for further guidance.

- If you answered "NO" to all the questions, or all "YES" responses were adequately researched and found to have no potential for significant impacts, and there is a Categorical Exclusion (CE) to cover the proposed action, then you do *not* need to prepare either an EA or EIS.

- If the appropriate CE requires documentation such as a Categorical Exclusion Determination (CED) and/or this Environmental Checklist, make sure the documentation is complete, submit it with the appropriate planning documents, and place it in the project file.

#### Question 1

Is there greater size or scope than generally experienced for a particular category of action?

Think about whether your action is likely to

- Result in the use, storage, release, and/or disposal of toxic materials such as fertilizers, cleaning solvents, laboratory wastes, or other hazardous materials such as explosives;
- Involve a facility that may contain polychlorinated biphenyls (PCBs), urea formaldehyde, or friable asbestos;
- Be on or near an EPA or State Superfund, or a priority cleanup site;
- Involve construction on or near an active or abandoned toxic, hazardous, or radioactive materials generation, storage, transportation, or disposal site;
- Involve use of a site that contains underground storage tanks (USTs) as evidenced by historical data or physical evidence such as vent pipes or fill caps;
- Have a significant possibility of accidental spills of oils, hazardous, or toxic materials;
- Require the use or storage of explosives; or
- Require the storage or transportation of a large amount of fuel.

Agencies that may require consultation include the following:

- EPA
- OSHA
- Appropriate Federal, State and local authorities, and Indian tribes

Think about whether your action is likely to be inconsistent with such authorities as:

- EPA's solid waste management guidelines
- A State Implementation Plan (SIP) under the Clean Air Act
- OSHA noise standards
- Executive Order 12898 (Environmental Justice)
- Executive Order 12372 (Review of Federal Programs)

Are you in compliance with the following laws?

- Clean Air Act
- Clean Water Act
- Resource Conservation and Recovery Act
- Comprehensive Environmental Response Compensation, and Liability Act (CERCLA—Superfund)
- Toxic Substance Control Act
- Occupational Safety and Health Act
- The Noise Control Act

#### Question 2

Is the proposed action located near a site that involves a unique characteristic of the geographic area, such as a historic or cultural resource, park land, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)?

Think about whether your action is likely to:

- Alter a natural ecosystem;
- Cause damage to or require the removal of any terrestrial, marine, or aquatic vegetation;
- Affect the water supplies of humans, animals, or plants;
- Affect the water table;
- Result directly or indirectly in construction on slopes greater than 15%;
- Result in construction on or near hydric soils, wetland vegetation, or other evidence of a wetland;
- Result in construction on or near any other natural feature that could affect the safety or health of the public;
- Be located on or near a wildlife refuge, a designated wilderness, a wild and scenic river, a National Natural Landmark, a National Historic Landmark, or a National Monument designated under the Antiquities Act;
- Be located on or near designated open space, or a designated conservation area;
- Be located on or near an area under study for any such designation;
- Be located on or near any other environmentally critical area;
- Have adverse visual, social, atmospheric, traffic, or other effects on such a critical area even though it is NOT located on or near the area;
- Change the use of park lands; or
- Alter a wetland.

Find out whether there is some possible, even improbable, effect of your action that would be so serious if it occurred that further review is appropriate.

For example, you want to acquire land in a non-sensitive area that is generally unlikely to have adverse effects on the environment. However, if there is an environmentally sensitive

area downstream from the land you want to acquire, and use of the land might have the potential to cause pollution as groundwater flows through the sensitive area, then you must conduct further review. Agencies that may require consultation include:

- Army Corps of Engineers
- US Fish and Wildlife Service
- National Marine Fisheries Service
- Appropriate Federal, State and local authorities, and Indian tribes

Think about whether your action is likely to be inconsistent with such authorities as:

- Executive Order 11990, Protection of Wetlands
- Executive Order 13089 (Coral Reef Protection)
- Executive Order 13158 (Marine Protected Areas)
- DOT Order 5660.1A (Wetlands)

Are you in compliance with the following laws?

- Clean Water Act
- Wild and Scenic Rivers Act
- Coastal Zone Management Act
- National Historic Preservation Act
- American Indian Religious Freedom Act
- Native American Graves Protection and Repatriation Act
- Archaeological Resources Protection Act

#### Question 3

Is there a likelihood that the proposed action would be highly controversial on environmental grounds?

Consider first whether your action is likely to be controversial in any way. If so, consider whether this controversy is likely to have an environmental element. For example, if the FMCSA decides to close a unit, controversy could be generated on economic grounds; however, unless this controversy encompasses a potential significant *environmental* impact, it does not trigger further NEPA analysis on its own.

Environmental controversies can be about a variety of things: Impacts on historic buildings, archaeological sites, and other cultural resources; impacts on traffic or parking on a community or neighborhood; and, of course, impacts on natural resources such as water, air, soil, and wildlife. To avoid missing a controversial issue that should be addressed under NEPA, be sure not to interpret the word "environmental" too narrowly.

Consideration should be given to Executive Order 12372 (Review of Federal Programs).

#### Question 4

Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks?

First, is there anything you do not know about the action's potential impacts? Second, does what you do not know have any significance?

For example, consider a conservation plan's implementation when the full effects of the plan will not be known until after implementation and monitoring.

#### Question 5

Will the action cause effects on the human or natural environment that may be precedent setting?

To answer this question, you must look forward and outward, and consider the possibility that what is done with your particular action will pave the way for future actions that could have serious environmental consequences.

For example, you decide to issue a waiver under 49 CFR 381.215 from 49 CFR 392.66(a)(3) for a commercial motor vehicle that has been found to have a mechanical condition which would likely produce a carbon monoxide hazard to the occupants. It may be possible to issue this waiver because of the type and circumstance of the mechanical condition, or perhaps the mechanical condition of other parts and accessories mitigates the hazard.

Although the nature of the particular situation may allow a CE to occur, if your action were taken as precedent for allowing ALL similar mechanical conditions to allow non-unique carbon monoxide hazards, then a higher level of review of the action may be in order.

#### Question 6

Are the action's impacts likely to create cumulatively significant impacts when considered along with other past, present, and reasonably foreseeable future actions?

Consider whether the action is related to other actions (by FMCSA or others) with impacts that are individually insignificant but that may, taken together, have significant effects.

For example, is the action part of an ongoing pattern of pollutant discharge, traffic generation (truck or bus), economic change, or land-use change in its locality that could collectively affect human health or the condition of the environment? (For further information on cumulative effects see: The Council on Environmental Quality's, "Considering Cumulative Effects" published January 1997.)

#### Question 7

Is the proposed action likely to have an impact on a district, site, highway, structure, or object that is listed on or eligible for listing on the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource?

Some preliminary investigation will be necessary to determine whether significant scientific, cultural or historic resources exist in the area of potential effect of the proposed action.

Think about whether your action is likely to affect:

- Districts, sites, buildings, vessels, aircraft, structures, or objects included in or eligible for the National Register of Historic Places;

- A building, structure, truck, bus, or aircraft that is over 45 years old;

- A neighborhood or commercial area; that may be important in the history or culture of the community;

- A neighborhood, commercial, industrial, or rural area that might be eligible for listing on the National Register as a district;

- A known or probable cemetery, through physical alteration or by altering its visual, social, or other characteristics;

- A rural landscape that may have cultural or aesthetic value;

- A place of traditional cultural value in the eyes of a Native American group or community;

- A known archaeological site, or land identified by archaeologists as having high potential to contain archaeological resources;

- An area identified by archaeologists or a Native American Group as a sacred site or as having high potential to contain Native American cultural items;

or

- The historic/cultural character of communities or neighborhoods. Agencies that may require consultation include:

- Appropriate State (*e.g.* State Historic Preservation Officer) and local authorities (*e.g.*, local historic preservation groups)

- Applicable Native American populations.

Think about whether your action is likely to be inconsistent with such authorities as:

- E.O. 13006, Locating Federal Facilities on Historic Properties in Our Nations Central Cities;

- E.O. 13007, Indian Sacred Sites;

- E.O. 13175, Consultation and Coordination with Indian Tribal Governments;

- E.O. 11593, Protection and Enhancement of the Cultural Environment;

Are you in compliance with the following laws?

- National Historic Preservation Act;
- Archaeological Resources Protection Act;
- American Indian Religious Freedom Act;
- Native American Graves Protection and Repatriation Act;

#### Question 8

Will the proposed action have a significant effect on species or habitats protected by the Endangered Species Act or other statute?

To answer this question, you must have information on protected species or habitats in the area of potential effect of the proposed action.

Think about whether your action is likely to

- Affect an endangered or threatened species, or its critical habitat;
- Affect a species under consideration for listing as endangered or threatened, or its critical habitat;
- Affect migratory birds;
- Affect a protected marine mammal;

or

- Affect essential fish habitat protected by the Magnuson-Stevens Fishery Conservation and Management Act.

Agencies that may require consultation include:

- US Fish and Wildlife Service
  - National Marine Fisheries Service
- Are you in compliance with the following laws?
- Endangered Species Act
  - Fish and Wildlife Coordination Act
  - Magnuson-Stevens Fishery Conservation and Management Act as amended in 1996
  - Migratory Bird Treaty Act
  - Executive Order 13186, Responsibilities of Federal Agencies To Protect Migratory Birds

#### Question 9

Is there a likelihood that the proposed action would be inconsistent with or cause a violation of any Federal, State, local, or tribal law or requirement imposed for the protection of the environment?

Think about whether your action is likely to

- Adversely affect the ambient air quality due to dust, vehicle or equipment emissions, open burning, etc.;
- Result in toxic or unusual air emissions;
- Adversely affect the ambient air quality due to the operation and/or maintenance of vehicles, vessels, or aircraft;

- Significantly increase the ambient noise levels of the area (includes operation and/or maintenance of machinery, vehicles, vessels, aircraft, loudspeaker systems, alarms, etc.);

- Include the use of equipment with unusual noise characteristics; or
- Have noisy activities continue past normal working hours.

#### Question 10

Is the proposed action likely to have an impact that may be both beneficial and adverse? A significant impact may exist even if it is believed that, on balance, the effect will be beneficial such as likelihood that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required?

Think about whether your action is likely to Adversely affect a SIP;

- Adversely affect national primary ambient air quality standards (NAAQS);
- Violate the carbon monoxide standards;
- Violate ozone standards;
- Violate lead standards; or
- Violate particulate matter standards.

Think about whether your action is likely to

- Change traffic patterns;
- Increase traffic volumes;
- Increase access constraints; or
- Require substantial new facilities.

#### Question 11

Are there reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification in the vicinity of the proposed action?

To answer this question, you must have historic information on reportable releases of hazardous or toxic substances as specified in 40 CFR part 302.

#### Question 12

Are there reportable 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?

To answer this question, you must have historic information on reportable releases of petroleum, oils, and lubricants, application of pesticides and herbicides, and have an understanding of the requirements for developing and amending a Spill Prevention, Control, or Countermeasures Plan.

#### Question 13

Does the proposed action have the potential to degrade already poor

environmental conditions? Does the initiation of degrading influence activity, or effect areas not already significantly modified from their natural condition?

To answer this question, you must have historic information of the area of potential effect and determine if the proposed action will further degrade or improve the already poor environmental conditions. In addition, you must determine the likelihood of the degrading activities, previously described, having an effect on areas not already modified from their natural condition.

#### Question 14

Does the proposed action have the potential to impact minority and/or low-income populations?

Think about whether your action is likely to

- Adversely impact minority and low-income communities;
- Adversely impact how public services (*i.e.*, transportation) are made available to minorities and low-income communities in the vicinity of the action; and
- Adversely change the environment in minority and low-income communities.

#### Other Environmental Considerations

Address any potential environmental effects that may be of concern, but do not fall into any of the other categories. As the decisionmaker, you could recognize something problematic in your unique situation that could not be foreseen in the development of a generalized guideline such as this.

#### Socioeconomic Impacts and Environmental Justice

If you are preparing an EA or an EIS due to the potential for significant environmental impacts, you must also consider and analyze any potential for significant impacts on the socioeconomic environment and issues of environmental justice.

Think about whether your action is likely to

- Change traffic patterns or increase traffic volumes (road and/or waterway);
- Require the rerouting of roads/waterways or traffic;
- Be located near any existing bottleneck in vehicle traffic (*e.g.*, a bridge intersection);
- Have access constraints;
- Affect a congested intersection;
- Be inconsistent with existing zoning, surrounding land use, or the official land use plan for the specific site and/or the delineated area;
- Be inconsistent with surrounding architecture or landscape;

- Increase or decrease the population of the community;
- Increase the population density of the area;
- Intrude on residential or business uses in the affected area;
- Relocate private residences or businesses;
- Affect the economy of the community in ways that result in impacts to its character, or to the physical environment;
- Result in a higher proportion of effects affecting low income or minority groups;
- Require substantial new utilities;
- Be regarded as burdensome by local or regional officials or the public because of infrastructure demands (*e.g.*, sewer, water, utilities, street system, public transit);
- Be regarded as burdensome by local or regional officials or the public because of support facilities demands (*e.g.*, schools, hospitals, shopping facilities, and recreation facilities);
- Alter a group's use of land or other resources (*e.g.*, sustenance fishing); or
- Disproportionately have a high and adverse effect on a minority or low income population.

#### 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 sensitive resources 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.

### 5. Training

a. Simulated inspection exercises, including those involving 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. The Following Types of Regulations,<sup>2</sup> and Actions Covered by This Order Taken Pursuant to Those Regulations

a. Regulations concerning 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 concerning applications for operating authority and certificates of registration.

f. Regulations implementing the following activities, whether performed by FMCSA or by States pursuant to the Motor Carrier Safety Assistance Program (MCSAP), which provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs).

- (1) Driver/vehicle inspections;
- (2) Traffic enforcement;
- (3) Safety audits;<sup>3</sup>

(4) Compliance reviews<sup>4</sup>

(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, overhead, 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 and HMRs;
- (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 and HMRs 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 brokers<sup>5</sup> 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 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,<sup>6</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> As defined in 49 U.S.C. 13102(10) and amended by the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, title II, Sec. 209(a), Dec. 9, 1999, 113 Stat. 1764), the term "household goods" as used in connection with transportation, 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 similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

<sup>2</sup> "Regulations" as used in this section includes interpretative rules and guidance, policy statements, orders, and other similar agency actions.

<sup>3</sup> A "safety audit" is an examination of motor carrier's 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.

<sup>4</sup> A "compliance review" is an on-site examination of motor carrier operations (normally at the carrier's facility). An investigator can examine items, 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, practices or procedures to ensure compliance with the applicable Federal safety regulations.

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 carriers in the transportation of property) with which to perform transportation regulated by the Secretary;

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

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

(4) 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 record preservation procedures for motor carriers, brokers, and household goods freight forwarders, including record types retained and retention periods.

r. Regulations implementing employer controlled substances and alcohol use and testing procedures designed to prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles 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 rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions).

y. Regulations implementing:

(1) Aiding or abetting prohibitions;

(2) Motor carrier identification and registration reports, including Performance and Registration Information Systems Management program registrations;

(3) Motor carrier and driver assistance with routine accident investigations;

(4) Relief during regional and local emergencies, including tow trucks responding to emergencies;

(5) Locations where motor carriers, drivers, brokers, and freight forwarders must store records;

(6) Requirements about motor carriers, drivers, brokers, and freight forwarders copies of records; and

(7) Prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record, including interstate motor carrier noise emission applications, certificates, reports, or records required by FMCSA.

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 motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road.

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

### Appendix 3—FMCSA Regulations Typically Subject to an EA

The following actions are typically subject to an environmental assessment:

(1) Regulations addressing compliance with interstate motor carrier noise emission standards.

(2) Regulations implementing procedures for motor carrier routing (commercial).

(3) Regulations addressing principles and practices for the investigation and voluntary disposition of loss and damage claims and processing salvage (*i.e.*, disposition of damaged property).

(4) Regulations addressing exemptions (not included in Appendix 2), commercial zones, and terminal areas.

(5) Regulations that apply exclusively to passenger carriers.

(6) Regulations that apply to driving of commercial motor vehicles.

(7) Regulations addressing parts and accessories necessary for safe operation.

(8) Regulations that apply to hours of service of drivers.

(9) Regulations that apply to transportation of hazardous materials, including driving and parking rules.

(10) Regulations that apply to transportation of migrant workers.

(11) Regulations that address employee safety and health standards (not included in Appendix 2).

### Appendix 4—FMCSA Categorical Exclusion Determination (CED)

#### “Public Notice—All Interested Parties” FMCSA Categorical Exclusion Determination for (Title of Proposed Project)

(Brief, concise description of the location and the proposed action. Should be only one or two paragraphs.)

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the FMCSA, and the undersigned have determined this action to be categorically excluded from further environmental documentation, in accordance with FMCSA’s NEPA Implementing Procedures and Policy for

Considering Environmental Impacts (FMCSA Order 5610.1), since implementation of this action will *not* result in any of the following:

1. Significant cumulative impacts on the human environment.

2. Substantial controversy or substantial change to an existing environmental condition.

3. Impacts that are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Pub. L. 97–449, and Section 106 of the National Historic Preservation Act.

4. Inconsistencies with any Federal, State, tribal, or local laws or administrative determinations relating to the environment.

Date

\*Preparer/Environmental Project  
Manager (as applicable)

Title/Position

Date

Environmental Reviewer

Title/Position

In reaching my decision/recommendation on the FMCSA’s proposed action, I have considered the information contained in this CED (and in any attached environmental checklists or other supplemental environmental analyses) on the potential for environmental impacts.

Date

Responsible Official

Title/Position

- The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA environmental project manager signs NEPA documents prepared by an applicant, a contractor, or another outside party.

### Appendix 5—FMCSA Environmental Assessment Cover Sheet

#### Public Notice—All Interested Parties

Title of Document

(Environmental Assessment)

Responsible Agency Name(s)

Title of Action

Location

Contact Name

Address

Telephone/Fax/E-mail (as appropriate)

Abstract of the Document

Date of Distribution

### Appendix 6—FMCSA Environmental Assessment (EA)

#### “Public Notice—All Interested Parties” FMCSA’S Environmental Assessment for (Title of proposed action)

The FMCSA’s environmental assessment (EA) was prepared in accordance with FMCSA’s NEPA Implementing Procedures and Policy for Considering Environmental Impacts

(FMCSA Order 5610.1) and complies with the National Environmental Policy Act of 1969 (Pub.L. 91–190) and the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500–1508).

This environmental assessment serves as a concise public document to briefly provide sufficient evidence and analysis for determining the need to prepare an environmental impact statement or a finding of no significant impact (FONSI). This environmental assessment concisely describes the proposed action, the need for the proposal, the alternatives, and the environmental impacts of the proposal and alternatives. This environmental assessment also contains a comparative analysis of the action and alternatives, a statement of the environmental significance of the preferred alternative, and a list of the agencies and persons consulted during EA preparation.

Date

\*Preparer/Environmental Project Manager (as applicable)

Title/Position

Date

Environmental Reviewer Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this EA on the potential for environmental impacts.

Date

Responsible Official Title/Position

\*The FMCSA preparer signs for NEPA documents prepared in-house. The FMCSA environmental project manager signs for NEPA documents prepared by an applicant, a contractor, or another outside party.

#### *Environmental Assessment (EA) Format*

#### I. Purpose of and Need for Proposed Action

The preparer of the EA will need to examine the objectives of the proposed action, the problems to be resolved by the action, and the environmental issues raised by the action, if any, as determined through scoping.

#### II. Description of the Proposed Action, No Action, and Alternatives

Examine the size, location, nature of proposed action, tied to purpose and need above. Also examine the size, location, and nature of any alternative actions that would meet the purpose and need when required by section 102(2)(E) of NEPA. A description of the No Action Alternative is also useful here, indicating the state of the environment as it exists today and in

the future if the agency decides not to implement its proposal.

#### III. Description of the Environmental Impacts of the Proposed Action, including the Alternatives and No Action

The preparer of the EA would describe the potential environmental impacts for each alternative, including all proposed Action Alternatives and No Action, and all issues identified during scoping and any other issues that have become apparent in the course of analysis. The preparer of the EA may examine the context(s) in which effects may occur, including the intensity of effects, using the Environmental Checklist as an outline. The preparer should also include mitigation measures (avoidance, minimization, repair, rehabilitation, restoration, preservation, and compensation) where they exist and are adequate to reduce effects below significance.

#### IV. Comments and Coordination

The preparer of the EA must include a list of agencies, tribes, groups or individuals who commented during the preparation of the EA and who have submitted comments to the notice of availability. A copy of each comment to the notice of availability must be appended to the EA. A list (may be in table format) of names, titles, educational and experience background, and analyses or document sections for which each person who prepared, reviewed, or who were consulted during the EA's preparation.

#### V. Appendices (if any), Including References, Maps, Reports, etc., That Substantiate the EA Analysis

#### VI. Section 4(f) Evaluation (49 U.S.C. 303) (if any)

#### VII. Other Compliance Information (if any)

The preparer of the EA must include any other environmental statutory evaluations completed, such as section 6(f) of the Land and Water Conservation Fund Act of 1965, section 106 of the National Historic Preservation Act, section 404 of the Clean Water Act, section 7 of the Endangered Species Act, Clean Air Act 1990 (conformity), Executive Order 12898 and DOT Order 5610.2 Environmental Justice assessments,

#### Appendix 7—FMCSA Finding of No Significant Impact (FONSI)

#### “Public Notice—All Interested Parties” FMCSA'S Finding of No Significant Impact for (Title of proposed action)

In accordance with the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190) and the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500–1508), and FMCSA Order 5610.1, this action has been thoroughly reviewed by the FMCSA and it has been determined, by the undersigned, that this project will have no significant impact on the human environment. Therefore, no Environmental Impact Statement (EIS) will be prepared.

This finding of no significant impact is based on the attached FMCSA prepared environmental assessment (reference other environmental documents as appropriate and if this action is related to other projects) which has been determined to adequately and accurately discuss the environmental issues and impacts of the proposed action and provides sufficient evidence and analysis for determining that an environmental impact statement is not required.

[Use the following language only if needed]:

The following environmental agreements have been reached with agencies having jurisdiction by law or expertise on environmental issues:

(List any agreements reached during the environmental analysis for this EA.)

The following mitigation and monitoring measures will be implemented to ensure that the action will have no significant impact on the quality of the human environment:

(List mitigation and monitoring measures agreed upon with others, or established independently by FMCSA.)

Date

Environmental Reviewer Title/Position

I have considered the information contained in the EA, which is the basis for this FONSI. Based on the information in the EA and this FONSI document, I agree that the proposed action as described above, and in the EA, will have no significant impact on the environment.

Date

Responsible Official Title/Position

**Appendix 8—FMCSA Notice of Intent to Prepare An Environmental Impact Statement**

**Public Notice—All Interested Parties  
FMCSA'S Notice of Intent To Prepare an Environmental Impact Statement**

The Federal Motor Carrier Safety Administration (FMCSA) intends to prepare an Environmental Impact Statement on the following action and/or project:

Name of Action/Project  
Location of Action/Project  
FMCSA Docket Number

The proposed action/project will:  
(Enter a brief description of the purpose and need for the project, and a description of the proposed action to meet that purpose and need.)

Alternatives to the proposed action include:

(Describe briefly any alternatives identified that will meet the purpose and need for the project; include a description of the No Action alternative.)

Public scoping (if appropriate at this stage) will include:

(Describe the scoping and public involvement plan for the EIS, including any meetings, field trips, or other public events scheduled as part of scoping.)

For further information:

Name of Contact  
Title  
Address  
Phone Number  
(Fax and E-mail addresses, if appropriate)

**Appendix 9—FMCSA Environmental Impact Statement Model Cover Sheet  
FMCSA'S EIS Model Cover Sheet Format**

**Public Notice—All Interested Parties  
FMCSA'S EIS Cover Sheet for (Title of Document/Volume #/Total # of Volumes)**

(Draft or Final Environmental Impact Statement)

or  
(Supplemental Environmental Impact Statement)

FMCSA Docket Number  
Responsible Agency Name(s)  
Title of Action/Project  
FMCSA Docket Number  
Location

Contact Name(s)  
Address  
Telephone/Fax/E-mail (as appropriate)  
[Add one paragraph abstract of the Document]

The Federal Motor Carrier Safety Administration (FMCSA) [enter a brief description of the underlying purpose

and need to which the agency is responding in proposing the alternatives, including the "no action" alternative]. This Environmental Impact Statement (EIS) examines the environmental effects of: [List the environmental analyses that were made in the EIS (*i.e.*, potential impacts on natural resources, air quality, water quality, endangered species, and community, social, and cultural resources were examined, together with the potential for the generation or release of toxic, hazardous, and radioactive wastes).] Date of Publication:

Date Comments Must be Received:  
(For DEIS/SEIS: Allow at least 45 Days from Date of Publication)  
(For FEIS: Allow at least 30 Days from Date of Publication)

**Appendix 10—FMCSA Environmental Impact Statement (EIS)**

**"Public Notice All Interested Parties"**

FMCSA (State whether Draft, Supplemental, or Final)  
Environmental Impact Statement (Volume # / Total # of Volumes)  
For (Title of action)

*Document Number:*  
*Prepared By:* (Responsible agency name(s) and contractor name, if appropriate, or prepared by: contractor name for responsible agency name(s)) (Location).

*Contact Information:* (Name, address, telephone/fax/e-mail, as appropriate).

*Abstract:* (One-paragraph abstract of the document).

*Date of Publication:*  
*Date Comments Must Be Received:*  
FMCSA Docket Number:

(For DEIS/SEIS: allow at least 45 Days from date of publication)  
(For FEIS: allow at least 30 Days from date of publication)

Date  
\* Preparer/Environmental Project Manager (as applicable)  
Title/Position  
Date  
Environmental Reviewer  
Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this EIS on environmental impacts.

Date  
Responsible FMCSA Official  
Title/Position

\* The FMCSA preparer signs for EISs prepared in-house. The FMCSA environmental project manager signs for EISs prepared by an applicant, a contractor, or another outside party.

**Appendix 11—FMCSA Notice of Availability of Environmental Impact Statement**

**FMCSA'S Notice of Availability of (Draft/Supplemental/Final) EIS for (Title of Proposed Action)**

The Federal Motor Carrier Safety Administration (FMCSA) has filed with the Environmental Protection Agency and made available to other governmental and private bodies a (Draft / Supplemental / Final) Environmental Impact Statement on the following action/project:

Name of Action/Project  
Location of Action/Project  
FMCSA Docket Number

This proposed action/project will:  
(Enter brief description of the purpose and need for the action, alternatives, plus no action, location of project, affected environment, etc.)

Copies of Draft/Final environmental Impact Statement are available from:

Name of Contact  
Title  
Address  
Phone Number  
(Fax and E-mail addresses, if appropriate)

[For Draft EISs *only*, use the following language:]

Council on Environmental Quality regulations provide for a 45-day review and comment period, which begins with the date of the **Federal Register** notice of the availability of the Draft Environmental Impact Statement. That date is (insert date here); comments are due to the FMCSA contact named above no later than (insert date here).

Date  
\*Preparer/Environmental Project Manager (as applicable)

Title/Position  
Date  
Environmental Reviewer  
Title/Position  
Date  
Responsible FMCSA Official  
Title/Position

**Appendix 12—FMCSA Record of Decision**

**"Public Notice—All Interested Parties"  
FMCSA Record of Decision**

The FMCSA has published a Final Environmental Impact Statement (FEIS) on the following project:

(Name of action/project)  
(Location of action/project)  
(FMCSA Docket Number)

(Describe each of the following topics:)

The purpose and need for the action/project was:

Alternatives examined included:  
Environmental consequences of the  
action/project include:

The decision is:

The environmentally preferable  
alternative(s) is (are):

I (selected/did not select) the  
environmentally preferable alternative  
because:

The following are the economic,  
technical, FMCSA statutory mission,  
national policy considerations (as  
applicable) that were weighed in  
reaching my decision: (Explain how  
these considerations, as applicable,  
entered into the decisionmaking  
process.)

All practicable means of avoiding or  
minimizing environmental harm from  
the selected alternative(s) were/were not  
adopted because:

The following mitigation, monitoring,  
and enforcement has been adopted (if  
applicable):

In reaching my decision/  
recommendation on the FMCSA's  
proposed action, I have considered the  
information contained in the above-  
mentioned FEIS on the potential for  
environmental impacts.

Date

Responsible FMCSA Official  
Title/Position

### Appendix 13—Form and Content of 4(f) Statements

#### Form and Content of 4(f) Statements

1. These instructions are to  
supplement the 4(f) requirements of  
Attachment 2 to DOT Order 5610.1C.

2. Section 4(f) of the Department of  
Transportation Act states that *special  
effort* should be made to preserve the  
natural beauty of the countryside,  
public parks, and recreation lands,  
wildlife and waterfowl refuges, and  
historic sites. Section 4(f) further states  
that the Secretary of Transportation  
(Secretary) shall not approve any  
program or project which requires the  
use of 4(f) lands (*see* paragraph 4.)  
unless:

a. There is *no feasible and prudent*  
alternative to the use of such lands, and;  
b. Such program includes *all possible*  
planning to minimize harm to 4(f) lands  
resulting from such use.

3. Subsequent legal decisions have  
indicated that the protection of  
parklands and other 4(f) areas is of  
*paramount importance*; that such lands  
are not to be lost unless there are *truly  
unusual factors* present, or unless the  
cost or community disruption resulting  
from alternatives reaches *extraordinary  
magnitudes*; and that the Secretary  
cannot approve the destruction of  
parkland unless alternatives present  
*unique problems*.

4. Section 4(f) lands include any  
publicly owned land from a park,  
recreation area, or wildlife or waterfowl  
refuge, or any land from an historic  
(including archaeological) site.

a. Publicly Owned land—Any land  
owned in fee simple or land subject to  
public easement or other interest in the  
land by a Federal, State, or local agency  
or entity.

b. Historic Site—For the purposes of  
Section 4(f), an historic site is  
significant only if it is on or eligible for  
inclusion on the National Register of  
Historic Places, or if the FMCSA or the  
DOT lead Federal agency determines  
that the application of Section 4(f) is  
appropriate. Consultation with the State  
Historic Preservation Officer (SHPO)  
and the Keeper of the Register (DOI) is  
required to identify such properties,  
unless the FMCSA official and the  
SHPO have agreed that the property  
does not meet the eligibility criteria,  
then the Keeper of the Register need not  
be consulted for a determination.

c. Archaeological Site—Section 4(f)  
generally applies to archaeological sites  
on or eligible for the National Register.  
If the SHPO concurs in a FMCSA  
determination that a data recovery  
program will negate “an adverse” effect  
to an archaeological property on or  
eligible for the National Register,  
Section 4(f) does not normally apply.  
(See the Advisory Council Historic  
Preservation Handbook: Treatment of  
Archaeological Properties, November  
26, 1980, Part II, Section X.)

d. Multiple-Use Lands—Where  
Federal lands or other large public land  
holdings are managed for multiple uses  
under a statute authorizing such  
management, Section 4(f) applies only  
to portions of multiple-use lands that  
are used for or are designated as being  
for public park, recreation, wildlife or  
waterfowl refuge, or historic purposes.  
The official having jurisdiction over the  
land (*see* paragraph 7) determines its  
significance.

e. Temporary 4(f)—Type Use of  
Acquired (Non-4(f)) Lands—This use  
shall not be subject to 4(f) actions if:

(1) The land was not previously used  
for parks, recreation, wildlife or  
waterfowl refuge purposes or was not  
listed on or eligible for the National  
Register before acquisition by the  
transportation agency; and

(2) The lease, permit, or license  
clearly states that the use is temporary  
(time period specified or subject to the  
transportation agency owning the land)  
and that after that period the  
transportation use will commence.

f. The amount of land taken or  
affected is immaterial; the law clearly  
refers to any 4(f) lands having Federal,

State, local, or tribal significance as  
determined by the officials having  
jurisdiction over the land. The 4(f)  
lands' significance must be determined  
as one entity and not be divided into  
significant and non-significant parcels.

g. Enhancement of the 4(f) lands by  
the proposed project is also immaterial;  
the Secretary must still approve the use  
of the land.

h. Also included are *former* 4(f) lands,  
if the transfer of ownership or the  
change in use was to avoid a Section 4(f)  
issue.

i. “Use of land” under Section 4(f)  
generally means the acquisition of title  
to or an easement in land for a  
transportation program or project. In  
unusual circumstances, serious adverse  
impacts such as severe increases in  
noise or air pollution, or access  
disruption may constitute a  
“constructive use,” even where no  
acquisition is involved, and Section 4(f)  
would apply.

j. Facilities (*e.g.*, roadside rest areas)  
located on 4(f) lands and provided by  
the transportation agency solely for the  
use by the users of the transportation  
facility will not normally be subject to  
Section 4(f).

k. Projects (*e.g.*, pedestrian, bicycle or  
equestrian bridges) that require the use  
of 4(f) lands for recreation purposes will  
not normally be subject to Section 4(f).

5. The language of Section 4(f) and  
subsequent legal interpretations clearly  
indicate the need for a *rigorous* 4(f)  
statement to accompany any FMCSA  
project using lands under the protection  
of this statute. The 4(f) statement should  
include the information discussed in the  
following paragraphs.

6. A comprehensive description of the  
4(f) lands affected or taken by the  
project should be presented.

a. The type and amount of lands  
required by the project should be  
indicated. This should include the  
acreage needed for permanent surface  
easements, aerial easements,  
underground easements, drainage and  
utility easements, etc., as well as that  
needed for temporary construction  
easements.

b. The existing 4(f) lands should be  
described including ownership,  
administrative jurisdiction, location,  
size, available recreational facilities,  
use, patronage, unique or irreplaceable  
qualities present, type of vegetation or  
landscaping, type of wildlife (including  
resident and migratory species),  
historical or cultural (including  
architectural or artistic) significance,  
etc.

c. The relationship of the 4(f) lands to  
other similarly used lands near the  
project should be clearly indicated.

d. Adverse impacts of the project on 4(f) lands should be discussed. This discussion should pay particular attention to the special nature of 4(f) lands and should include detailed information concerning the effect of the project on natural views, local historical values, pedestrian and other access, recreational use, vegetation, wildlife, etc. Care should be taken to include a rigorous analysis of aesthetic, air, water, and noise pollution on 4(f) lands near and adjacent to the project. If these impacts are insignificant, the reasons for this determination should be given in detail.

e. Secondary impacts of the project on involved 4(f) lands should also be discussed, as these can often be of a greater magnitude than direct primary impacts. Such a discussion should include possible change in nearby land values that could lead to private development in the area which would reduce the natural beauty or scenic qualities of the 4(f) lands, increased patronage which may lead to excessive patronage and overuse of the lands, etc.

f. General statements made in the above discussions and descriptions should be supported by numerical data. In addition, maps, plans, elevations, pictorial drawings, photographs (including aerial photographs), or other graphics should be presented which show the affected 4(f) lands and their relationship to the proposed project. These graphics should be of sufficient scale and detail to allow an analysis of the use to be made.

7. A statement of the tribal, local, State, or national significance of the 4(f) lands should be presented. This statement should come from the officials having jurisdiction over the lands when at all possible, and should address the significance of the entire area involved, and the actual land affected or taken by the project. When such a statement cannot be obtained from the officials having jurisdiction, the lands will be presumed to be significant. Any statement of insignificance from whatever source is subject to review by the FMCSA for bias.

8. A complete description of all alternatives and their impacts that were considered in order to avoid effects on, or the taking of, 4(f) lands should be presented. The Secretary cannot approve a project unless there is *no feasible and prudent* alternative to the use of involved 4(f) lands.

a. Alternatives considered should be sincere attempts to avoid or reduce impacts on 4(f) lands and not those contrived to satisfy the letter of the law.

b. The FMCSA must critically examine the project as a whole and its relation to nearby 4(f) lands to determine if the applicant has considered *all reasonable* alternatives to avoid or minimize the use of these lands, including the "status quo" or "do nothing" alternative.

c. In order to evaluate the feasibility and prudence of the alternatives, rigorous and detailed information must be presented for *each* one. If the alternatives are determined not to be feasible and prudent, this information should include evidence that they present *truly unique and unusual* technical problems or that they will result in costs or community disruptions that reach *extraordinary magnitudes*. (See *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (2 ERC 1250) (1971)).

d. Evidence supporting determination on feasibility and prudence should include, but not be limited to:

(1) A description of each alternative, including a discussion of the type and amount of land required (especially through 4(f) lands), maps, plans, elevations, or other graphics, sufficient to assess potential impacts of the alternative.

(2) A cost estimate for *each* alternative, including figures showing percentage differences in total costs for the various alternatives (including the proposed project).

(3) A discussion of the environmental and community impacts of *each* alternative, including figures showing the number of people displaced, the number of homes or businesses removed, the degree of air and noise pollution caused by the alternative, and other numerical data that will allow a proper evaluation of the *magnitude* of the impacts to be made, if appropriate.

(4) An assessment of the technical or engineering feasibility of *each* alternative, which includes full consideration of new or innovative construction techniques.

9. If there is no feasible and prudent alternative to the use of 4(f) lands by the proposed project, then a description of measures to minimize harm to the protected area should be presented. The Secretary cannot approve a project unless it includes *all possible* planning to minimize harm to the involved 4(f) lands.

a. The FMCSA must examine the relationship of the proposed project to the affected 4(f) lands and determine whether *all possible* measures to minimize harm were considered; it should ensure that the statement treated alternative designs, sites and/or routes.

b. All planning undertaken to minimize harm to 4(f) lands should be described in detail. A statement of actions taken, or to be taken, to implement this planning should also be included, along with an estimated schedule showing when this implementation will take place.

c. Measures to minimize harm should include, but not be limited to, the following:

(1) The replacement of land and facilities, or the provision of compensation adequate for the functional replacement of land and facilities.

(2) Measures to reduce visual intrusion and related aesthetic impacts, such as landscape screenings, appropriate architectural design, etc.

(3) Measures to reduce noise impacts, such as sound barriers, etc.

(4) Measures to reduce construction impacts, such as control of drainage and erosion, proper disposal of spoil material, protection of trees and other vegetation, control of temporary air and noise pollution, maintenance of vehicular and pedestrian access during construction, etc.

(5) Measures to enhance the natural beauty of the lands traversed, such as the provision of more usable landscaped open space in congested urban areas, etc.

10. Evidence of concurrence, or a description of efforts to obtain concurrence of officials having jurisdiction over Section 4(f) lands regarding the proposed action and measures planned to minimize harm should be presented. Evidence of consultation with grantor agencies, where land acquired with Federal grant money is involved, should also be presented. Concurrence of these officials to the proposed project, however, does not remove the necessity for the preparation of a detailed and rigorous 4(f) statement.

11. Approval of the 4(f) statement in accordance with FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1) shall be accomplished by having the proper approving official sign a 4(f) determination approval statement. This approval page shall contain the following paragraph:

"Based on this 4(f) statement, I have determined that there is no feasible and prudent alternative to the use of this 4(f) land(s) and that all possible planning to minimize harm to this land(s) has been accomplished."

The dated approval page must be inserted as the first page inside the cover of the final document.

12. Section 4(f) statements should be made a part of, and be supported by, data within Environmental Impact Statements, or FMCSA Supplementary Statements, whenever such are prepared as part of a project, *e.g.*, whenever the use of or effect on the 4(f) lands will “significantly affect the quality of the human environment.”

a. When incorporating a 4(f) statement into an EIS as required by FMCSA’s NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1), one of two methods for presentation of the 4(f) information may be used. The 4(f) statement may be presented as a *complete separate section* of the EIS or the 4(f) information may be *incorporated throughout the text* of the EIS.

b. When the 4(f) statement is presented as a *complete separate section* of an EIS, that section must contain the detailed analysis of issues, alternatives, and mitigation measures to be implemented. A 4(f) statement presented in this manner shall be written in sufficient detail to allow the 4(f) section to stand independent of the EIS.

c. When the 4(f) information is *incorporated throughout the text* of an EIS a summary of findings of the 4(f) investigation shall be presented in an appropriate section of the EIS. This summary should concisely describe the 4(f) issue and direct the reader to quickly locate detailed information needed to rigorously evaluate the 4(f) issue.

d. When a 4(f) statement is incorporated throughout the text of an EIS, the front cover of the EIS shall clearly indicate that the document is an Environmental Impact/Section 4(f) Statement.

e. When the 4(f) statement is incorporated throughout the text of an EIS, the requirement of paragraph 11 of this appendix shall be combined with the EIS approval page.

13. Some uses of 4(f) lands will only minimally affect the 4(f) land. In such instances, the 4(f) statement shall be an independent document accompanied by a Finding of No Significant Impact (FONSI) or Categorical Exclusion Determination Statement.

#### Appendix 14—Air Quality Analysis

This appendix offers guidance on how to determine the appropriate level of air quality analysis for Federal Motor Carrier Safety Administration (FMCSA) actions subject to environmental review. Where projects are of greater scope than characteristic FMCSA actions, these actions should be developed in

coordination with the Office of the Secretary of Transportation (OST) and the Environmental Protection Agency (EPA).

Two primary laws apply to air quality: The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and the Clean Air Act as amended (CAA) (42 U.S.C. 7401 *et seq.*). NEPA and its implementing regulations (40 CFR Parts 1500–1508) and guidelines establish broad Federal policies and goals for the protection of the environment and provide a framework for balancing the need for environmental quality with other essential societal functions, including national defense.

The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed criteria pollutants. The six pollutants are: Carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulates (PM–10 and PM–2.5), and sulfur dioxide (SO<sub>2</sub>). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

Every effort should be made to reflect information necessary to address any applicable State and local air quality requirements in the NEPA document.

These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards

#### FMCSA Responsibilities

##### *National Environmental Policy Act*

FMCSA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potential impacts of a proposed action, including whether the action would affect an area’s attainment and maintenance of air quality standards established by the Clean Air Act.

##### *Clean Air Act*

It is FMCSA’s affirmative responsibility under Section 176(c) of the CAA to assure that its actions that are covered by the general conformity requirements conform to applicable SIPs in nonattainment and maintenance areas. Before FMCSA can fund or support in any manner an activity, it must address the conformity of the action with the applicable SIP using the criteria and procedures prescribed in

the general conformity rule (see CAA—General Conformity Requirements section).

#### Requirements

##### *National Environmental Policy Act*

The requirements for air quality analysis under NEPA are distinct from those of the general conformity rule of the CAA. However, the NEPA document should reflect findings of a conformity analysis. When a NEPA analysis is needed, the impacts of the alternatives on air quality are assessed by evaluating the alternatives against the NAAQS. The proposed action’s emissions are analyzed for each reasonable alternative, including the no action alternative. The analysis should include direct emissions as well as indirect emissions that are reasonably foreseeable. For purposes of quantitatively evaluating health impacts under NEPA, provide all estimated criteria air pollutant concentrations, *e.g.*, 1— or 8-hour average concentrations for ozone.

In most cases, further analysis would not be required for areas that are in attainment with the NAAQS for criteria pollutants. However, based on the nature of the proposed action, additional analysis may be appropriate. The methodologies and scope of these analyses should be determined through consultation with Federal, State, and local air quality agencies.

##### *Categorical Exclusions (CEs)*

Typically, actions that are categorically excluded under this Order would have no effect or a *de minimus* effect on air quality and would not result in more than a *de minimus* increase in emissions from commercial motor vehicle (CMV) activity. As such, an air quality analysis is generally not necessary. If there is some question as to whether a particular project normally processed as a CE would have the potential for a significant air quality impact, the screening criteria listed in the analysis section of this appendix can be used to determine whether further analysis is needed. If the screening analysis shows that the proposed action has the potential to substantially increase emissions from CMV activity, a national-level analysis should be conducted to develop an estimate of emissions associated with the proposed action (see Analysis section), and if appropriate, the results should be documented in an environmental assessment.

*Environmental Assessment (EA)/  
Finding of No Significant Impact  
(FONSI)*

NEPA and the CAA Amendments of 1990 have separate requirements and processes; however, their steps can be integrated and combined for efficiency, and results of conformity analysis should be reflected in environmental documents. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as early as practicable when preparing an EA.

The preparation of an EA/FONSI may not require substantial analytical backup. Such a judgment could be based on the screening criteria, previous analyses for similar Federal agency actions or previous general analyses for various classes of projects that are current. In general, a simplified national analysis procedure should be adequate for most Federal agency actions processed with an EA/FONSI (see Analysis Section). If the analysis shows that the proposed action will not create a new violation or exacerbate an existing violation, the proposed action will normally lead to a FONSI.

*Clean Air Act—General Conformity Requirements*

Section 176(c) of the CAA, as amended in 1990, requires that Federal agency actions conform to the appropriate Federal or State air quality implementation plans (FIPs or SIPs) in order to attain the CAA's air quality goals. Section 176(c) states:

"No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan."

General conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such Federal agency activities will not:

- (1) Cause or contribute to any new violation of any standard in any area.
- (2) Increase the frequency or severity of any existing violation of any standard in any area.
- (3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA 1990 amendments required the EPA to issue rules that would ensure Federal agency actions conform to

appropriate FIP or SIP. A final rule for determining conformity of general Federal agency actions (40 CFR part 93, subpart B) was published in the **Federal Register** (FR) on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR part 51, subpart W specifies requirements for conformity which States must include in their respective SIPs. EPA published separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR part 93, subpart A, and 40 CFR part 51, subpart T) on November 24, 1993 and several subsequent amendments. The remaining conformity discussion addresses only general conformity since FMCSA actions are subject to this rule.

The general conformity rule establishes the procedures and criteria for determining whether certain Federal agency actions conform to State or Federal air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal agency action, the following must be considered: the nonattainment or maintenance status of the area; the project's emission levels; exemptions from conformity and presumptions to conform; and the regional significance (discussed below) of the project's emissions. The procedures for assessing conformity for FMCSA actions are presented in the analysis section of this appendix.

The general conformity rule only applies in areas that EPA has designated nonattainment or maintenance. A nonattainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS and is designated as nonattainment by EPA. A maintenance area is any geographic area of the U.S. previously designated nonattainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated as nonattainment or maintenance areas is maintained in 40 CFR part 81 (commonly known as the *Green Book*) by the EPA Office of Air Quality Planning and Standards (OAQPS) on their Web site. This serves as the official register of all nonattainment and maintenance areas.

The general conformity rule covers direct emissions of criteria pollutants or their precursors from Federal agency actions, as well as indirect emissions that are reasonably foreseeable, and can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

A conformity determination is not required if the emissions caused by the

proposed Federal agency action are not reasonably foreseeable; if the emissions caused by the proposed Federal agency action cannot practicably be controlled and maintained by the Federal agency through its continuing program responsibility; if the action is listed as exempt or presumed to conform; or if the action is below the emission threshold (*de minimis*) levels (40 CFR 93.153).

*Exemptions*

Certain Federal actions are exempt from the requirement of the general conformity rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

- (i) Judicial and legislative proceedings;
- (ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;
- (iii) Rulemaking and policy development and issuance;
- (iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;
- (v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;
- (vi) Administrative actions such as personnel actions, organizational changes, debt management or collections, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;
- (vii) The routine, recurring transportation of material and personnel;
- (viii) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted; or
- (ix) Research, investigations, studies, demonstrations, or training where no environmental detriment is incurred;

A complete list of all actions that would result in no emissions increase or an increase in emissions that is clearly *de minimis* can be found at 40 CFR 93.153(c)(2) and 93.153(d).

The general conformity rule (58 FR 63250, November 30, 1993) includes a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless

regionally significant. To date, FMCSA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the presumption of conformity would be published in the **Federal Register** in the future. For those actions that are not exempt from the general conformity requirements, FMCSA must conduct a screening process to determine if the proposed action has the potential to generate emissions in excess of the *de minimis* thresholds (see Analysis section).

## Analysis

### General Procedures

In the preparation of the air quality section of the NEPA document, FMCSA must present the results of the air quality analysis for all analyzed alternatives. The scope of the air quality analysis must be designed so that it provides a comparison of alternatives with regard to the air quality standards set forth in the CAA. If the results of the analysis determine that the proposed action would result in emissions below *de minimis* levels, no conformity determination is required. However, if the air quality analysis determines the proposed action would result in emissions above *de minimis* levels, FMCSA must perform a conformity analysis and determination.

The conformity review and determination does not address how emissions of pollutant(s) of concern affect human or ecological receptors. However, completion of the conformity analysis would provide the necessary data to evaluate the effects on these receptors.

The general conformity analysis should be reflected in the air quality analysis section of the NEPA document. As a matter of practice, the general conformity analysis should be performed concurrently with the NEPA document. The draft and final conformity determinations may be provided as an appendix or separate volume of the NEPA documents or incorporated into the body of the NEPA document.

### Analysis

When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or local air quality agencies and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, and/or mitigation measures to be incorporated into the action.

### Evaluation Criteria

Figure 1 contains a flow chart that describes the evaluation criteria and procedure to help determine if a conformity determination is required. If a proposed action is not exempt from the general conformity requirements, the potential for the proposed action to generate direct or indirect emissions in excess of the *de minimis* thresholds must be evaluated.

The potential for a proposed action to generate emissions in excess of the *de minimis* thresholds in a nonattainment or maintenance area can be determined using the following evaluation criteria. Actions that would not modify the

elements of CMV traffic presented in these criteria would have air quality impacts that are clearly *de minimis* and no further air quality analysis is required.

### Increase in CMV mileage

Would the proposed action result in an overall increase in CMV mileage? An increase in the number of miles traveled could result in an increase in overall emissions.

### Routing

Would the proposed action result in a geographical shift of CMV operations at the regional level? For example, if the proposed action were to shift CMV travel to different interstates, a region may experience an increase in CMV mileage, although the number of miles traveled nation-wide may not increase.

### Operation

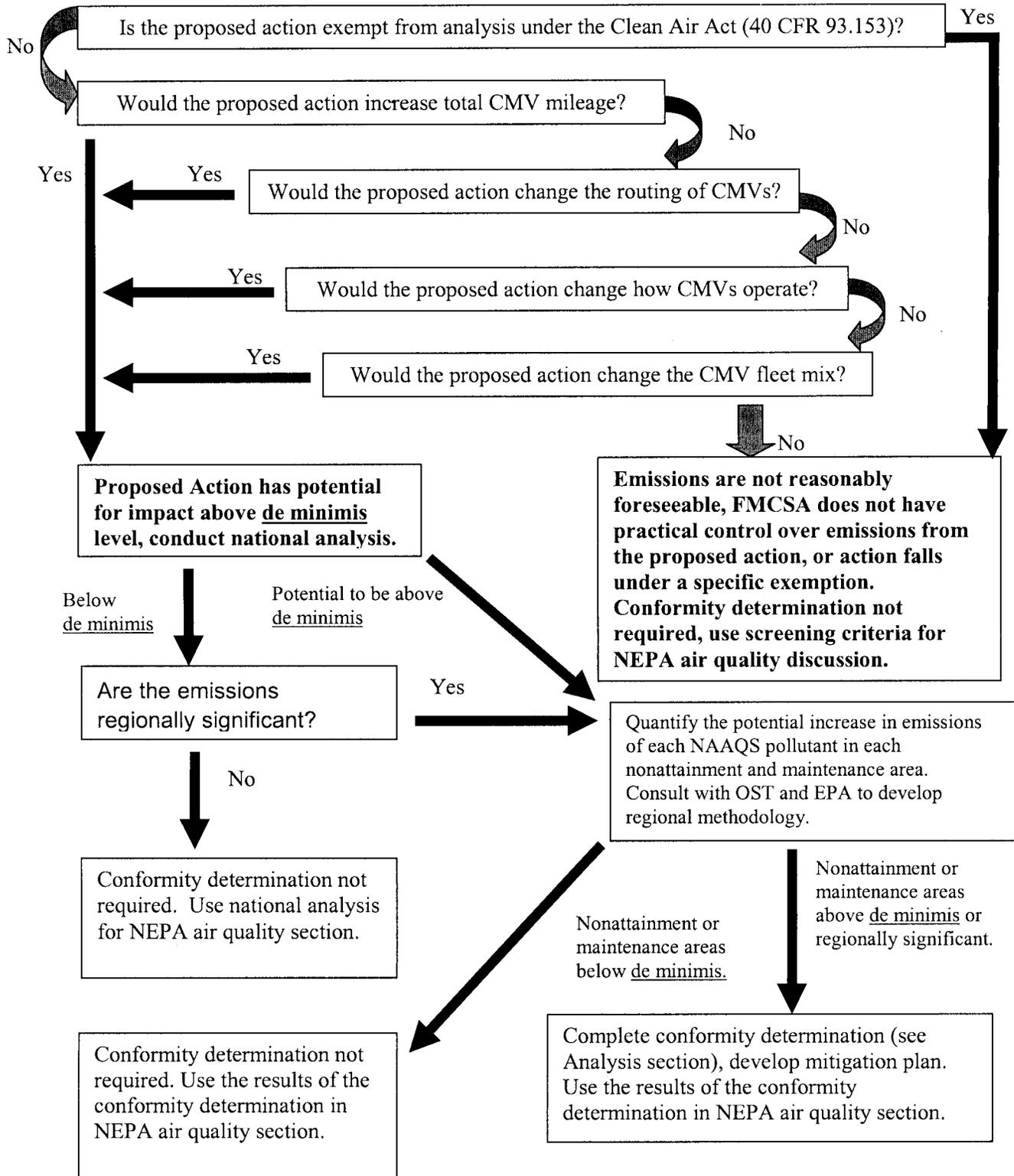
Would the proposed action result in a change in how CMVs are operated? For example, would idling times be increased or would speeds be restricted during operation. These changes in operation could result in an increase in overall emissions.

### Fleet Mix

Would the proposed action result in a shift in the mixture of CMVs in any regional fleet? The use of different types of CMVs, vehicles of different ages, or vehicles with different maintenance regimes should be considered changes in the fleet mix. Emissions from CMVs can vary substantially and changes in the fleet mix may result in changes in the amount of emissions from the fleet.

BILLING CODE 4910-EX-P

**Figure 1. Air Quality Analysis Procedure**



**BILLING CODE 4910-EX-C**

Emissions from FMCSA proposed actions that would have the potential to modify the elements of CMV operation

listed above must be assessed using the methodology described below.

**National Analysis Methodology**

For FMCSA actions with the potential to increase emissions that impact CMV activity uniformly nation-wide,

emissions should be calculated at the national scale. These nation-wide estimates of emissions can then be assigned to each nonattainment area in proportion to the national level of CMV activity. Estimates of potential nation-wide emission increases should be developed using EPA-approved models unless otherwise approved by the EPA (40 CFR 51.859(c)). In accordance with CEQ NEPA guidelines (40 CFR 1500–1508), this simplified analysis would allow FMCSA to determine the scope of the potential emission increase without the need for excess paperwork and delay.

If the project's emissions are below annual threshold levels (*de minimis* levels) and are not regionally significant, then the requirements of the general conformity regulation do not apply to the Federal agency action or project (and therefore, a conformity determination is not required). If the potential emission increase from the proposed action is greater than the *de minimis* threshold in a nonattainment area or maintenance area, then the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR parts 51 and 93).

### Conformity Determination

In determining whether emission threshold levels are exceeded, and that a conformity determination is required, agencies must consider direct and indirect emissions. Direct emissions are those that are caused by or initiated by the Federal agency action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal agency action, but that occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded.

The general conformity rule adopted a definition of indirect emissions, which excludes emissions that may be attributable to the Federal agency action, but that the Federal agency has no authority to control. In addition to assessing direct emissions, FMCSA is responsible for assessing indirect emissions of criteria pollutants and precursors that are caused by a Federal agency action, are reasonably foreseeable, and can practicably be controlled by FMCSA through its continuing program responsibility. FMCSA may compare emissions with and without the proposed Federal agency action during the year in which emissions are projected to be greatest in

determining whether emission threshold levels are exceeded.

If a Federal agency action does not exceed the threshold levels or is presumed to conform, the action may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal agency action represent ten percent or more of a maintenance or nonattainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal agency action that are exempt from conformity requirements (*e.g.*, emission sources covered by New Source Review (CAA Section 111)) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal agency actions that fall below threshold levels, but have the potential to impact the air quality of a region.

The conformity analysis would be conducted on the proposed action and would show whether the conformity requirements would apply and explain the basis for the conclusion, including if and how the following were used:

- Criteria pollutant(s) or precursors expected to be emitted, if any;
- Emissions of pollutants of concern occurring in a nonattainment or maintenance area;
- Whether the alternative is exempt from the CAA conformity requirements;
- Emissions estimates for pollutant(s) of concern, if needed.

For purposes of demonstrating conformity, present emission estimates, *i.e.*, tons per year, of only the pollutant(s) of concern. The CAA General Conformity rule (40 CFR 93.159) requires that emissions estimates use the latest planning assumption, the most accurate estimation techniques, current models, and the latest emission factors. Section 93.159(d)) requires emissions estimates for:

- The mandated attainment year in the CAA, or the farthest year in which emissions re specified in the maintenance plan, if applicable;
- The year during which the total of direct and indirect emission from the action is expected to be the greatest on an annual basis;
- Any year for which the applicable SIP specifies an emissions budget. The general conformity rule, in § 93.158, provides options for demonstrating conformity. Options include showing that the emissions resulting from the action are specifically accounted for in the SIP or in a SIP budget; that the emissions are accounted for in a SIP

revision or a planned SIP revision to which the State has committed; that the action is specifically included in a transportation plan and transportation improvement program found to conform under the Transportation Conformity rule; or that enforceable mitigation measures will fully offset the emissions increases.

Documentation for a conformity determination must:

- Briefly describe how the conformity determination criteria would be met;
- Summarize how any conformity analysis was conducted based on the latest local or area-wide planning assumptions (*e.g.*, employment, population, travel, and congestion);
- Summarize the methodology for calculating emissions of the pollutant(s) of concern;
- Briefly describe the methodology (including assumptions and input data) for air quality modeling (for use in NEPA air quality section);
- Briefly describe any mitigation measures or offsets needed to fully offset the project's emissions and to demonstrate conformity; and
- Briefly describe the process for implementing and enforcing the mitigation measures or offsets.

In addition, the comparison of the proposed action with regard to conformity is required to show how the action would conform to the applicable implementation plan, and to the extent known, any mitigation measures or offsets needed to demonstrate conformity. If mitigation measures are necessary, they would be determined on a project-by-project basis.

A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (*i.e.*, the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

If a proposed action is modified after the project has been determined to be below *de minimis* levels, all emissions from the proposed action must be reevaluated against the *de minimis* thresholds to determine if a conformity determination is necessary. In a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), briefly describe any conformity determination(s). In a ROD, include any commitments to implement mitigation measures or offsets needed to achieve conformity with the applicable implementation plan, and reference the

preparation of a NEPA mitigation action plan.

If FMCSA has not made a needed final conformity determination at the time a final NEPA document is issued, issue the final conformity determination concurrent with the ROD, and in addition to describing the final conformity determination, provide responses to public comments on the draft determination. If a modification to the proposed action occurs after the final conformity determination has been issued, any increase in emissions must be below the *de minimis* levels or a new determination will be necessary.

Once the final conformity determination is issued, FMCSA must complete the action in five years, unless a continuous program to implement the action is in place. Otherwise, a new conformity determination is required.

#### **Appendix 15—Distribution of Environmental Impact Statements**

##### **Distribution of Environmental Impact Statements**

CEQ regulations require distribution to the following:

#### **A. Draft EISs**

- Other agencies with jurisdiction by law or special expertise with respect to the environmental impacts involved or that are authorized to develop and enforce environmental standards (including cooperating agencies)

Federal

State

Local (including counties)

Tribal

- The applicant, if any
- Any person, organization, or agency requesting the entire EIS
- Indian tribes when the effects may be on a reservation
- Any agency that has requested to receive EISs on actions of the kind proposed

Environmental Protection Agency

After distributing the EIS to the parties listed above, send five (5) copies to pertinent EPA Regional Offices and 5 copies to: U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Mail Code 2252-A, Room 7241, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

For all deliveries by courier, including express delivery services other than the U.S. Postal Service, use 20004 as the zip code. If the documents are to be hand-delivered, ask the security guards to phone (202) 564-2400 for an escort to the Filing Section. Telephone inquiries can also be made to: (202) 564-7167 or (202) 564-7153.

#### **B. Final EISs**

- All of the above, plus
- Any person, organization, or agency that submitted substantive comments on the draft EIS

#### **C. Supplemental EISs**

- All of the above (A. and B.)

#### **D. Notice of NEPA-Related Hearings, Meetings, and Documents**

- **Federal Register**
- FMCSA Docket assigned to the project
- FMCSA's Office of Communications (MC-CM)
- Local newspapers of general circulation
- Newsletters (of the agency or other organizations)
- Those who requested a hearing or meeting or requested notices to the individual action (40 CFR 1506.6(b)(1))
- National organizations reasonably expected to be interested in the matter or who have requested notice regularly be provided (40 CFR 1506.6(b)(2))
- Potentially interested community organizations including small business associations (40 CFR 1506.6(b)(3)(vi))
- Owners and occupants of nearby or affected property (40 CFR 1506.6(b)(3)(viii))

*Distribution to Any or All of the Following Is Appropriate Where Scoping, Analysis, Public Participation, or Expressed Interest So Indicate*

- U.S. Senators for the States where the action will occur
- U.S. Representatives for the Districts where the action will occur
- Governors for the States where the action will occur
- Governing body of any Federally recognized Indian tribe that may be affected by the action.
  - Elected officials of the local jurisdiction where the action will occur or that may be affected by the action:
- County commissioners, Township council, or equivalent
- Mayor
- Head of City Council
- City or County Executive
- City or County Manager, Administrator
- Cooperating agency(ies) where FMCSA is the lead agency
- U.S. Environmental Protection Agency (5 copies to headquarters and five copies to pertinent EPA Regional Offices where the action will occur)
- Public libraries
- Agencies with jurisdiction by law or expertise:

1. Federal agencies such as:

- U.S. Department of Interior, including
  - National Park Service
  - Fish and Wildlife Service (with appropriate documentation for coordination under the Endangered Species Act)
- U.S. Department of Justice
- U.S. Department of Commerce
- U.S. Department of Health and Human Services
- U.S. Department of Housing and Urban Development
- U.S. Army Corps of Engineers (with any permit application under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act)
- Advisory Council on Historic Preservation (with appropriate determination under Section 106 of the National Historic Preservation Act)
- Federal Emergency Management Agency (with appropriate determination under Executive Order 11988)
- U.S. Geological Survey
- U.S. Small Business Administration

2. State agencies such as:

- State Environmental Protection Agency, Environmental Quality Department, or Pollution Control Agency
- State Attorney(s) General
- State and Local Air Quality Board(s)
- State Historic Preservation Officer (with appropriate determination under Section 106 of the National Historic Preservation Act)
- State Department of Natural Resources
- State Department of Transportation, including
  - State Motor Vehicle Administration
  - State Motor Carrier Agency(ies)
  - State Highway Patrols
  - State Utility Commissions
- State Department of Public Safety
- State Fish and Game
- State and Local Parks and Recreation Agency(ies)
- State Land Use Board/Commission/Department
- Community Development Agency

3. Governments of Federally recognized Indian tribes and native entities within the State of Alaska potentially affected by the action, and/or specific pertinent agencies as directed by the tribal or native Alaskan government

4. County and Local agencies such as:

- County Planning Commission/Engineering Department
- City Landmark Commission and/or Historic Preservation Commission
- Fire Department

- Police Department
  - Building Department
  - Land Use and/or Zoning Department or Commission
  - Parks and Recreation
5. Non-governmental groups and organizations such as:
- Representatives of affected low-income and minority groups (with translations, etc., where needed)
  - Non-Federally recognized Indian tribes
  - Native Hawaiian groups (in Hawaii)
  - Other indigenous groups where applicable
  - Environmental groups (Audubon, Greenpeace, Friends of the Earth, Natural Resources Defense Council, Sierra Club, etc.)
  - Industry groups (Chamber of Commerce, Downtown associations, American Trucking Associations, Inc., American Bus Association, Associated General Contractors, National Private Truck Council, United Motor Coach Association, etc.)
  - Utility companies (gas, electric, water, etc.)
  - Neighborhood groups
  - Adjacent landowners
  - Print and electronic media

#### Appendix 16—List of Relevant Environmental Statutes and Executive Orders

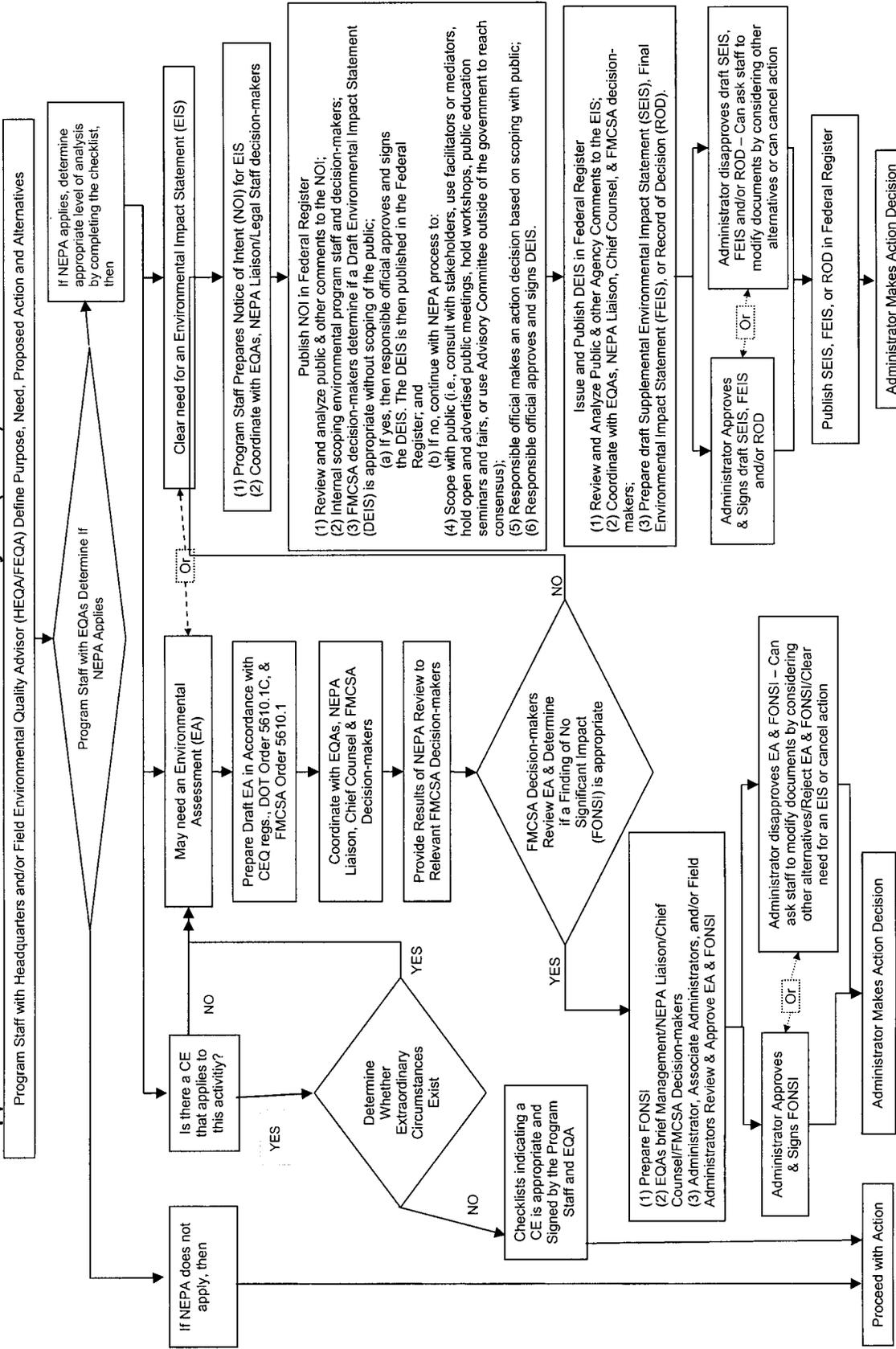
##### List of Relevant Environmental Statutes and Executive Orders

1. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211, 66 FR 28355)
2. American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996, *et seq.*)
3. Antiquities Act (16 U.S.C. 433, *et seq.*)
4. Archeological and Historic Preservation Act (AHPA) (16 U.S.C. 469)
5. Archeological Resources Protection Act (ARPA) (16 U.S.C. 470, *et seq.*)
6. Architectural Barriers Act (42 U.S.C. 4151, *et seq.*)
7. Clean Air Act (CAA) (Pub. L. 95–95 / 42 U.S.C. 7401, *et seq.*)
8. Clean Water Act of 1977 (CWA) (Pub. L. 95–217 / 33 U.S.C. 1251, *et seq.*)
9. Community Environmental Response Facilitation Act (CERFA) (42 U.S.C. 9620 *et seq.*)
10. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as SUPERFUND (Pub. L. 96–510 / 26 U.S.C. 4611, *et seq.*)
11. Consultation and Coordination With Indian Tribal Governments (E.O. 13175, 65 FR 67249)
12. Coral Reef Protection (E.O. 13089, 63 FR 32701).
13. Department of Transportation Act, Section 4(f) (Pub. L. 89–670 / 49 U.S.C. 303, Section 4(f), *et seq.*)
14. Developing and Promoting Biobased Products and Bioenergy (E.O. 13134, 64 FR 44639)
15. Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001–11050, *et seq.*)
16. Endangered Species Act of 1973 (ESA) (Pub. L. 93–205 / 16 U.S.C. 1531, *et seq.*)
17. Energy Efficiency and Water Conservation at Federal Facilities (E.O. 12902, 59 FR 11463)
18. Environmental Effects Abroad of Major Federal Actions (E.O. 12114, 44 FR 1957)
19. Environmental Review of Trade Agreements (E.O. 13141, 64 FR 63169)
20. Environmental Quality Improvement Act (Pub. L. 98–581 / 42 U.S.C. 4371, *et seq.*)
21. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (E.O. 12898, 59 FR 7629)
22. Federal Compliance with Pollution Control Standards (E.O. 12088, 43 FR 47707)
23. Federal Insecticide, Fungicide, and Rodenticide Act (Pub. L. 86–139 / 7 U.S.C. 135, *et seq.*)
24. Federal Records Act (FRA) (44 U.S.C. 2101–3324, *et seq.*)
25. Federalism (E.O. 13132, 64 FR 43255)
26. Fish and Wildlife Act of 1956 (Pub. L. 85–888 / 16 U.S.C. 742, *et seq.*)
27. Fish and Wildlife Coordination Act (Pub. L. 85–624 / 16 U.S.C. 661, *et seq.*)
28. Fisheries Conservation and Recovery Act of 1976 (Pub. L. 94–265 / 16 U.S.C. 1801 *et seq.*)
29. Greening the Government Through Leadership in Environmental Management (E.O. 13148, 65 FR 24595)
30. Greening the Government Through Federal Fleet and Transportation (E.O. 13149, 65 FR 24607)
31. Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition (E.O. 13101, 63 FR 49643)
32. Historic Sites Act (16 U.S.C. 46, *et seq.*)
33. Indian Sacred Sites (E.O. 13007, 61 FR 26771)
34. The President Intergovernmental Review of Federal Programs (E.O. 12372, 47 FR 30959)
35. Invasive Species (E.O. 13112, 64 FR 6183)
36. Locating Federal Facilities on Historic Properties in our Nation's Central Cities (E.O. 13006, 61 FR 26071)
37. Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996. (16 U.S.C. 1801, *et seq.*)
38. Marine Protected Areas (E.O. 13158, 65 FR 24909)
39. Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92–532 / 16 U.S.C. 1431, *et seq.* and 33 U.S.C. 1401, *et seq.*)
40. Migratory Bird Treaty Act (16 U.S.C. 703–712, *et seq.*)
41. National Environmental Policy Act of 1969 (NEPA), (Pub. L. 91–190 / 42 U.S.C. 4321, *et seq.*)
42. National Historic Preservation Act of 1966 (NHPA) (Pub. L. 89–665 / 16 U.S.C. 470, *et seq.*)
43. Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001, *et seq.*)
44. Noise Control Act of 1972 (Pub. L. 92–574 / 42 U.S.C. 4901, *et seq.*)
45. Implementation of the North American Free Trade Agreement (NAFTA) (E.O. 12889, 58 FR 69681)
46. Procurement Requirements and Policies for Ozone Depleting Substances (E.O. 12843, 48 FR 21881)
47. Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109, *et seq.*)
48. Protection and Enhancement of Cultural Environment (E.O. 11593, 36 FR 8921)
49. Protection and Enhancement of Environmental Quality (E.O. 11514, 35 FR 4247)
50. Protection of Children From Environmental Health Risks and Safety Risks (E.O. 13045, 62 FR 19885.)
51. Protection of Wetlands (E.O. 11990, 42 FR 26961)
52. Recreational Fisheries (E.O. 12962, 60 FR 307695)
53. Requiring Agencies to Purchase Energy Efficient Computer Equipment (E.O. 12845, 58 FR 21887)
54. Resource Conservation and Recovery Act of 1976 (RCRA), (Pub. L. 94–580 / 42 U.S.C. 6941, *et seq.*)
55. Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186, 66 FR 3853)
56. Safe Drinking Water Act (SDWA) (Pub. L. 93–523 / 42 U.S.C. 201, *et seq.*)
57. Toxic Substances Control Act (TOSCA) (7 U.S.C. 136, *et seq.*)
58. Wild and Scenic Rivers Act (Pub. L. 90–542 / 16 U.S.C. 1271, *et seq.*)

**Note:** All Public Law (Pub. L.) and DOT Order Numbers should be referenced as amended.

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### Appendix 17 – FMCSA’s National Environmental Policy Act (NEPA) Review Process



The Administrator signs all EA/FONSI and EIS/ROD documents (Unless Delegated to another Responsible Agency Official). Program Staff Implements Decision (with mitigation and/or monitoring where specified in EA/FONSI or EIS/ROD).

## Appendix 18—Special Areas of Consideration When Implementing NEPA

This appendix supplements the information that appears in Chapter 2, FMCSA Responsible Parties, Duties, And Instructions For Implementing NEPA.

### 1. Air Quality

Both the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA) require that air quality be considered in the preparation of environmental documents for any proposed action. The CAA also requires that all Federal actions conform to the State Implementation Plan (SIP). The Environmental Protection Agency's General Conformity Rule, 40 CFR parts 51 and 93 applies to FMCSA actions.

The level of detail in air quality analyses will vary considerably according to the action, the existing level of air quality in the area, and degree of controversy. The only pollutants of concern for a project analysis are those that would be directly affected by the action.

See Appendix 14 for guidance on the appropriate level of air quality analysis for a project.

### 2. Noise

In compliance with the Noise Control Act of 1972, the responsible FMCSA official must ensure that commercial motor vehicles (CMVs) and commercial motor vehicle equipment operated by motor carriers conform to the Interstate Motor Carrier Noise Emission Standards of the Environmental Protection Agency in 40 CFR part 202.

If an action involving a construction activity is proposed, an analysis of potential noise impacts should be prepared, including the following for each alternative under detailed study:

a. A brief description of noise sensitive areas (residences, businesses, schools, parks, etc.), including information on the number and types of activities which may be affected.

b. The extent of the impact (in decibels) at each sensitive area. This includes a comparison of the predicted noise levels with both the noise abatement criteria and the existing noise levels. (Traffic noise impacts occur when the predicted traffic noise levels approach or exceed the noise abatement criteria or when they substantially exceed the existing noise levels). The criterion used for defining a "substantial increase" in noise levels should be identified. Use of a table for this comparison is recommended for clarity.

c. Noise abatement measures which have been considered for each impacted

area and activity and those measures that are reasonable and feasible and that would "likely" be incorporated into the proposed action. Estimated costs, decibel reductions and height and length of barriers should be shown for all abatement measures.

d. Noise impacts for which no prudent solution is reasonably available and the reasons why.

### 3. Hazardous Materials

The responsible FMCSA official must document whether the proposed action will result in impacts on the use, transportation, and storage of hazardous materials or on the number or severity of hazardous materials accidents or incidents.

An accident is defined as an event that occurs when the vehicle transporting the goods is involved in a collision. Any accident involving the shipment of hazardous materials would be considered as a hazardous materials accident regardless of whether any of the material was spilled or was exposed to the atmosphere. Similarly, a non-hazardous materials shipment accident would be considered as a non-hazardous materials shipment accident even if fuel from the tractor spilled during an accident. An event that occurs when the vehicle transporting the goods spills some of the hazardous materials cargo but is not involved in a collision is termed an enroute incident. An event resulting in the spill or release of hazardous materials material during loading or unloading is defined as a loading/unloading incident. The analysis must identify any moderate to significant adverse impacts to public safety and health, transportation, property damage, water resources, and biological resources from releases of hazardous materials associated with safety-related accidents and incidents. Also, mitigating measures and countermeasures should be identified.

The analysis of the action should also identify any impacts on water quality and public health and safety from oil and fuel leaks and spills, particularly from tankers, commercial motor vehicles (CMVs), and fuel storage tanks. Runoff of hazardous materials from roads, infrastructure construction, and deterioration of discarded vehicles have an impact on wetlands, surface and groundwater quality as well. The 1981 FHWA research report entitled "Constituents of Highway Runoff" and the 1987 report entitled "Effects of Highway Runoff on Receiving Waters" contain procedures for estimating pollutant loading from highway runoff and would be helpful in determining

the level of potential impacts and appropriate mitigative measures.

To estimate the likely impacts of potential hazardous materials incidents/accidents, the following impact categories should be considered:

- Injuries and deaths
- Cleanup costs
- Property damage
- Evacuation
- Product loss
- Traffic incident delay
- Environmental damage

For guidance, consult FMCSA's Hazardous Materials Incident Prevention Manual (<http://www.fmcsa.dot.gov/factsfigs/accidenthm/forewhaz.htm>) and the Final Report on Comparative Risks of Hazardous Materials and Non-hazardous Materials Truck Shipment Accidents/Incidents, March 2001, prepared for FMCSA by Battelle (<http://www.fmcsa.dot.gov/Pdfs/HMRiskFinalReport.pdf>).

### 4. Endangered Species

a. *Responsibilities.* If an action involving a construction activity is proposed, the following requirements apply.

(1) During the scoping process, the responsible FMCSA official must request from the Regional Directors of the Fish and Wildlife Service (FWS) and the National Marine Fisheries Services (NMFS), information on whether any species which is listed, or proposed to be listed, on the Federal Endangered Species List may be present in the area of a proposed action.

(2) The responsible FMCSA official must ensure that an action enhances the continued existence of species' listed as endangered or threatened and is not likely to jeopardize the continued existence of such species. If a proposed action may affect any species that is listed, or is proposed for listing, as an endangered or threatened species, then the responsible FMCSA official must initiate informal or formal consultation with the following: Terrestrial Species—Department of Interior, FWS and for Marine Species—Department of Commerce, NMFS. Any consultation must be reflected in the resulting environmental documentation.

(3) When applicable, the responsible FMCSA Official must ensure that the environmental documentation in the case file includes the biological assessment, the results of the consultation process, the analysis of any procedures taken to avoid impacts on the species, and any other pertinent information to document compliance with this law.

b. *Public and Agency Involvement.* The responsible FMCSA official must coordinate with the FWS and the NMFS regarding the initiation of a consultation process, as well as to explore the necessity to prepare a biological assessment, as required by section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531, *et seq.*) and the ESA implementation regulations (50 CFR part 402). A copy of the EA, EIS, or any other public notice document prepared for a proposed action affecting, or potentially affecting, endangered species, must be sent to the Endangered Species Specialist of the appropriate FWS and NMFS field and regional offices.

c. *Content of NEPA Documentation.* Any EA or EIS for a proposed action must state the presence or absence of endangered species within the physical area of the action. If endangered species are likely to be present, the EA or EIS must describe the species, summarize the potential for effects on the species, and if necessary, summarize the biological assessment, the results of the consultation process, the analysis of any procedures taken to avoid impacts on the species, and any other pertinent information to document compliance with this law.

## 5. National Historic Preservation Act (NHPA) and Related Executive Orders

If an action involving a construction activity is proposed, the following requirements apply.

a. *General requirements.* The responsible FMCSA official must comply with the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*) (NHPA), the regulations which implement the NHPA (36 CFR part 800), and E.O. 11593, 36 FR 8291, *Protection and Enhancement of the Cultural Environment*. The responsible FMCSA official must also take into account E.O. 13006, 61 FR 26071, *Locating Federal Facilities on Historic Properties in our Nation's Central Cities*, if the FMCSA action includes locating FMCSA facilities in metropolitan areas.

b. *Responsibilities Under Section 106 of the NHPA.*

(1) *General.* The responsible FMCSA official must comply with the NHPA Section 106 process regarding historic and cultural resources. Historic and cultural resources include any district, site, building, structure, or object significant in American history, architecture, archaeology, or culture. The regulations setting forth the NHPA Section 106 process were revised and finalized December 12, 2000 and became effective January 11, 2001 (65

FR 77697), and are codified at 36 CFR part 800. Citations to the NHPA Section 106 regulations refer to the regulation published in the December 12, 2000, **Federal Register** notice (65 FR 77697). When a FMCSA proposed action triggers the requirements of Section 106 and NEPA, the Section 106 process must be integrated with, and conducted concurrently with, any applicable NEPA environmental analysis, to the extent practicable (40 CFR 1502.25(a); 36 CFR 800.2(a)(4), 800.3(b) and 800.8).

(2) *Determine If an Undertaking is Present.* Before taking an action, the responsible FMCSA official must determine if the action is an "undertaking" in accordance with 36 CFR 800.16(y). If the action is an "undertaking," the responsible official must determine whether it is a type of action that has the potential to cause effects on historic properties *if historic properties were present* (it is irrelevant whether historic properties are there or not at this point in the process). If it is a type of action that has the potential to cause effects on historic properties, then the responsible FMCSA official must investigate the action area to determine if the action may actually affect any resources listed, or eligible for listing, on the NRHP.

Criteria for evaluating eligibility for listing on the NRHP are given in 36 CFR 60.4. (In brief, 36 CFR 60.4 states that properties of historical, architectural, or archaeological significance should be considered for NRHP evaluation if they are associated with events and persons significant in our past, or that have distinctive character, artistic values or are the work of a master, or have yielded or are likely to yield important information in pre-history or history. This section provides specific criteria and should be referenced.) If the type of action is one that does not have the potential to cause effects on historic properties if historic properties were present, then the responsible official has no further obligations under Section 106.

(3) *For Undertakings, Identify the Appropriate SHPO/THPO and Consult.* If an FMCSA action is an undertaking that could affect historic properties, the responsible FMCSA official must identify the appropriate State Historic Preservation Officer (SHPO), appropriate Tribal Historic Preservation Officer (THPO), or appropriate Indian tribe (36 CFR 800.3(c) and (d)). The responsible official must consult the appropriate preservation officer or Indian tribe and plan to involve the public in carrying out and completing the Section 106 process in consultation with the SHPO/THPO (36 CFR 800.3(e)).

(4) *Public and Agency Involvement.* At all appropriate stages of the Section 106 process, the responsible FMCSA official must ensure proper public participation, as required by 36 CFR part 800. The extent of public involvement will depend upon the specific action and the historic resources involved. In most cases, the responsible official must provide the public with information about the undertaking and its effects on historic properties and seek public comment and input (36 CFR 800.2(d)(2)). Consulting parties should be identified in consultation with the SHPO/THPO (36 CFR 800.3(f)). Consulting parties can include the Advisory Council on Historic Preservation; the National Park Service, Indian tribes, Native Hawaiian Organizations; representatives of local governments; applicants for Federal assistance, permits, licenses and other approvals; and individuals and organizations with a demonstrated interest in the undertaking (36 CFR 800.2(b)-(c)).

c. *Content of NEPA Documentation.* Unless the NEPA process is being used to comply with NHPA per 36 CFR 800.8, to the extent practicable, EAs and EISs for actions that have the potential to, or will, significantly affect historic properties should summarize the results of the Section 106 process. The summary should include information on the presence or absence of historic properties; the significance of impacts to historic properties; any treatments/mitigation that may be developed to avoid significant adverse effects on historic properties, and a summary of the consultation and public notice efforts and results. The EA or EIS should also include a copy of any action Memorandum of Agreement/Programmatic Agreement developed in compliance with Section 106. EAs and EISs must fulfill the requirements of 36 CFR 800.8 when prepared as the main instrument for compliance with Section 106.

## 6. Wetlands

If an action involving a construction activity is proposed, the following requirements apply.

a. *Responsibilities.*

(1) FMCSA actions require compliance with the provisions of Executive Order 11990, *Protection of Wetlands* (except as noted in Section 1(b) of the order); and DOT Order 5660.1A, *Preservation of the Nation's Wetlands*.

(2) The responsible FMCSA official must coordinate with the applicant and the lead Federal agency when applicable, to ensure the action is

planned, constructed, and operated to assure the protection, preservation, and enhancement of wetlands to the fullest extent practicable.

(3) The responsible FMCSA official must document the effects of each action on wetlands in accordance with DOT Order 5660.IA.

b. *Public and Agency Involvement.* Appropriate opportunity for early review of proposals for new construction in wetlands should be provided to the public and to agencies with special interest in wetlands. When applicable, the public notice must state the acreage of wetlands taken or impacted. This will include the U.S. Fish and Wildlife Service, State wildlife and/or natural resources agencies, and other parties as appropriate.

c. *Content of NEPA Documentation.* Information developed in accordance with DOT Order 5660.IA, along with the "Wetlands Findings," must be included in either the EA, EIS, or in the Environmental Analysis Checklist and/or CED if required. Any measures included with the proposed action to protect wetlands must also be summarized.

#### **7. Determinations Under Section 4(f) of the DOT Act [49 U.S.C. 303(c)]**

If an action involving a construction activity is proposed, the following requirements apply.

##### *a. Responsibilities.*

(1) Section 4(f) of the DOT Act states that "The Secretary must not approve any program or action which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless: (A) there

is no feasible and prudent alternative to the use of such land; and (B) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic site resulting from such use." Furthermore, direct use of the land is not the sole qualifier for considering 4(f). Should the action be in close proximity to affect the lands in question, one will normally prepare a 4(f) statement. See, DOT Order 5610.1C, for further direction.

(2) The responsible FMCSA official must ensure that Section 4(f) statements and determinations are prepared per Section 4(f) of the DOT Act of 1966, as amended (49 U.S.C. Section 303), and Section 12 of DOT Order 5610.1C.

(3) A 4(f) analysis consists of an investigation by the responsible FMCSA official who determines if there is use of 4(f) property. Even when there is no direct use of a 4(f) property, an analysis supporting this finding must be prepared. When there is use of 4(f) property, a 4(f) statement is required. Based on this 4(f) statement, a 4(f) determination will be prepared for signature by the appropriate area and district or Administrator level official. The 4(f) determination may be made part of the 4(f) statement.

b. *Integration of 4(f) Statement with EISs.* Originators of EISs for FMCSA actions requiring determinations under section 4(f) of the DOT Act must incorporate the required 4(f) determination in the EIS. The form and content of 4(f) statements, and data needed to support the 4(f) determinations and conclusion are contained in Appendix 13.

c. *Public and Agency Involvement.* The responsible FMCSA official must give the official having jurisdiction over the section 4(f) property, the Department of Interior, and as appropriate, the Department of Agriculture and the Department of Housing and Urban Development an opportunity to review all draft section 4(f) statements. When the 4(f) statement is contained within an EIS, consultation with the departments must be performed in accordance with procedures for review of the draft EIS. When the 4(f) statement is associated with a FONSI, the statement must be sent to the above Departments for review, using the same procedures and points of contact as used for an EIS.

d. *Legal Review.* District legal officers must provide legal sufficiency review of FMCSA section 4(f) determinations for actions that originate within their area. The Office of Chief Counsel must provide final legal sufficiency review of all other FMCSA section 4(f) determinations.

e. *Approval of 4(f) Statements.* The responsible FMCSA official has the authority to approve 4(f) statements.

#### **8. Other**

This section does not cover all environmental and historic and cultural resource mandates that may fall under the umbrella of the NEPA environmental planning process. For a more complete list of environmental and historic and cultural resource laws, consult Appendix 16.

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