

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

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

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

2. Timing of Agency Action

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

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

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

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

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

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

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

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

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

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

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

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

C. Planning and Early Coordination

1. Scoping

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

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

2. Environmental Planning Process

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

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

D. Environmental Documentation

1. Actions Affected

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

2. Categorical Exclusions (CEs)

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