

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Documents Prepared by Contractors

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

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

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

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

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

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

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

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

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

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

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

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

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