



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

259095

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

NOV 10 2003

Ms. LaKisha R. Pearson and Mr. David R. Miller
Office of Policy, Plans, and Regulations (MC-PR)
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
400 Seventh St., SW
Washington, D.C. 20590-0001

FMCSA-2002-14095-5

Dear Ms. Pearson and Mr. Miller:

The Environmental Protection Agency (EPA) has reviewed the draft order of the Federal Motor Carrier Safety Administration's (FMCSA) **National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts (Docket No. FMCSA-2002-14095)**. This draft order was published in the Federal Register on September 26, 2003. Our review is provided in accordance with EPA authorities and responsibilities under Section 309 of the Clean Air Act.

The draft order establishes a process by which FMCSA will assess environmental impacts and prepare environmental assessments and environmental impact statements for agency actions under NEPA. The order applies to FMCSA decisions to conduct research activities, promulgate regulations, award grants, conduct major acquisitions and other FMCSA activities.

Overall, EPA is pleased that our June 23, 2003, comments on an earlier draft of the document have been adequately addressed, particularly the elimination of several proposed categorical exclusions and the addition of language emphasizing the interfacing of the air quality analysis undertaken as part of the General Conformity Process with NEPA documentation. Furthermore, many of the additional changes made to the document since then are beneficial and provide clarification to key areas.

There continue to be a few areas in which EPA would like to see wording changes and/or further clarification. Detailed comments regarding these areas are enclosed.

Thank you for the opportunity to provide comments on the draft order. If you have any questions regarding our comments, please call me or James G. Gavin of my staff at (202) 564-7161.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne N. Miller". The signature is fluid and cursive, with a large initial "A" and "M".

Anne Norton Miller
Director
Office of Federal Activities

Enclosure

Detailed Comments
Federal Motor Carrier Safety Administration's
National Environmental Policy Act Implementing Procedures and Policy for Considering
Environmental Impacts

C. Planning and Early Coordination

p. 55721, section 1. In the scoping section, 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 no longer includes "private" parties. The updated wording may be misconstrued as limiting invitations to participate in the scoping process to governmental bodies only. EPA believes the previous wording including known affected private parties amongst the invitees is more appropriate.

D. Environmental Documentation

p. 55722, Section 3. (2) The wording of this categorical exclusion is awkward. Changing it to "is reasonably likely to have controversy regarding the potential..." would be one preferable way of restating this limitation.

Appendix 2 - Categorical Exclusions

p. 55730, section 4. f. Clarification of this proposed category would be helpful. It remains unclear what is intended by the category and, specifically, what using "overlay of existing procedures" means.

P. 55730, section 4. g. This appears to be very similar to a proposed CE that was originally 5h in the earlier draft. After we commented on the confusion related to that proposed CE, the response was that it had been eliminated. Although the wording has been changed, the current variation remains unclear and would benefit from further clarification.