

Title: Records of Decision
Date: March 2019
SOP No.: 14
Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance on preparing a record of decision (ROD) for an environmental impact statement (EIS) on a proposed FTA project, in compliance with the Council on the Environmental Quality (CEQ) National Environmental Policy Act (NEPA) implementing regulations (40 CFR parts 1500-1508) and the FTA environmental impact regulations (23 CFR part 771).

### **2. Applicability/Scope**

This guidance focuses on traditional, stand-alone ROD documents issued after a final EIS (FEIS). Combined FEIS/ROD documents are discussed in SOP No. 10 (*Managing Content, Review, and Distribution of Environmental Impact Statements*). The ROD is a concise public record of FTA's decision.

### **3. Responsibilities**

FTA Regional staff is responsible for managing the environmental review process, which includes providing guidance to the project sponsor regarding ROD document development.

The Office of Chief Counsel is responsible for reviewing RODs or combined FEIS/RODs for legal sufficiency pursuant to 23 CFR 771.127(b) or 23 CFR 771.125(b), which is usually assigned to the Regional Counsel.

The FTA Regional Administrator or designee must approve the ROD when satisfied that it complies with NEPA prior to its public distribution. Approval will be made by signing and dating the ROD.

### **4. Standard Procedures for Developing a ROD**

**4.1. Review public record.** Before preparing a ROD, Regional staff should review: (a) any written public and interagency comments on the draft EIS (DEIS); (b) the responses to those comments; and, (c) the FEIS. Note, FTA usually does not solicit comments on a FEIS, but comments may be received during the 30-day waiting period following EPA's *Federal Register* notice of availability for the FEIS. In some instances, public comment may be solicited on an FEIS to facilitate compliance with other requirements, such as a *de minimis* determination under Section 4(f).

**4.2. Content.** The Region must ensure that the ROD states FTA's decision and presents the basis for the decision (i.e., all of the factors considered and how those factors entered into the decision). The ROD is FTA's environmental decision document; it does not commit FTA to approve any future grant request for the proposed project.

**4.2.1. Description of the project.** The ROD should briefly describe the project, which may include brief summaries of the project purpose and need.

**4.2.2. Alternatives.** The ROD must identify: (1) all alternatives considered by FTA; (2) the NEPA selected alternative; and (3) the environmentally preferable alternative(s) (40 CFR 1505.2). If the selected alternative is also an environmentally preferable alternative, both aspects must be noted in the ROD.

**4.2.3. Brief Summary of environmental impacts and findings.** The ROD should summarize the environmental impacts and identify all findings required by Federal environmental laws and executive orders in order to present a complete record, including:

- Section 106 determination and any agreements (i.e., Memorandum of Agreement or Programmatic Agreement);
- Project-level air quality conformity (if the project is in an air quality nonattainment or maintenance area);
- Section 7 (Endangered Species Act) finding; and,
- Any required Section 4(f) approval in accordance with 23 CFR part 774, per 23 CFR 771.127(a).

**4.2.4. Mitigation.** Per 40 CFR 1505.2, the ROD must state whether all practicable means to avoid or minimize environmental harm have been adopted for the selected alternative, and if not, explain why they were not. It should summarize the mitigation measures that will be incorporated into the project to comply with any applicable statute, regulation, or executive order (23 CFR 771.127(a)). Additionally, if a monitoring plan is developed for a mitigation measure(s) (e.g., Section 404 or Section 106 compliance), it must be adopted (either through a corresponding agreement or the ROD), and summarized in the ROD (40 CFR 1505.2).

**4.2.5. Response to comments.** The ROD should respond to any new substantive comments received on the FEIS or supplemental environmental document, as appropriate. A brief summary of comments and responses may appear in the body of the ROD or in an attachment to the ROD.

**4.3. Combined FEIS/ROD.** Per 23 U.S.C. § 139(n)(2), FTA must, to the maximum extent possible, combine the FEIS and ROD into a single document, unless: (1) the FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or (2) there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action. For more information on combined FEIS/ROD documents, see SOP No. 10: *Managing Content, Review, and Distribution of Environmental Impact Statements*.

**4.4. Legal sufficiency.** The ROD must be reviewed for legal sufficiency prior to signature (23 CFR 771.125(b); 23 CFR 771.127(b)). FTA Regional Counsel conducts this review.

**4.5. Consider FTA funding source.** FTA only has NEPA responsibility for federally-funded projects. Regional staff should confirm that the project is eligible to receive Federal funding and has identified FTA formula or flex funds for the project, has applied for a discretionary grant program (e.g., TIGER), or the project sponsor has stated that it will seek Capital Investment Grant funds for the project prior to ROD signature.

**4.6. Date of issuance and signature.** The ROD must include the date the finding was issued and the signature of the RA or his/her designee. The Region may complete and sign a ROD no sooner than 30 days after notice of publication of the FEIS in the *Federal Register* or 90 days after publication of a notice for the DEIS, whichever is later (23 CFR 771.127(a)). The ROD signature date must be recorded in the Federal Permitting Dashboard within 10 days of signature, pursuant to USDOT's *Federal Permitting Dashboard Reporting Standard* (Dec. 2018) (internal only).

**4.7. Notice and distribution.** Although not required unless FTA issues a revised or amended ROD (see 23 CFR 771.127(b)), the Region should request that the project sponsor make the signed ROD available to the public (e.g., posting to the project website).

**4.8. Limitation on Claims.** The FTA Regional Office should notify FTA's Office of Environmental Programs (TPE-30) when the ROD is signed so it can be included in the next Limitation on Claims notice for the *Federal Register*. The publication of this notice will start the 150-day statute of limitations on challenges to the ROD.

**4.9. Amended ROD.** Per 23 CFR 771.127(b), there are two cases when FTA may issue an amended ROD: (1) to change the selected alternative or (2) to make substantial changes to the mitigation measures or findings discussed in the ROD. If, after ROD signature, FTA wants to approve an alternative other than the one identified as the preferred alternative and the new preferred alternative was fully evaluated in the DEIS (in the case of a combined FEIS/ROD) or FEIS (in the case of a ROD issued separately from the FEIS), FTA can issue an amended ROD. However, if the new preferred alternative was not fully evaluated, a supplemental EA or EIS may be needed. If FTA amends a ROD, the Region must give notice and distribute the document to the extent practicable to all persons, organizations, and agencies that received a copy of the DEIS (in the case of a combined FEIS/ROD) or the FEIS (in the case of a ROD issued separately from the FEIS).

**4.10. Pre-award authority.** The ROD allows the project sponsor to incur certain project costs at its own financial risk, as detailed in the annual Apportionment Notice in the *Federal Register*.

## 5. References

- Air Quality Conformity Regulation, [40 CFR part 93](#)
- CEQ regulations implementing NEPA, [40 CFR parts 1500-1508](#)
- FTA's Environmental Impact and Related Procedures, [23 CFR part 771](#)
- Section 4(f) regulations, [23 CFR part 774](#)
- Section 404(b)(1) guidelines, [40 CFR part 230](#)
- USDOT Federal Permitting Dashboard Reporting Standard (2018), internal—FTA only

APPROVAL:



Megan W. Blum  
Director, Office of Environmental Programs

DATE:

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