



Federal Highway Administration

23 CFR Part 771

Federal Railroad Administration

49 CFR Part 264

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA-2025-0007]

RIN 2125-AF80; 2130-AD05; 2132-AB51

National Environmental Policy Act Regulations

ACTION: Final Rule.

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

SUMMARY: FHWA, FRA, and FTA (collectively referred to as the “Agencies”) are finalizing the interim final rule (IFR) published on July 3, 2025, which revised the Agencies’ National Environmental Policy Act (NEPA) of 1969 implementing regulations in light of the removal of the Council on Environmental Quality (CEQ) regulations, the amendments to NEPA included in the section of the Fiscal Responsibility Act (FR Act) of 2023, known as the Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023, amendments regarding efficient environmental reviews included in the Infrastructure Investment and Jobs Act (IIJA) of 2021, and the Supreme Court decision in *Seven County Infrastructure Coalition*. The Agencies provided a 30-day comment period for the public to review and comment on the IFR. This final rule addresses public comments received and finalizes the IFR with minor technical changes.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Agencies are finalizing the IFR published on July 3, 2025 (90 FR 29426), which revised their regulations at 23 CFR Part 771 (Part 771) implementing NEPA (42 U.S.C. 4321–4347, as amended). The regulations at Part 771 were promulgated in 1974 based upon FHWA’s guidelines for implementing NEPA, first issued on November 30, 1970 (*see* 36 FR 23666, 23696; December 11, 1971, and 39 FR 41804; December 2, 1974) and subsequently amended several times. After the CEQ issued NEPA implementing regulations (CEQ regulations) in 1978 (43 FR 55978; November 29, 1978), Part 771 was considered a supplement to the CEQ regulations.

In 2025, Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353; January 29, 2025), rescinded E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which directed CEQ to issue regulations implementing NEPA and required Federal agencies to comply with those

rules. CEQ's regulations were removed, effective April 11, 2025. *See Removal of National Environmental Policy Act Implementing Regulations* (90 FR 10610; February 25, 2025). CEQ finalized the withdrawal of its regulations by adopting its IFR in a Final Rule issued January 8, 2026 (91 FR 618).

As a result of the foregoing, the Agencies removed cross-references to the removed CEQ regulations in Part 771 through the IFR. The Agencies previously followed the procedures contained in the removed CEQ regulations for any topics not addressed by Part 771. The Part 771 regulations stand on their own.

In addition to removing cross-references to the CEQ regulations, the Agencies revised Part 771 to reflect the amendments to NEPA included in the section of the FR Act of 2023 known as the BUILDER Act of 2023, Pub. L. 118-5, Div. C, Tit. III, Section 321 (June 3, 2023) (NEPA Amendments), which streamlined the environmental review process for all Federal Agencies. Part 771 also reflects amendments to 23 U.S.C. 139 and 203(e), regarding efficient environmental reviews, and applicable to the Agencies only, included in the IIJA, Pub. L. 117-58 (November 15, 2021).

This final rule makes further minor technical changes to Part 771 based on comments received in response to the IFR and following additional consideration by the Agencies regarding necessary changes to the regulations. Technical changes made in response to public comments are discussed in Section II (Comments).

The additional technical changes the Agencies determined were necessary include adding and revising relevant authorities in 23 CFR 771.123(b)(1) to read "23 U.S.C. 139(f), 168, 169, 23 CFR 450.212, 23 CFR 450.318, or 23 CFR 450 Appendix A, as applicable." The Agencies also updated FHWA and FTA categorical exclusions (CE) found at 23 CFR 771.117(c)(23) and 23 CFR.771.118(c)(13) to incorporate the monetary threshold for projects receiving limited Federal assistance in accordance with Section 11317 of IIJA, which amended Section 1317(1) of the Moving Ahead for Progress in the

21st Century Act (MAP-21), 23 U.S.C. 109 note; Pub. L. 112–141. Effective in the fiscal year of October 1, 2021, the monetary limits for the CE for projects of limited Federal assistance are defined as (1) Projects receiving less than “\$6,000,000” of Federal funds, or (2) Projects with a total estimated cost less than “\$35,000,000” and Federal funding of less than 15 percent of total estimated project cost. Accordingly, the limited Federal assistance CEs were amended by striking “\$5,000,000” and “\$30,000,000” from clauses 771.117(c)(23)(i) and (ii), and 771.118(c)(13)(i) and (ii), respectively, and inserting “\$6,000,000” and “\$35,000,000.” Finally, the Agencies made nonsubstantive grammatical changes or changes for clarity in 23 CFR 771.101, 23 CFR 771.138, and 23 CFR 771.113.

The Agencies may seek future changes to Part 771 through a deregulatory rulemaking effort to further expedite the environmental review process and reduce additional burdens on regulated parties.

II. Comments

The Agencies received 1,991 comments in the docket in response to the IFR but only 244 unique comments. The Agencies considered the comments and respond to the issues raised by the comments in this final rule. Summaries of and responses to these comments, including minor technical changes to the regulation text, are provided in this section.

Many of the comments proposed various substantive edits and changes to Part 771. The Agencies appreciate and acknowledge these comments but decline to make the suggested substantive changes at this time because they are outside the scope of this rulemaking effort, which is limited to technical changes. However, such comments will be retained and considered for future rulemaking efforts.

General Comments on the Interim Final Rule

Comment: Several commenters expressed general support for the IFR. These commenters praised the Agencies' effort to clarify the Agencies' NEPA procedures and requirements given the removal of the CEQ regulations, as well as to reflect amendments to NEPA included in the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA.

Response: The Agencies acknowledge and appreciate these supportive comments.

Comment: A number of commenters opposed the IFR changes, broadly noting their concerns over diminishing NEPA's intended purpose, reducing public input, increasing risks to wildlife habitats, and impacting Tribal and treaty rights.

Response: The Agencies are committed to complying with NEPA by analyzing alternatives to a proposed Agency action, ensuring meaningful public participation, and identifying the range of impacts to the environment as a result of the proposed alternatives, in line with statutory requirements. The Agencies made only technical changes to reflect the removal of the CEQ regulations as well as the amendments to NEPA included in the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. Part 771 retains procedures for public involvement and thorough environmental analysis proportional to project impacts. Respect for Tribal sovereignty and treaty rights will be upheld consistent with applicable law, including NEPA.

Comments on the Agencies' rationale for issuing an IFR

Comment: Several commenters disagreed that the Agencies had good cause under 5 U.S.C. 553(b)(B) to waive the Administrative Procedure Act (APA) notice and comment requirements or waive the 30-day delay of the effective date to make the rule effective immediately under 5 U.S.C. 553(d)(3). These comments asserted that the Agencies failed to demonstrate that an emergency or other exceptional circumstances existed or that the application of the APA's notice and comment requirements were

“impractical, unnecessary, or contrary to the public interest.” Several commenters also requested additional time to review and comment on the Part 771 updates.

Response: As stated in the IFR, the technical, non-discretionary nature of the changes and expeditious need to update Part 771 to conform with statutory changes warranted application of the good cause exception to bypass notice and the opportunity for public comment and make the rule effective immediately. The Agencies made only technical changes to reflect the removal of the CEQ regulations, as well as the amendments to NEPA included in the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. Under the APA, the requirement for prior notice and opportunity for public comment does not apply when the Agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest,” 5 U.S.C. 553(b)(B). The Agencies determined that notice and opportunity for public comment were unnecessary due to the technical, non-discretionary nature of the changes and the urgent need to update Part 771 to reflect the removal of the CEQ regulations, which the Agencies had previously relied upon when they drafted Part 771. In addition, the Agencies found Part 771 contained elements that were no longer substantively supported and thus notice and opportunity for public comment would have been contrary to the public interest given the number of environmental reviews underway across the Agencies’ programs. In order to remedy the unpredictability and regulatory inconsistency created by the removal of the CEQ regulations and the other statutory changes quickly, the Agencies made only necessary technical changes in this rulemaking effort. By limiting the changes to technical changes, the changes could be implemented immediately, and environmental reviews could continue without delay.

Nevertheless, the Agencies elected to solicit comments out of an abundance of caution and for reasons of good government. The Agencies considered all comments received, including the comments received after the deadline.

Comment: Several commenters opposed the IFR changes based on perceived reliance on the 2020 CEQ regulations, describing those regulations as legally flawed and insufficient in scope. Commenters urged alignment with CEQ’s 2023 final rule, which restored broader environmental review elements such as cumulative and indirect impact analyses.

Response: The Agencies did not rely on any version of the CEQ regulations. The Agencies made only technical changes to the Agencies’ NEPA procedures to reflect the removal of the CEQ regulations, as well as the amendments to NEPA, the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. The Agencies will continue to coordinate with the CEQ and other agencies to promote best practices in NEPA reviews.

Comment: Some commenters raised concerns over the Supreme Court’s decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168, 145 S. Ct. 1497 (2025) (*Seven County*), and revisions to Part 771 based on the ruling.

Response: On May 29, 2025, the Supreme Court issued its decision in *Seven County*. The Agencies reflected the outcome of the decision in the IFR by noting that NEPA is a “purely procedural statute.” (90 FR 29429; *Seven County*, 145 S. Ct. at 1507, 1511). CEQ has issued guidance, *Implementation of the National Environmental Policy Act* (September 29, 2025), superseding guidance of the same name it had issued on February 19, 2025, that addressed amendments to NEPA and discussed aspects of the *Seven County* decision, including that NEPA is “purely procedural.” This covers the extent the *Seven County* decision was included in the Agencies’ technical changes to Part 771, which were made primarily to reflect the removal of the CEQ regulations, as well as statutory changes from the amendments to NEPA, the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA.

Comments related to impacts on the NEPA process

Comment: Several commenters expressed concern over the technical changes to Part 771 and suggested that these changes would make it more difficult to coordinate compliance with other applicable laws and statutes outside of NEPA.

Response: The Agencies made no substantive changes with respect to the coordination required to comply with other environmental laws or requirements, nor the Agencies' obligations under other statutory coordination requirements.

Comment: Several commenters pointed to risks of inconsistent NEPA procedures across Federal Agencies and other agency partners complicating multimodal projects, causing delays, or generating conflicting requirements because of the IFR changes.

Response: Part 771 outlines joint NEPA procedures for Federal railroad, transit, and highway projects and is intended to increase coordination and consistency for multimodal projects and across programs. As applicable, Part 771 continues to require or recommend coordination with Federal Agencies and other agency partners, including those outside of the DOT:

- Sections 771.109(c) and 771.111 discusses coordination with Federal Agencies and facilitation of early communication between agency partners. For environmental impact statements (EIS), a coordination plan is required in section 771.123(b)(2).
- Section 771.141, Reliance and Adoption Efficiencies, outlines the circumstances under which any other Federal Agency may rely on the Agencies' NEPA documents as if they were their own, thereby reducing delay. Section 771.105(a) declares that all environmental investigations, reviews, and consultations should be coordinated as a single environmental review process and in a single environmental document to the maximum extent practicable.

Comment: Several commenters expressed concern regarding public involvement, with some commenters suggesting that the Agencies made substantive changes to the Agencies' public involvement procedures and requirements.

Response: The Agencies made no substantive changes to public involvement requirements or procedures. Public involvement remains an essential part of the Agencies' NEPA process in accordance with 23 CFR 771.105(d), and early coordination and public involvement remain a requirement in 23 CFR 771.111. Project sponsors may, at their discretion, supplement these requirements commensurate with project complexity, controversy, or public interest.

Comment: Several commenters expressed concern over the removal of considerations for environmental justice (EJ) impacts in the environmental review process.

Response: On January 20, 2025, President Trump signed E.O. 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, and E.O. 14154, *Unleashing American Energy*. These E.O.s revoked E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All* (April 21, 2023). On January 21, 2025, President Trump signed E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*. This E.O. revoked E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994).

The Agencies made technical corrections to Part 771 to reflect the removal of the CEQ regulations, as well as to incorporate amendments to NEPA as part of the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. Per 23 CFR 771.105(c), the Agencies will evaluate alternatives and make decisions that consider the reasonably foreseeable social, economic, and environmental impacts of the proposed transportation improvement, consistent with applicable law.

Comment: Several commenters expressed concern over the removal of consideration for impacts related to greenhouse gas emissions and climate change in the environmental review process.

Response: On January 20, 2025, President Trump signed E.O. 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, and E.O. 14154, *Unleashing American Energy*. These E.O.s revoked E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 20, 2021) and E.O. 14008, *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021). Subsequently on January 29, 2025, Secretary Duffy signed a memorandum for Secretarial Officers and Heads of Operating Administrations, *Implementation of Executive Orders Addressing Energy, Climate Change, Diversity, and Gender*.

The Agencies made technical corrections to Part 771 to reflect the removal of the CEQ regulations, as well as to incorporate amendments to NEPA as part of the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. Per 23 CFR 771.105(c), the Agencies will evaluate alternatives and make decisions that consider the reasonably foreseeable social, economic, and environmental impacts of the proposed transportation improvement, consistent with applicable law.

Comment: Several commenters raised concerns over the lack of requirements to analyze cumulative and indirect environmental impacts. Commenters emphasized that such analyses are critical for evaluating climate change impacts, EJ considerations, and protection of cultural and historic resources.

Response: The terms direct, indirect, and cumulative effects were defined in the CEQ regulations, which have been removed. The Agencies made only technical changes to Part 771 to reflect the removal of the CEQ regulations, as well as to incorporate amendments to NEPA as part of the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. For consistency with the NEPA statute, which does not use the

terms direct, indirect, or cumulative effect, the final rule uses the term “reasonably foreseeable” to refer to the statutory NEPA standard for evaluating the social, economic, and environmental impacts of proposed transportation improvements. The Agencies will evaluate alternatives and make decisions that consider all effects that are reasonably foreseeable, including the social, economic, and environmental impacts of a proposed transportation improvement.

Comment: Several commenters raised concern with the “reasonably foreseeable” standard for assessing environmental impacts and requested that the Agencies define the term for clarity.

Response: For consistency with the NEPA statute, the final rule uses the term “reasonably foreseeable” to refer to the standard for evaluating the social, economic, and environmental impacts of proposed transportation improvements. This term applies across the Federal Government and is being added to Part 771 in this final rule to ensure consistency between the Agencies and other Federal Agencies.

Since publication of the IFR, CEQ has defined the term “reasonably foreseeable” via an appendix to guidance¹ issued on September 29, 2025. The Agencies decline to define “reasonably foreseeable effects” in Part 771 because substantive changes are outside the scope of this rulemaking. However, the Agencies may consider defining this term in a future rulemaking.

Comments requesting further changes and flexibilities in the NEPA process

Comment: Some commenters proposed including non-major Federal actions in Part 771 in response to the request for suggestions from the Agencies in the IFR. Additional comments requested that the Agencies define “non-major Federal actions.”

¹ CEQ’s guidance is posted at <https://www.whitehouse.gov/articles/2025/09/ceq-releases-guidance-to-streamline-nepa-reviews/>.

Response: The Agencies appreciate and acknowledge the comments and will reserve and consider them for a future rulemaking. The Agencies decline the proposed substantive changes at this time because they are outside the limited scope of this rulemaking effort. The Agencies made only technical changes to Part 771 to reflect the removal of the CEQ regulations, FR Act amendments to NEPA, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA. NEPA defines a “major Federal action” by reference to the degree of Federal control and responsibility, 42 U.S.C. 4336e. The Agencies will continue to distinguish major Federal actions and non-major Federal actions consistent with applicable law.

Comment: Several commenters requested the Agencies update their CEs and implement efficiencies more broadly with respect to CE determinations.

Response: The Agencies appreciate and acknowledge comments requesting updated CEs and broader CE efficiencies but decline the suggested changes because they are outside the scope of this rulemaking effort, which is focused on technical changes. The Agencies will reserve and consider the comments regarding CE efficiencies for a future rulemaking but continue to support efficient processing of routine projects that qualify for CEs and will assess potential flexibilities to promote efficiency in the NEPA process.

Comment: Some commenters requested flexibilities in the public involvement process, such as removing the requirement to provide public notice through local newspapers and instead providing alternative means to provide notice.

Response: The Agencies appreciate and acknowledge comments requesting changes to public involvement requirements and procedures but decline to make such changes in this final rule because substantive changes are beyond the scope of this rulemaking effort. The Agencies will reserve and consider the removal of newspaper requirement for a future rulemaking. Regardless of the newspaper requirement, several

sections throughout Part 771 already encourage the use of project websites or other publicly accessible electronic means to make the environmental document available while minimizing hardcopy requests and printing costs.

Comment: Several commenters recommended that DOT set a timeline of less than the one year for CE determinations and implement reporting procedures for delays.

Response: The Agencies recognize the value of timely environmental reviews to promote efficient project delivery. The relevant statutory authorities are silent on timelines for completing CE determinations, and the Agencies decline to set a timeline for CE determinations because substantive changes are outside the scope of this rulemaking effort. In addition, compliance with other statutory requirements may require additional time and documentation but the Agencies will continue to evaluate process improvements.

Comment: Several commenters recommended tracking and reporting milestones such as the time from award notification for discretionary grant program projects to environmental clearance completion to provide transparency to grantees and congressional oversight committees.

Response: The Agencies value transparency and recognize congressional interest in project delivery metrics, and the Agencies will continue to provide tracking information and reports as required by law. This includes providing environmental assessment (EA) and EIS project information on the Permitting Dashboard for Federal Infrastructure Projects, available at <https://www.permits.performance.gov>. However, the Agencies decline to make further changes in this final rule because substantive changes are outside the scope of this rulemaking. The Agencies appreciate and acknowledge the comments and will reserve and consider them for a future rulemaking.

Comment: One commenter requested that the Agencies provide more detail in 23 CFR 771.115(b)-(c) to differentiate between the EA and CE classes of action. The

current language in paragraph (b) provides that a CE applies to actions that normally do not have a significant environmental effect and is excluded from the requirement to prepare an EA or EIS. The current language in paragraph (c) provides that an EA applies to actions that do not have reasonably foreseeable significant effects on the quality of the human environment or for which the significance of an environmental impact is unknown. Per the commenter, it is difficult to distinguish between the two classes of actions because the language in 23 CFR 771.115(b)-(c) suggests that both the EA and CE classes of action apply to actions that do not have a “reasonably foreseeable significant effect.”

Response: After careful examination of the language in 23 CFR 771.115(b)-(c), the Agencies agree the language should be revised to distinguish the difference between EAs and CEs as classes of action more clearly. Accordingly, the Agencies are revising the language in 23 CFR 771.115(c) to make clear that an EA applies to “[a]ctions that do not have reasonably foreseeable significant effects on the quality of the human environment *but that cannot be categorically excluded* or actions for which the significance of the environmental impact is unknown” to be consistent with NEPA, 42 U.S.C. 4336(b)(2) (emphasis added). For consistency, the language in 23 CFR 771.119(a) has been revised to read, “The applicant must prepare an EA in consultation with the Administration for each action that does not have a reasonably foreseeable significant effect on the quality of the human environment but that cannot be categorically excluded or actions for which if the significance of the environmental impact such effect is unknown, unless the agency finds that the proposed action is a CE and does not clearly require the preparation of an EIS.”

Comment: A commenter proposed removing the certification requirement at 23 CFR 771.138(c)(1) for the Draft Environmental Impact Statement (DEIS). The commenter noted that the certification requirement means that, for a DEIS, the lead

agency is required to certify the timeline requirements are met under 23 CFR 771.138 prior to completing the NEPA process through the final EIS or combined final EIS/Record of Decision (ROD).

Response: The Agencies agree with the commenter and have removed the certification requirement for a DEIS in 23 CFR 771.138(c) in the final rule. This change should address any prior confusion by clearly stating that the lead agency must certify the EIS timeline requirement has been met at the completion of the NEPA process. The certification requirement remains with respect to timeline and page limit requirements for final EISs and combined final EIS/RODs.

Comment: Several commenters requested new flexibilities in the re-evaluation process, clarification on when a re-evaluation is needed, and that the timeframe for triggering the written re-evaluation requirement for an EIS be aligned with the 5-year threshold provided in DOT's NEPA Order.

Response: The Agencies appreciate and acknowledge the comment but decline to make the suggested changes because substantive changes are outside the scope of this rulemaking. In the final rule, the Agencies made only technical changes to Part 771 to reflect the removal of the CEQ regulations, amendments to NEPA in the FR Act, and amendments to 23 U.S.C. 139 and 203(e) included in IIJA.

Comment: Several commenters suggested delegating NEPA or related Federal requirements, such as routine consultations under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, to non-Federal entities.

Response: The Agencies appreciate and acknowledge the comments, but decline to make these changes as NEPA and other Federal delegation programs are outside the scope of this rulemaking effort. The Agencies continue to encourage project sponsors to use environmental data and analyses prepared for compliance with State environmental review requirements in preparing the Federal NEPA document when it is relevant and

contemporary to avoid duplication of effort and promote efficient environmental reviews. State documents and analyses related to compliance with State environmental requirements may be used to inform the NEPA process to the extent consistent with applicable law.

Comment: Some commenters expressed opposition to CEQ's rescission of its regulations and other Governmentwide efforts and related policies, and expressed opinions not directly related to IFR and technical changes to Part 771.

Response: Comments related to NEPA implementation outside the context of Part 771, or actions taken by other Federal Agencies or entities, are outside the scope of this rulemaking effort.

III. REGULATORY ANALYSIS AND NOTICES

Legal Authority for this Rulemaking

This final rule is published under the authority of the Secretary of Transportation delegated to the Agencies pursuant to 49 CFR 1.81, 1.85, 1.89, and 1.91. Authority for these regulations is as follows: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 203, 315, 326, and 327; 49 U.S.C. 303 and 24201; 49 U.S.C. 5323(c) and 5323(q); 49 CFR 1.81, 1.85, 1.89, and 1.91; Pub. L. 109-59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112-141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Pub. L. 114-94, 129 Stat. 1312, Sections 1304 and 1432.

The Agencies considered all comments received before the close of business on the comment closing date indicated above, as well as the comments received after the deadline. The comments are available for examination in the docket (FHWA-2025-0007) at www.regulations.gov.

Executive Order 12866, Executive Order 14192, and DOT Regulatory Policies and Procedures

This rule is a nonsignificant regulatory action under E.O. 12866, *Regulatory Planning and Review* (58 FR 51735 (October 4, 1993)). Therefore, the Office of Management and Budget (OMB) has not reviewed this rule. E.O. 12866 further directs Agencies to assess all costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits.

Implementation guidance for E.O. 14192, *Unleashing Prosperity Through Deregulation*, issued by the OMB (Memorandum M-25-20, March 26, 2025), defines an E.O. 14192 deregulatory action as “an action that has been finalized and has total costs less than zero.” This final rule is considered an E.O. 14192 deregulatory action. The Agencies expect minor cost savings because this final rule would enable projects to move more expeditiously through the Federal environmental review process. It would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA while still ensuring that projects are built in an environmentally responsible manner and consistent with Federal law. These cost savings cannot be quantifiable. The Agencies do not have specific data to assess the economic impact of this final rule because such data does not exist and would be difficult to develop.

Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act, as amended, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed previously, the Agencies have determined that prior notice and opportunity for public comment is unnecessary under the APA. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule. *See* 5 U.S.C. 601(2), 603(a).

Environmental Analysis

NEPA does not require any Federal Agency to conduct NEPA analysis for the development of Agency procedures that implement NEPA. In addition, the promulgation of this final rule is categorically excluded from the requirement to prepare an impact statement by 23 CFR 771.116(c)(15), 771.117(c)(20), and 771.118(c)(4) and, therefore, the Agencies have determined that no environmental analysis is needed. The Agencies do not anticipate any adverse environmental impacts from this final rule, and no unusual circumstances are present under 23 CFR 771.117(b).

Executive Order 13132, Federalism

The Agencies have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132, *Federalism*, which requires Agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. The Agencies have determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Agencies have analyzed this final rule according to the principles and criteria in E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, and DOT Order 5301.1, *Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes*. The Agencies have determined that this action will neither significantly nor uniquely affect Tribal communities or Indian Tribal governments. In addition, this action does not impose compliance costs on Tribal governments and does not preempt Tribal law.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act, 2 U.S.C. 1531, requires Agencies to assess the effects of Federal regulatory actions on State, local, and Tribal

governments, and the private sector. For any final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments in the aggregate of \$100 million or more (in 1996 dollars) in any given year, agencies must prepare, among other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate. This final rule applies to Federal Agencies and would not result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

Paperwork Reduction Act (PRA)

Under the PRA, 44 U.S.C. 3501, *et seq.*, Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This action does not impose any new information collection burden that would require additional review or approval by OMB for the purposes of the PRA.

Executive Order 13211 (Energy Effects)

The Agencies have analyzed this action under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Agencies have determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN

contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental impact statements; Grant programs-transportation; Highways and roads; Historical preservation; Public lands; Railroads; Recreation and recreation areas; Reporting and recordkeeping requirements.

49 CFR Part 264

Environmental impact statements; Railroads.

49 CFR Part 622

Environmental impact statements; Mass transportation.

Issued in Washington, DC, under the authority delegated in 49 CFR 1.81(a)(5), 1.85, 1.89, and 1.91.

Sean McMaster,
Administrator,
Federal Highway Administration.

David A. Fink,
Administrator,
Federal Railroad Administration.

Matthew B. Cahill,
Acting Deputy Administrator,
Federal Transit Administration.

In consideration of the foregoing, the Agencies revise 23 CFR part 771, and 49 CFR part 264, and part 622, subpart A to read as follows:

Title 23 – HIGHWAYS

1. Revise part 771 to read as follows:

PART 771 – ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

- 771.101 Purpose.
- 771.103 [Reserved]
- 771.105 Policy.
- 771.107 Definitions.
- 771.109 Applicability and responsibilities.
- 771.111 Early coordination, public involvement, and project development.
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- 771.129 Re-evaluations.
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- 771.131 Emergency action procedures.
- 771.133 Compliance with other requirements.
- 771.137 International actions.
- 771.138 Timelines, Page Limits, and Certifications.
- 771.139 Limitations on actions.
- 771.141 Reliance and Adoption Efficiencies.

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 203(e), 315, 326, and 327; 49 U.S.C. 303 and 24201; 49 U.S.C. 5323(c) and 5323(q); 49 CFR 1.81, 1.85, 1.89, and 1.91; Pub. L. 109-59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112-141,

126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Pub. L. 114-94, 129 Stat. 1312, Sections 1304 and 1432.

§ 771.101 Purpose.

This part prescribes the policies and procedures of the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969, as amended (NEPA). Together these regulations set forth all FHWA, FRA, FTA, and U.S. Department of Transportation (DOT) requirements under NEPA for the processing of highway, public transportation, and railroad actions. This part also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 203(e), 326, and 327; 49 U.S.C. 303, 24201, 5323(c) and 5323(q); Pub. L. 112-141, 126 Stat. 405, section 1301 as applicable; and Pub. L. 114-94, 129 Stat. 1312, section 1304.

§ 771.103 [Reserved]

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the maximum extent practicable and consistent with Federal law, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in a single environmental document required by this part.

(b) Programmatic approaches be developed for compliance with environmental requirements (including the requirements found at 23 U.S.C. 139(b)(3)), coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.

(c) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the reasonably foreseeable social, economic, and

environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(d) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(e) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute other than NEPA, executive order, or Administration regulation or policy.

(f) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(g) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied the benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this part.

§ 771.107 Definitions.

The definitions contained in 42 U.S.C. 4336e and in titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply to this part.

Action. A highway, transit, or railroad project proposed for U.S. DOT funding. It also can include activities such as joint and multiple use permits, changes in access control, or rulemakings, which may or may not involve a commitment of Federal funds.

Administration. FHWA, FRA, or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means FHWA, FRA, or FTA, or a State when the State is functioning as FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327, or other applicable law. A reference herein to FHWA, FRA, or FTA means the State when the State is functioning as FHWA, FRA, or FTA respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327, or other applicable law. Nothing in this definition alters the scope of any delegation or assignment made by FHWA, FRA, or FTA.

Administration action. FHWA, FRA, or FTA approval of the applicant's request for Federal funds for construction. It also can include approval of activities, such as joint and multiple use permits, changes in access control, rulemakings, etc., that may or may not involve a commitment of Federal funds.

Applicant. Any Federal, State, local, or federally recognized Indian Tribal governmental unit that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this section) may assume the responsibilities of the applicant in this part. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant in this part. The applicant may also be the project sponsor.

Cooperating agency. Any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact

involved in a proposal and has been designated as a cooperating agency by the lead agency.

Environmental document. An environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision.

Environmental studies. The investigations of potential reasonably foreseeable environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

Finding of no significant impact (FONSI). Means a final determination by the Administration that the proposed action does not require the issuance of an environmental impact statement.

Lead agency(ies). The Administration and, if applicable, any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or 42 U.S.C. 4336a(1)(B).

Major Federal action. An action that the Administration determines is subject to substantial Federal control and responsibility.

Major project. A project subject to the requirements of 23 U.S.C. 139 that (1) requires multiple (two, or more) authorizations, reviews, or studies under a Federal law other than NEPA; (2) for which the lead agency has determined an EIS is required (or for which the lead agency has determined an EA is required and where the project sponsor requests that the project be treated as a major project); and (3) for which the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

Participating agency. A Federal, State, local, or federally recognized Indian Tribal governmental unit with an interest in the proposed project and has accepted an invitation to be a participating agency or, in the case of a Federal agency, has not declined the invitation in accordance with 23 U.S.C. 139(d)(3).

Programmatic approaches. An approach that reduces the need for project-by-project reviews, eliminates repetitive discussion of the same issue, or focuses on the actual issues ripe for analyses at each level of review, consistent with NEPA and other applicable law.

Project sponsor. The Federal, State, local, or federally recognized Indian Tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project. Where it is not the applicant, the project sponsor may conduct some of the activities on the applicant's behalf.

Section 4(f). Refers to 49 U.S.C. 303 and 23 U.S.C. 138 (as implemented by 23 CFR part 774).

Special expertise. Statutory responsibility, agency mission, or related program experience.

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this part only apply to major Federal actions. Steps taken by the applicant that do not require Federal approvals, such as preparation of a regional transportation plan, are not subject to this part.

(2) The Administration has determined the following additional actions are not major Federal actions subject to NEPA:

(i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside the jurisdiction of the United States.

(ii) [Reserved].

(3) This part does not apply to or alter final agency action the Administration made prior to July 3,

(4) Environmental documents accepted or prepared after July 3, 2025 must be developed in accordance with this part.

(b)(1) The project sponsor, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this part unless the Administration approves of their deletion or modification in writing. FHWA will ensure that this is accomplished as part of its stewardship and oversight responsibilities. FRA and FTA will ensure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(2) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, FHWA must ensure the State highway agency constructs the project in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents.

(c) The following roles and responsibilities apply during the environmental review process:

(1) The Federal lead agencies are responsible for managing the environmental review process and the contents of the appropriate environmental documents.

(2) Any State or local governmental entity applicant that is or is expected to be a direct recipient of funds under title 23 of the United States Code or 49 U.S.C. ch. 53 for the action, or is or is expected to be a direct recipient of financial assistance for which FRA is responsible (*e.g.*, 49 U.S.C. Subtitle V) must serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance, and independently evaluates the environmental documents.

(3) The Administration may invite other Federal, State, local, or federally recognized Indian Tribal governmental units to serve as joint lead agencies in

accordance with 42 U.S.C. 4336(a)(1)(B). If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the Administration will determine the role of the applicant in accordance with this part and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of 42 U.S.C. 4332(G), may prepare the environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) A participating agency must provide input during the times specified in the coordination plan under 23 U.S.C. 139(g) and within the agency's special expertise or jurisdiction. Participating agencies provide comments and concurrence on the schedule within the coordination plan. For projects not subject to 23 U.S.C. 139, participating agencies will participate in the environmental review process consistent with 42 U.S.C. 4336a, as appropriate.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, the State highway agency must ensure the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written FHWA approval to modify or delete such mitigation features.

(e) When FRA is the lead agency, the project sponsor is a private entity, and there is no applicant acting as a joint-lead agency, FRA may provide written authorization to the project sponsor to prepare the environmental document under FRA supervision. FRA's written authorization will establish the project sponsor's and FRA's respective responsibilities in preparing the environmental document.

§ 771.111 Early coordination, public involvement, and project development.

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental documents an action requires, the scope of the document, the level of analysis, and related environmental requirements. These activities contribute to reducing or eliminating delay, duplicative processes, and conflict, including by incorporating planning outcomes that have been reviewed by agencies and Indian Tribal partners in project development.

(2)(i) The information and results produced by or in support of the transportation planning process may be incorporated into environmental review documents in accordance with 23 U.S.C. 139(f), 168, 169, 23 CFR 450.212, 23 CFR 450.318, or 23 CFR 450 Appendix A, as applicable.

(ii) The planning process described in paragraph (a)(2)(i) of this section may include mitigation actions consistent with a programmatic mitigation plan developed pursuant to 23 U.S.C. 169 or from a programmatic mitigation plan developed outside of that framework.

(iii) The purpose and need, alternatives development and screening, and other relevant analyses, studies, and work products developed pursuant to 49 U.S.C. 25101 or other Administration-approved planning efforts, may be incorporated into the NEPA process as appropriate.

(3) Applicants intending to apply for funds or request Administration action should notify the Administration at the time a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (see § 771.115) and related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process. A lead agency, in consultation with participating agencies, must develop an environmental checklist, as appropriate, to assist in resource and agency identification.

(b)(1) The Administration will identify the probable class of action as soon as sufficient information is available to identify the reasonably foreseeable impacts of the action.

(2) For projects to be evaluated with an EIS, the Administration must respond in writing to a project sponsor's formal project notification within 45 days of receipt.

(c) When the FHWA, FRA, or FTA are jointly involved in the development of an action, or when the FHWA, FRA, or FTA act as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis. A project sponsor may request the Secretary to designate the lead Federal agency when project elements fall within the expertise of multiple DOT agencies.

(d) During early coordination, the lead agencies may invite other agencies with an interest in the action to participate. The lead agencies must, however, invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139 within 45 days from publication of the notice of intent. Any such agencies with special expertise concerning the action may also be invited to become cooperating agencies. Any such agencies with jurisdiction by law concerning the action must be invited to become cooperating agencies.

(e) Other States and Federal land management entities that may be significantly affected by the action or by any of the alternatives must be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.

(f) Any action evaluated under NEPA as a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) must:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering (a form of programmatic environmental documentation) of EISs or EAs may be appropriate. The first tier EIS or EA would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on a project's reasonably foreseeable impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process;

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of reasonably foreseeable social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions;

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project that requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines a public hearing is in the public interest;

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice must also provide information required to comply with public involvement requirements of other laws, executive orders, and regulations;

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives and major design features,

(C) The reasonably foreseeable social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process, and

(E) The State highway agency's procedures for receiving both oral and written statements from the public;

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing;

(vii) An opportunity for public involvement in defining the purpose and need and the reasonable range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139; and

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 23 CFR 774.5(b)(2)(i).

(i) Applicants for FRA programs or the FTA capital assistance program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seek input from the public through scoping for the environmental review process. Project milestones may be announced to the public using electronic or paper media (*e.g.*, newsletters, note cards, or emails). For actions requiring an EIS, an early opportunity for public involvement in defining the purpose and need for the action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS.

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts

are underway. Notice of early scoping must be made to the public and other agencies. If early scoping is the start of the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FRA or FTA will publish the notice of intent if it is determined at that time the proposed action requires an EIS. The notice of intent will establish a 30-day period for comments on the purpose and need, alternatives, impacts, and relevant information, studies, or analyses with respect to the proposed agency action.

(3) Are encouraged to post and distribute materials related to the environmental review process, including, environmental documents (*e.g.*, EAs and EISs), environmental studies (*e.g.*, technical reports), public meeting announcements, and meeting minutes, through publicly accessible electronic means, including project websites. Applicants should keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Should post all FONSI, combined final EISs/ RODs, and RODs on a project website until the project is constructed and open for operation.

(j) Information on the FHWA environmental process may be obtained from:

FHWA Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, D.C. 20590, or www.environment.fhwa.dot.gov.

Information on the FRA environmental process may be obtained from: FRA Director, Office of Environmental Program Management, Federal Railroad Administration,

Washington, D.C. 20590, or railroads.dot.gov. Information on the FTA environmental

process may be obtained from: FTA Director, Office of Environmental Policy and

Programs, Federal Transit Administration, Washington, D.C. 20590 or

www.transit.dot.gov.

§ 771.113 Timing of Administration activities when NEPA applies.

(a) The lead agencies, in cooperation with the applicant and project sponsor, as appropriate, will perform the work necessary to complete the environmental review process. This work includes drafting environmental documents and completing environmental studies, related engineering studies, agency coordination, public involvement, and identification of mitigation measures. Except as otherwise provided in law or in paragraph (d) of this section, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction must not proceed until the following have been completed:

(1)(i) The Administration has classified the action as a CE;

(ii) The Administration has issued a FONSI; or

(iii) The Administration has issued a combined final EIS/ROD or a final EIS and ROD;

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For FHWA actions, completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental review documents unless otherwise specified by the approving official.

(c) Letters of Intent issued under the authority of 49 U.S.C. 5309(g) are used by FTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by FTA until the NEPA process is

completed. Letters of Intent issued by FRA under the authority of 49 U.S.C. 24911(g) may be issued prior to completion of the NEPA process.

(d) The prohibition in paragraph (a)(1) of this section do not apply to:

(1) Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA. Exceptions for the acquisitions of real property are addressed in paragraphs (c)(6) and (d)(3) of § 771.118 for FTA.

(2) The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.

(3) A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).

(4) FRA may make exceptions on a case-by-case basis for purchases of railroad components or materials that can be used for other projects or resold.

§ 771.115 Classes of actions.

There are three classes of actions that prescribe the level of documentation required in the NEPA process. In selecting the class of action, the Administration may make use of any reliable data source and is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable. A programmatic approach may be used for any class of action.

(a) *EIS*. Actions that have a reasonably foreseeable significant effect on the quality of the human environment require an EIS. The following are examples of actions that normally require an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) Construction or extension of a fixed transit facility (*e.g.*, rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation right-of-way.

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing transportation right-of-way.

(5) New construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.

(6) New construction of major railroad lines or facilities (*e.g.*, terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation right-of-way.

(b) *CE*. Actions that normally do not have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA actions or § 771.118(c) for FTA actions. When appropriately documented, additional projects may

also qualify as CEs pursuant to § 771.117(d) for FHWA actions or pursuant to § 771.118(d) for FTA actions. FRA's CEs are listed in § 771.116.

(c) *EA*. Actions that do not have reasonably foreseeably significant effects on the quality of the human environment but that cannot be categorically excluded or actions for which the significance of the environmental impact is unknown. All actions that are not EISs or CEs are EAs. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

§ 771.116 FRA categorical exclusions.

(a) CEs are actions that, based on FRA's past experience with similar actions, normally do not involve significant environmental impacts. They are actions that do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in paragraph (a) of this section may be designated as CEs only after FRA approval. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for these CEs are satisfied and significant environmental effects will not result.

(1) Administrative procurements (*e.g.*, for general supplies) and contracts for personal services, and training.

(2) Personnel actions.

(3) Planning or design activities that do not commit to a particular course of action affecting the environment.

(4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(5) Internal orders, policies, and procedures not required to be published in the *Federal Register* under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

(6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.

(7) Financial assistance to an applicant where the financial assistance funds an activity already completed, such as refinancing outstanding debt.

(8) Hearings, meetings, or public affairs activities.

(9) Maintenance or repair of existing railroad facilities, where such activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting, of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or facilities, such as advances in signal communication or train control systems, equipment, or track, provided such activities do not require the acquisition of a significant amount of right-of-way and do not significantly alter the traffic density characteristics of the existing rail line or facility.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.

(16) Alterations to existing facilities, locomotives, stations, and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(17) The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment, that does not significantly alter the traffic density characteristics of an existing rail line.

(19) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail

line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(21) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities, and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(22) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches,

cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

(d) Any action qualifying as a CE under § 771.117 or § 771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.

§ 771.117 FHWA categorical exclusions.

(a) CEs are actions that, based on FHWA's past experience with similar actions, normally do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in paragraph (a) of this section and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so social, economic, and environmental effects can be assessed; and Federal-aid system revisions establishing classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 23 U.S.C. 125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such

as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally funded projects:

(i) Receiving less than \$6,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.transit.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than \$35,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) not requiring a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions that meet the criteria for a CE in paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of

health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (*e.g.*, bridges, wetlands) or actions facilitating open space use (*e.g.*, recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

(f) Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

(g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement; and

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed.

(h) Any action qualifying as a CE under § 771.116 or § 771.118 may be approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

§ 771.118 FTA categorical exclusions.

(a) CEs are actions that, based on FTA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in paragraph (a) of this section normally do not require any further NEPA approvals by FTA.

- (1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new)

within or adjacent to existing transportation right-of-way, such as: Utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

(2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

(3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

(4) Planning and administrative activities not involving or leading directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

(5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

(6) Acquisition or transfer of an interest in real property not within or adjacent to recognized environmentally sensitive areas (*e.g.*, wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: Acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects making use of the acquired or transferred property.

(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, not resulting in a change in functional use of the facilities, such as: Equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

(8) Maintenance, rehabilitation, and reconstruction of facilities occupying substantially the same geographic footprint and not resulting in a change in functional use, such as: Improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: Buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the

physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

(10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: Police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

(11) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 49 U.S.C. 5324; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(12) Projects, as defined in 23 U.S.C. 101, taking place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(13) Federally funded projects:

(i) Receiving less than \$6,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.transit.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$35,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.transit.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to

the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and expanding existing culverts and drainage pipes.

(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(d) Additional actions that meet the criteria for a CE in paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant must submit documentation demonstrating the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (*e.g.*, lanes for parking, weaving, turning, climbing).

(2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to

the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate development of the land would preclude future transportation use and such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, is completed.

(5) [Reserved]

(6) Facility modernization through construction or replacement of existing components.

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.

(e) Any action qualifying as a CE under § 771.116 or § 771.117 may be approved by FTA when the applicable requirements of those sections are met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.

(f) Where a pattern emerges of granting CE status for a particular type of action, FTA will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section.

§ 771.119 Environmental assessments.

(a)(1) The applicant must prepare an EA in consultation with the Administration for each action that does not have a reasonably foreseeable significant effect on the quality of the human environment but that cannot be categorically excluded or actions for which the significance of the environmental impact is unknown, unless the agency finds that the proposed action is a CE and does not clearly require the preparation of an EIS.

(2) For FTA, the contractor's scope of work for the preparation of the EA should not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).

(b) For actions that require an EA, the applicant, in consultation with the Administration, must, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project, including project's purpose and need, and alternatives to achieve the following objectives: Determine which aspects of the proposed action have potential for reasonably foreseeable social, economic, or environmental impacts; identify alternatives and measures that might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements that should be performed concurrently with the EA. The applicant must accomplish this through early coordination activities or through a scoping process. The applicant must summarize the public involvement process and include the results of agency coordination in the EA.

(c) The Administration must approve the EA before it is made available to the public as an Administration document.

(d) The applicant does not need to circulate the EA for comment, but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices or, for FRA at Headquarters, for 30 days and in accordance with paragraphs (e) and (f) of this section. The applicant must send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, Tribal, State and local government. The applicant must also send notice to the State intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the EA available.

(e) When a public hearing is held as part of the environmental review process for an action, the EA must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The applicant must publish a notice of the public hearing in local newspapers announcing the availability of the EA and where it may be obtained or reviewed. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant must place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice must invite comments from all interested parties. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, a different period is warranted.

(g) If no significant impacts are identified, the applicant must furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA must be made available for public review (including the affected units of government) for a minimum of 30 days before the FHWA makes its final decision. This public availability must be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines the action is likely to have a significant impact on the environment, the preparation of an EIS will be required, unless the Administration imposes mitigation measures or modifies the action to avoid the significant effects.

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA must be prepared in accordance with the applicable provisions of that statute.

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA, comments submitted on the EA (in writing or at a public hearing or meeting), and other supporting documentation, as appropriate. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), the Administration will issue a written FONSI incorporating by reference the EA and any other appropriate supporting documentation.

(b) After the Administration issues a FONSI, a notice of availability of the FONSI must be sent by the applicant to the affected units of Federal, State, and local

government, and the document must be available from the applicant and the Administration upon request by the public. Notice must also be sent to the State intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the FONSI available.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS must be prepared when the Administration determines that the action is likely to cause significant impacts on the quality of the human environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e), and the decision has been made by the Administration to prepare an EIS, the Administration will issue a notice of intent for publication in the *Federal Register*. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the State or local level.

(b)(1) Prior to the notice of intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 U.S.C. 139(f), 168, 169, 23 CFR 450.212, 23 CFR 450.318, or 23 CFR 450 Appendix A, as applicable. The scoping process will be used to identify the purpose and need, the range of alternatives and reasonably foreseeable impacts, and the significant issues to be addressed in the EIS. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration's notice of intent and by appropriate means at the State or local level.

(2) For projects subject to 23 U.S.C. 139, the lead agencies must establish a coordination plan, including a schedule, within 90 days of notice of intent publication.

(c) The draft EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency) or prepared by the project sponsor in accordance with § 771.109(e). The draft EIS must evaluate a reasonable range of alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The range of alternatives considered for further study must be used for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information and circumstances or to fulfill NEPA responsibilities in a timely manner, in accordance with 23 U.S.C. 139(f)(4)(B). The draft EIS must also summarize the studies, reviews, consultations, and coordination required by environmental laws or executive orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies or the applicant may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. For FTA, the contractor's scope of work for the preparation of the EIS will not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content).

(e) The draft EIS should identify the preferred alternative to the extent practicable. If the draft EIS does not identify the preferred alternative, the Administration should provide agencies and the public with an opportunity after issuance of the draft EIS to review the reasonably foreseeable impacts of the preferred alternative.

(f) At the discretion of the lead agency, the preferred alternative (or portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with other legal requirements, including permitting. The development of such

higher level of detail must not prevent the lead agency from making an impartial decision as to whether to accept another alternative being considered in the environmental review process.

(g) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet. The cover sheet should include a notice that after circulation of the draft EIS and consideration of the comments received, the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude issuance of the combined document.

(h) A lead, joint lead, or cooperating agency must be responsible for publication and distribution of the EIS. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the draft EIS available.

(i) The applicant, on behalf of the Administration, must circulate the draft EIS for comment. The draft EIS must be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency. The draft EIS must be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Cooperating and participating agencies. The draft EIS must also be transmitted directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These transmittals must be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(j) When a public hearing on the draft EIS is held (if required by § 771.111), the draft EIS must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS must be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice must be made similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(k) The *Federal Register* public availability notice must establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter must identify where comments are to be sent.

§ 771.124 Final environmental impact statement/record of decision document.

(a)(1) After circulation of a draft EIS and consideration of comments received, the lead agency, in cooperation with the applicant (if not a lead agency), must combine the final EIS and ROD, to the maximum extent practicable, unless:

(i) The final EIS makes substantial changes to the proposed action relevant to environmental or safety concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the reasonably foreseeable impacts of the proposed action.

(2) When the combined final EIS/ROD is a single document, it must include the content of a final EIS presented in § 771.125 and present the basis for the decision, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter.

(3) If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement pursuant to 23 U.S.C. 139(n)(1), which together must then become the combined final EIS/ROD.

(4) A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration.

(5) The Administration must indicate approval of the combined final EIS/ROD by signing the document. The provision on Administration's Headquarters prior concurrence in § 771.125(c) applies to the combined final EIS/ROD.

(b) The *Federal Register* public availability notice published by EPA will not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD. When filed with EPA, the combined final EIS/ROD must be available at the applicant's offices and at appropriate Administration offices. A copy should also be made available at institutions such as local government offices, libraries, and schools, as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the combined final EIS/ROD available.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The final EIS must identify the preferred alternative and evaluate all reasonable alternatives considered. It must also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in paragraphs (b) and (d) of § 771.109. The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance their requirements can be met.

(2) Every reasonable effort must be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS must identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines:

(i) Additional coordination with other Federal, State or local governmental agencies is needed;

(ii) The social, economic, or environmental impacts of the action may need to be more fully explored;

(iii) The impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or

(iv) The action involves national policy issues.

(2) Any action to which a Federal, State, or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(d) Approval of the final EIS is not an Administration action as defined in § 771.107 and does not commit the Administration to approve any future request for financial assistance to fund the preferred alternative.

(e) The initial publication of the final EIS must be in sufficient quantity to meet the request for copies reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(f) The final EIS must be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes. The applicant must also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13, which implements Executive Order 12372. When filed with EPA, the final EIS must be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools,

as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the final EIS available.

(g) The final EIS may take the form of an errata sheet pursuant to 23 U.S.C. 139(n)(1).

§ 771.127 Record of decision.

(a) When the final EIS is not combined with the ROD, the Administration will complete and sign a ROD no sooner than 30 days after publication of the final EIS notice in the *Federal Register* or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision, summarize any mitigation measures to be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the ROD available.

(b) If the Administration subsequently wishes to approve an alternative not identified as the preferred alternative but fully evaluated in the draft EIS, combined FEIS/ROD, or final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised or amended ROD must be subject to review by those Administration offices that reviewed the final EIS under § 771.124(a) or § 771.125(c). To the extent practicable, the approved revised or amended ROD must be provided to all persons, organizations, and agencies that received a copy of the final EIS.

§ 771.129 Re-evaluations.

The Administration must determine, prior to granting any new approval related to an action or amending any previously approved aspect of an action, including mitigation

commitments, whether an approved environmental document remains valid as described in this section.

(a) The applicant must prepare a written evaluation of the draft EIS, in cooperation with the Administration, if an acceptable final EIS is not submitted to the Administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) The applicant must prepare a written evaluation of the final EIS before the Administration may grant further approvals if major steps to advance the action (*e.g.*, authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant must consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

(d) For tiered EAs or EISs, if the second tier occurs 5 or more years after the first tier document, the applicant in consultation with the Administration, must re-evaluate the analysis and any underlying assumptions of the first tier EIS or EA to ensure reliance on the analysis remains valid.

§ 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS must be supplemented whenever the Administration determines:

(1) Changes to the proposed action would result in significant environmental impacts not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other reasonably foreseeable environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD must be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the reasonably foreseeable impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration must so indicate in the project file.

(d) A supplement is to be developed using the same process and format (*i.e.*, draft EIS, final EIS, and ROD) as an original EIS, except scoping is not required.

(e) In some cases, an EA or supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental document must not necessarily:

- (1) Prevent the granting of new approvals;
- (2) Require the withdrawal of previous approvals; or
- (3) Require the suspension of project activities, for any activity not

directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration must suspend any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental document is completed.

§ 771.131 Emergency action procedures.

Responses to some emergencies and disasters are categorically excluded under § 771.117 for FHWA, § 771.118 for FTA, or § 771.116 for FRA. Otherwise, requests for deviations from the procedures in this part because of emergency circumstances must be referred to the Administration's Headquarters for evaluation and decision after consultation with the CEQ.

§ 771.133 Compliance with other requirements.

(a) The combined final EIS/ROD, final EIS or FONSI should document compliance with requirements of all applicable environmental laws, executive orders, and other related requirements. If full compliance is not possible by the time the combined final EIS/ROD, final EIS or FONSI is prepared, the combined final EIS/ROD, final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. FHWA's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

(b) In consultation with the Administration and subject to Administration approval, an applicant may develop a programmatic approach for compliance with the

requirements of any law, regulation, or executive order applicable to the project development process.

§ 771.137 International actions.

(a) If the Administration determines a major Federal action is proposed, the requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions that significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration must coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

§ 771.138 Timelines, Page Limits, and Certifications

(a)(1) *Timelines for completion of EISs.* (i) The Administration must complete the EIS no later than 2 years from publication of the notice of intent to the signature date of the ROD or combined final EIS/ROD (as applicable).

(ii) For EISs that are major projects, the Administration must, to the maximum extent practicable, complete the EIS within a schedule consistent with an agency average of not more than 2 years from publication of the notice of intent to the signature date of the ROD or combined final EIS/ROD.

(2) Timelines for completion of EAs.

(i) The Administration must complete the EA no later than 1 year from the date the Administration determined the class of action to the

signature date of the EA. If a notice of intent is published for an EA, then the start date shall be the publication date.

(ii) For EAs that are major projects, the Administration must, to the maximum extent practicable, complete the EA within a schedule consistent with an agency average of not more than two years from the date the Administration determined the EA was required to the signature date of the FONSI. If a notice of intent is published for an EA, then the start date shall be the publication date.

(3) The Administration, in consultation with the applicant, may extend the timelines described in paragraphs (a)(1)(i) and (a)(2)(i) to provide only so much additional time as necessary to complete the EIS or EA, as applicable.

(b) *Page Limits.* (1) EIS—

(i) The text of an EIS must not exceed 200 pages, not including citations or appendices, to the maximum extent practicable, unless the Administration establishes a new page limit;

(ii) When a project does not follow the 23 U.S.C. 139 process, the EIS must not exceed 150 pages, not including citations or appendices. An EIS for a proposed action of extraordinary complexity must not exceed 300 pages, not including any citations or appendices.

(2) The text of an EA must not exceed 75 pages, not including any citations or appendices.

(c) *Certifications.* (1) The lead agency(ies) signature on the EA, final EIS, or combined final EIS/ROD (as applicable) will certify that the Administration has considered the factors mandated by this part; that the EA, final EIS, or combined final EIS/ ROD (as applicable), reflects the Administration's expert judgment and documents the most important considerations required by the statute and within the applicable

timeline and page limits; and that any considerations addressed briefly or left unaddressed were, in the Administration's judgment, comparatively unimportant.

§ 771.139 Limitations on actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the *Federal Register* indicating such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 150 days after the date of publication of the limitations on claims notice by FHWA or FTA. Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within two years after the date of publication of the limitations on claims notice by FRA. These time periods do not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed. This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

§ 771.141 Reliance and Adoption Efficiencies

(a) When a single environmental document is not prepared for a proposed major Federal action, an agency may rely upon an existing environmental document, or element thereof, to document compliance with NEPA as follows:

(1) Any Federal agency may rely upon an environmental document prepared in accordance with 23 U.S.C. 139 to the same extent such Federal agency could adopt or use a document prepared by another Federal agency.

(2) The Administration may rely upon an existing environmental document not prepared in accordance with 23 U.S.C. 139 if the Administration determines that the proposed action is substantially the same as the action covered

in the existing environmental document and that the environmental issues were adequately identified and addressed.

(3) The Administration may rely upon an existing categorical exclusion decision by another Federal agency if the Administration determines that a proposed major Federal action is substantially the same as the action that another Federal agency determined is categorically excluded from NEPA.

(4) A Federal land management agency may rely upon an existing environmental document or categorical exclusion decision prepared by FHWA for a project addressing substantially the same major Federal action proposed for approval by the Federal land management agency.

(b) Adoption of Categorical Exclusions under 42 U.S.C. 4336c:

(1) FHWA, FRA, or FTA may establish a new categorical exclusion by adopting a category of action listed as a categorical exclusion in another agency's NEPA procedures.

(2) A State functioning as FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 326 or 327 may not establish a new categorical exclusion through adoption.

(3) To establish the new categorical exclusion, the Administration will:

(i) identify the categorical exclusion listed in another agency's NEPA procedures that covers a category of proposed actions or related actions;

(ii) consult with the agency that established this categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of Administration actions is appropriate; and

(iii) Provide public notification that the Administration plans to use the categorical exclusion for its proposed actions by documenting its adoption.

(4) The Administration may begin to apply the newly adopted categorical exclusion to proposed major Federal actions upon completion of sub-paragraphs (b)(3)(i)-(iii).

Title 49 – Transportation

PART 264 – ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

2. Revise the authority citation for part 264 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 24201; 23 U.S.C. 139, 327, 330; 49 CFR 1.81; Pub. L. 112-141, 126 Stat. 405, Section 1319; and Pub. L. 114-94, 129 Stat. 1312, Sections 1309, 1432, 11502, and 11503.

3. Revise part 622, Subpart A to read as follows:

Part 622 – ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A – Environmental Procedures

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303, 5323(c), and 5323(q); 23 U.S.C. 139, 326, 327, and 330; Pub. L. 109-59, 119 Stat. 1144, Sections 6002 and 6010; 49 CFR 1.81; Pub. L. 112-141, 126 Stat. 405, Sections 1315, 1316, 1317, and 1318; and Pub. L. 114-94, Section 1309.

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and Executive Orders are set forth in 23 CFR part 771, including compliance with FTA's environmental review statute located at 49 U.S.C. 5323(c). The procedures for complying with 49 U.S.C. 303, commonly known as "Section 4(f)," are set forth in 23 CFR part 774. The procedures for complying with the Surface Transportation Project Delivery Program

application requirements and termination are set forth in 23 CFR part 773. The procedures for participating and complying with the program for eliminating duplication of environmental reviews are set forth in 23 CFR part 778.

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