DEPARTMENT OF TRANSPORTATION

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
RIN 2130–AD05
RIN 2132–AB51

Revision of National Environmental Policy Act Regulations

ACTION: Interim final rule.

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

SUMMARY: FHWA, FRA, and FTA are publishing this interim final rule (IFR) to modify the regulations implementing the National Environmental Policy Act (NEPA) that apply to all three agencies to be consistent with the removal of regulations previously issued by the Council on Environmental Quality (CEQ), the amendments to NEPA included in the section of the Fiscal Responsibility Act of 2023 known as the Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act of 2023, and amendments regarding efficient environmental reviews included in the Infrastructure Investment and Jobs Act of 2021. This rule will become effective immediately while the agencies seek comment on what further changes may be appropriate.

DATES: Effective on July 3, 2025. Comments must be received on or before August 4, 2025.

ADDRESSES: You may submit comments identified by the Docket Number FHWA–2025–0007 using any of the following methods:

E-Gov Web: https://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: U.S. DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Submissions must include the agency name, docket number (FHWA–2025–0007), and Regulatory Identification Number (RIN) for this rulemaking (2125–AF80). If you submit your comments by mail, submit two copies. If you wish to receive confirmation that your comments have been received, include a self-addressed stamped postcard. Internet users may submit comments at *https://www.regulations.gov.*

Privacy Act: DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: For FHWA: Megan Cogburn, Office of Planning, Environment, and Realty, (202) 893–5850, or via email at *Megan.Cogburn@dot.gov;* Diane Mobley, Office of Chief Counsel, (202) 366–1366, or via email at *Diane.Mobley@dot.gov;* For FRA: Lana Lau, Office of Environmental Program Management, (202) 923–5314, or via email at *Lana.Lau@dot.gov;* Faris Mohammed, Office of Chief Counsel, (202) 763–3230, or via email at *Faris.Mohammed@dot.gov;* For FTA: Megan Blum, Office of Environmental Policy and Programs, (202) 809–4701, or via email at *Megan.Blum@dot.gov;* Mark Montgomery, Office of Chief Counsel, (505) 820–2061, or via email at *mark.montgomery@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *www.regulations.gov.* An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

I. Background

FHWA, FRA, and FTA are publishing this interim final rule (IFR) modifying their implementing regulations (Part 771) for the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347, as amended (NEPA). The regulations at 23 CFR part 771 were promulgated to supplement the Council on Environmental Quality's (CEQ's) NEPA regulations. 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 was the authority CEQ had relied upon to issue its regulations. The CEQ's regulations have been repealed, effective April 11. *See Removal of National Environmental Policy Act Implementing Regulations* (90 FR 10610; Feb. 25, 2025).

As a result of the foregoing, the regulations at 23 CFR part 771, which implement NEPA for FHWA, FRA, and FTA, must be modified to remove cross-references to the defunct CEQ regulations. Prior to their removal, FHWA, FRA, and FTA followed the procedures contained in the CEQ implementing regulations for any topics not addressed by 23 CFR part 771. Now,

Part 771 needs to be revised to stand on its own.

In addition to removing cross-references to the CEQ regulations, this IFR revises 23 CFR part 771 to reflect amendments to NEPA included in the section of the Fiscal Responsibility Act (FR Act) of 2023 known as the BUILDER Act of 2023, Public Law 118–5, Div. C, Tit. III, § 321 (June 3, 2023) (NEPA Amendments), which streamlines the environmental review process for Federal agencies, and to reflect amendments to Title 23 of the U.S. Code, Sections 139 and 203(e), regarding efficient environmental reviews, included in the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021) (IIJA). Consistent with the NEPA Amendments, for instance, the phrase ''reasonably foreseeable'' has been inserted before the terms ''impact'' and ''effect'' throughout the regulation. Footnotes were removed to reduce redundant information that can be found elsewhere. FHWA, FRA, and FTA have supplementary guidance on environmental documents and procedures for their programs available on the internet through the DOT Guidance Portal at *https://transportation.gov/guidance* and *https://www.environment.fhwa.dot.gov, https://railroads.dot.gov,* and *https://www.transit.dot.gov.* Revisions to specific sections of the regulation are identified and discussed below, as appropriate. The agencies intend to pursue a future deregulatory rulemaking to further expedite the environmental review process.

II. Section-by-Section Analysis

§ 771.101 Purpose

This section of the regulation is revised to remove references to the CEQ regulations, as well as to modify references to authorities based on amendments to Title 23 of the U.S. Code in the IIJA. Reference to 23 U.S.C. 203(e) has been added to reflect IIJA amendments relating to NEPA implementation and the Federal Lands Transportation Program. Reference to 23 U.S.C. 325 is removed as the statute is repealed. Reference to 49 U.S.C. 5323(c) has also been added to clarify that the procedures set forth in 23 CFR part 771 comply with the statute.

§ 771.105 Policy

This section is revised to reflect changes in terminology introduced by the NEPA Amendments. Section 771.105(a) has been revised to state ''a single environmental document'' in place of ''the environmental review document.'' Section 771.105(c) is revised to add ''reasonably foreseeable'' as the standard for evaluating the social, economic, and environmental impacts of a proposed transportation improvement.

§ 771.107 Definitions

This section incorporates new definitions for consistency with the NEPA Amendments and 23 U.S.C. 139. The definition ''cooperating agency'' has been added consistent with the definition provided in NEPA and requirements related to cooperating agencies found in 23 U.S.C. 139. Similarly, the definition ''environmental document'' has been added to the section as it is defined in NEPA, except that the definition of an environmental document includes a notice of intent and a record of decision (ROD), consistent with the definition of ''environmental document'' under 23 U.S.C. 139. A combined final environmental impact statement (EIS)/ROD document is not included in the definition but is treated as an environmental document since both the final EIS and the ROD are environmental documents. The definitions ''finding of no significant impact (FONSI),'' ''major federal action,'' and ''special expertise'' have also been added, consistent with definitions provided in NEPA. The definition for ''major project,'' as provided at 23 U.S.C. 139(a)(7), has been incorporated to distinguish between requirements in NEPA and 23 U.S.C. 139 throughout 23 CFR part 771.

This section also revises several existing definitions for consistency with the statutory definitions and requirements provided in NEPA and 23 U.S.C. 139. The definition for ''applicant'' has been revised to clarify that applicants may also be the ''project sponsor'' as the term is defined in the section. 23 U.S.C. 139(a)(10) defines ''project sponsor'' to mean ''the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.'' This revision harmonizes the definition of ''project sponsor'' in 23 U.S.C. 139 with the definition for ''applicant'' as defined in the section. The definition of ''environmental studies'' has been revised to clarify that investigations of environmental impacts relevant to the environmental review process assess the ''reasonably foreseeable'' impacts associated with the proposed actions. The definition for ''lead agencies'' has been revised for consistency with the statutory definition provided at 23 U.S.C. 139(a)(6) and in NEPA.

Revisions to this section also remove reference to 23 U.S.C. 325 in the definition for ''Administration,'' as the statute was repealed, as well as references to the CEQ regulations, and incorporate terminology and references to relevant statutory provisions in NEPA as appropriate.

§ 771.109 Applicability and Responsibilities

Consistent with the NEPA Amendments, this section clarifies that the requirements of 23 CFR part 771 apply only to major Federal actions. The section then identifies actions that are excluded from NEPA review because they are not major Federal actions. The actions identified in this section are those which FHWA, FRA, and FTA most commonly undertake, but are not the only actions that the agencies undertake that are not major Federal actions. This section is not intended to be exhaustive, and FHWA, FRA, and FTA are seeking comments on other actions that may not be major Federal actions.

Sections 771.109(a)(3) and (a)(4), as renumbered, have been revised to insert dates establishing the effective dates for the changes introduced by this IFR with respect to when a final agency action occurs or when an environmental document is accepted or initiated. The paragraph previously numbered (a)(4) has been removed as it is no longer relevant.

Revisions to language in §§ 771.109(c)(1) and (c)(2) are meant to clarify that it is ultimately the Federal lead agency that is responsible for managing the environmental review process and the contents of environmental documents, and any joint lead agency may prepare environmental review documents under the Federal lead agency's supervision and subject to the Federal lead agency's independent evaluation of such documents. Section 771.109(c)(1) has also been revised to replace ''preparation'' with ''contents'' for consistent terminology with NEPA.

Section 771.109(c)(6) has been removed to be consistent with the amendments to NEPA that allow all project sponsors, regardless of whether the project sponsor is a private entity, to prepare environmental documents under the supervision of the lead agency.

Revisions to § 771.109(c)(6), formerly subparagraph (c)(7), clarify the role of participating agencies in the environmental review process, as identified in 23 U.S.C. 139 and NEPA.

For FRA, § 771.109(e) is revised for consistency with the NEPA Amendments providing for an agency to

develop procedures for private entities to allow a project sponsor to prepare environmental documents.

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology and statutory references from NEPA as appropriate.

§ 771.111 Early Coordination, Public Involvement, and Project Development

Section 771.111(a)(2)(iii) was added to incorporate the passenger rail planning process FRA undertakes as part of the Corridor Identification and Development Program authorized under the IIJA and codified at 49 U.S.C. 25101, or other Administration-approved planning efforts. Revisions to paragraph (g) clarify that tiering is a form of programmatic environmental document.

Section 771.111(i)(2) is revised to clarify the factors relevant to soliciting comments in a notice of intent, including ''impacts and relevant information, studies, or analyses with respect to the proposed agency action,'' *see* 42 U.S.C. 4336a(c).

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology and statutory references from NEPA as appropriate. Section 771.111(j) has also been revised to include updated contact information for FRA and FTA.

§ 771.113 Timing of Administration Activities When NEPA Applies

This section includes a minor revision to the title of the section to emphasize that the requirements that follow are only applicable if NEPA applies.

Paragraph (c) is revised to clarify that FRA may issue letters of intent prior to completion of the NEPA process for projects receiving funding under the Federal-State Partnership for Intercity Passenger Rail grant program pursuant to 49 U.S.C. 24911(g), which stipulates that the contingent commitment is not an obligation of the Federal government and is subject to the availability of appropriations for the grant program.

§ 771.115 Classes of Actions

This section is revised to incorporate updated terminology and language from the NEPA Amendments and removes language that previously reflected consistency with the CEQ regulations. The introductory paragraph is revised by clarifying that in making a class of action determination, the Administration may make use of any reliable data source, but is not required to undertake new scientific or technical research unless such research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable. This revision reflects consistency with the language in Section 106(b)(3) of NEPA.

Sections 771.115(a)-(c) are revised to remove ''Class I,'' ''Class II,'' and ''Class III'' as used in the parentheses attached to each listed class of action. This terminology was derived from the CEQ regulations and is no longer applicable.

Revisions to this section also include the removal of references to the CEQ regulations and the insertion of terminology from NEPA as appropriate.

§ 771.116 FRA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.117 FHWA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.118 FTA Categorical Exclusions

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.119 Environmental Assessments

Sections 771.119(a)(2) and (a)(3) have been revised to reflect that the conflict of interest requirements previously stated in the section were derived from the CEQ regulations. The revisions remove the relevant conflict of interest requirements for FTA and FRA. Section 771.119(a)(2) is further modified to emphasize FTA's best practice of seeking to reduce the size of documents related to a contractor's scope of work for an EA.

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.121 Findings of No Significant Impact

This section includes minor revisions in § 771.121(a), clarifying that the Administration is responsible for issuing a written FONSI. The provision for relying upon another agency's EA/FONSI in § 771.121(c) is removed and consolidated into new § 771.141(a).

§ 771.123 Draft Environmental Impact Statements

This section includes minor technical revisions. Section 771.123(b)(1) is revised to clarify that the scoping process may begin prior to the publication of a notice of intent. Section 771.123(b)(2) is revised to make clear that the requirement that lead agencies must establish a coordination plan, including a schedule, within 90 days of the publication of the notice of intent is only applicable to projects subject to 23 U.S.C. 139. Section 771.123(c) is revised to clarify that a draft EIS may be prepared by the project sponsor in accordance with 23 U.S.C. 139. Section 771.123(d) is revised to remove reference to conflict of interest requirements previously derived from the CEQ regulations.

This section includes revisions to incorporate the passenger rail planning process FRA undertakes as part of the Corridor Identification and Development Program authorized under the IIJA and codified at 49 U.S.C. 25101.

Revisions to this section also include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.124 Final Environmental Impact Statement/Record of Decision Document

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations. Terminology from NEPA has been inserted as appropriate.

§ 771.125 Final Environmental Impact Statements

Revisions to this section include the removal of terminology particular to the CEQ regulations, as well as the removal of references to the CEQ regulations.

§ 771.127 Record of Decision

This section includes one revision removing a reference to the CEQ regulations.

§ 771.129 Re-Evaluations

This section is revised to add § 771.129(d) which clarifies that for tiered EAs and EISs, the Administration must re-evaluate the analysis in the first tier if the second tier occurs 5 or more years after the first tier document, to ensure reliance on the analysis remains valid. This addition is consistent with relevant requirements in Section 108 of NEPA.

§ 771.130 Supplemental Environmental Impact Statements

This section is revised to insert terminology from NEPA as appropriate.

§ 771.131 Emergency Action Procedures

This section includes a revision removing reference to the CEQ regulations.

§ 771.137 International Actions

This section is revised at § 771.137(a) to clarify that the subsequent requirements are only applicable in instances where the Administration determines that a major Federal action is proposed.

§ 771.138 Timelines, Page Limits, and Certifications

This section is added to 23 CFR part 771 for clarity and to harmonize requirements in NEPA and 23 U.S.C. 139. Section 771.138(a)(1) outlines the timeline for completing an EIS or combined final EIS/ROD in accordance with NEPA, but also distinguishes where a project is a major project subject to 23 U.S.C. 139. Similarly, § 771.138(a)(2) outlines the timelines for completing an EA in accordance with NEPA and distinguishes where a project is a major project subject to 23 U.S.C. 139. Section 771.138(a)(3) is added to reflect language permitting the lead agency to extend the deadline for EAs and EISs in Section 107 of NEPA.

Section 771.138(b)(1) outlines the page limit requirements for an EIS in accordance with NEPA, but also distinguishes where a project is a major project subject to 23 U.S.C. 139. Section 771.138(b)(2) provides the page limit requirements for EAs in accordance with NEPA and provides a different page limit requirement where the project is a major project subject to 23 U.S.C. 139.

Section 771.138(c) is added to reflect guidance from CEQ for the lead agency(ies) to certify that an EA, draft EIS, final EIS, or combined final EIS/ROD complies with the requirements of 23 CFR part 771 and applicable statutes. This section supports implementation of statutory requirements on timelines and page limits provided in NEPA.

§ 771.141 Reliance and Adoption Efficiencies

This section is added to 23 CFR part 771 for consistency with NEPA and 23 U.S.C. 139. Section 771.141(a)(1) is inserted to reflect language at 23 U.S.C. 139(c)(5). Section 771.141(a)(2) is inserted to address situations where an environmental document is not prepared in accordance with 23 U.S.C. 139, but the Administration determines that the proposed action is substantially the same as the action covered in the existing environmental document. Section 771.141(a)(3) is added to clarify that the Administration may rely upon an existing CE determination made by another Federal agency if the Administration determines the proposed major Federal action is substantially the same as the action that another Federal agency determined is a CE. Section 771.141(a)(4) is added to reflect consistency with 23 U.S.C. 203(e)(4). Section 771.141(b) is added for consistency with the procedures for the adoption of another Federal agency's CEs as outlined in Section 109 of NEPA and 23 U.S.C. 139(q).

III. Basis For Issuing an Interim Final Rule

A. Good Cause Exists for Proceeding With an Interim Final Rule

For the reasons described in this section, FHWA, FRA, and FTA have determined that an interim final rule is the appropriate mechanism to update Part 771 to align with current law. This interim final rule satisfies the requirements of the Administrative Procedure Act (APA) under 5 U.S.C. 553(b)–(d). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. The agencies will consider these comments in deciding the next steps following this interim final rule.

Under the Administrative Procedure Act, 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), and to make the rule effective immediately for good cause, 5 U.S.C. 553(d)(3). FHWA, FRA, and FTA find that, to the extent that prior notice and solicitation of public comment would otherwise be required, the technical nature of these changes and the need to expeditiously replace the agencies' existing rules satisfies the ''good cause'' exception in 5 U.S.C. 553(b)(B). The agencies find that notice and opportunity for public comment are unnecessary for this rulemaking because the CEQ regulations upon which DOT's regulations were based were rescinded. Therefore, the agencies have no discretion but to make technical changes to reflect the removal of regulations previously issued by CEQ, the amendments to NEPA included in the section of FR Act of 2023 known as the BUILDER Act of 2023, and the amendments included in the Infrastructure Investment and Jobs Act of 2021.

Moreover, as discussed above, DOT's prior rules were promulgated as a supplement to the CEQ's NEPA regulations. 23 CFR 771.101. As such, the current version of Part 771 is supplementing a NEPA regulation that no longer exists. The agencies have continued to rely upon Part 771 to implement NEPA and 23 U.S.C. 139. This is not, however, tenable in the long term, and revisions to Part 771 are critical to provide clarity and certainty to the regulated public. Because of the need for speed and certainty, notice-and-comment, to the extent it was required at all, is unnecessary, impracticable, and contrary to the public interest.

For the same reasons stated in the present section, above, DOT finds that ''good cause'' exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This IFR will accordingly be effective immediately.

B. Notice-and-Comment Rulemaking Is Not Required for Rules of Agency Procedure

The agencies are revising their prior procedures and practices for implementing NEPA, a ''purely procedural statute'' which '''simply prescribes the necessary process' for an agency's environmental review of a project—a review that is, even in its most rigorous form, ''only one input into an agency's decision and does not itself require any particular substantive outcome.'' *Seven County,* 145 S. Ct. at 1507, 1511. ''NEPA imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project,'' and ''is relevant only to the question of whether an agency's final decision—*i.e.,* that decision to authorize, fund, or otherwise carry out a particular proposed project or activity—''was reasonably explained.'' *Id.* at 1511. As such, notice-and-comment procedures are not required because this revision falls within the Administrative Procedure Act (APA) exception for ''rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). These are procedural provisions, not ones that impose substantive environmental obligations or restrictions.

Moreover, even if (and to the extent that) the agencies' regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy under 5 U.S.C. 553(b)(A). An interpretative rule provides an interpretation of a statute,

rather than make discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority. General statements of policy provide notice of an agency's intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. Both of these types of agency action are expressly exempted from notice and comment by statute, 5 U.S.C. 553(b)(A).

Accordingly, although FHWA, FRA, and FTA are providing notice and an opportunity to comment on this interim final rule, these agencies have determined that notice and comment procedures are not required. The fact that FHWA, FRA, and FTA previously undertook notice and comment rulemaking in promulgating these regulations is immaterial. As the Supreme Court has held, where notice and comment procedures are not required, prior use of them in promulgating a rule does not bind the agency to use such procedures in making future changes. *See Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101 (2015).

C. In an Abundance of Caution and for Reasons of Good Government, the Agencies Solicit Comment

As explained above, FHWA, FRA, and FTA believe comment is not required because good cause exists to forego it. Nevertheless, the agencies have elected to solicit comment, in an abundance of caution and for reasons of good government.

The agencies encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. The agencies will consider comments received on or before the closing date for comments. The agencies will consider late-filed comments to the extent practicable. This IFR may be amended based on comments received.

IV. Regulatory Analysis and Notices

Legal Authority for This Rulemaking

This IFR 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; Public Law 109–59, 119 Stat. 1144, Sections 6002 and 6010; Public Law 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Public Law 114–94, 129 Stat. 1312, Sections 1304 and 1432.

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

This rule is a ''significant regulatory action'' under E.O. 12866, *Regulatory Planning and Review* (58 FR 51735 (Oct. 4, 1993)). Therefore, the Office of Management and Budget (OMB) has reviewed this rule under that E.O. Executive Order 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. This final rule is considered an E.O. 14192 deregulatory action. The Agencies expect minor cost savings that cannot be quantified. 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. Commenters are requested to submit any information pertaining to potential economic impacts.

This final rule modifies 23 CFR part 771. The Agencies anticipate that the changes in 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.

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

The Regulatory Flexibility Act, as amended (RFA), 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, FHWA, FRA, and FTA 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 IFR. 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 for the implementation of NEPA. The promulgation of this IFR is also categorically excluded from the requirement to prepare an impact statement by 23 CFR 771.117(c)(20) and therefore FHWA, in coordination with FRA and FTA, has determined that no environmental analysis is needed.

Executive Order 13132, Federalism

FHWA, in coordination with FRA and FTA, analyzed this IFR 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

FHWA, in coordination with FRA and FTA, analyzed this IFR 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.* FHWA, in coordination with FRA and FTA, has determined that this action will not 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 NPRM or 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, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate. This action 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 1 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 the 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, on June 26, 2025, under the authority delegated in 49 CFR 1.81, 1.85, 1.89, and 1.91.

Gloria M. Shepherd,

Executive Director, Federal Highway Administration.

Robert Andrew Feeley,

Acting Administrator, Federal Railroad Administration.

Tariq Bokhari,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Agencies revise Title 23, Code of Federal Regulations, part 771, and Title 49, Code of Federal Regulations, parts 264 and 622 to read as follows:

Title 23—Highways

■ 1. Revise part 771 to read as follows:

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

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); Public Law 112–141, 126 Stat. 405, section 1301 as applicable; and Public Law 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 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, 2025.

(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 a 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, U.S. Code or chapter 53 of title 49, U.S. Code for the action, or is or is expected to be a direct recipient of financial assistance for which FRA is responsible (*e.g.,* Subtitle V of Title 49, U.S. Code) 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 CFR part 450, 23 CFR part 450 Appendix A, or 23 U.S.C. 139(f), 168, or 169, 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 U.S. 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 EISs, 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 FONSIs, 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, DC 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, DC 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, DC 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 is limited by the following exceptions:

(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 or 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 coachers, 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 $5,000,000 (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 $30,000,000 (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 $5,000,000 (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 $30,000,000 (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, or if the significance of 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.

(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 CFR 450.212, 450.318, or 23 CFR part 450 Appendix A. 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 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 2 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, draft EIS, 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, draft EIS, 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.

(2) [Reserved]

§ 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 2 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 part 771 of Title 23 of the CFR, 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 part 774 of Title 23 of the CFR. The procedures for complying with the Surface Transportation Project Delivery Program application requirements and termination are set forth in part 773 of Title 23 of the CFR. The procedures for participating and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of Title 23 of the CFR.

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DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OLP 178]

Civil Monetary Penalties Inflation Adjustments for 2025

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for penalties assessed after [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] with respect to violations occurring after November 2, 2015.

DATES: This rule is effective July 3, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

In accordance with the requirements of section 4 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the ''Inflation Adjustment Act''), as amended, (28 U.S.C. 2461 note) Justice is required periodically to adjust for inflation the civil monetary penalties assessed or enforced by the Department by publishing a rule in the **Federal Register**.

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (''BBA''), substantially revised the prior provisions of the Inflation Adjustment Act and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

The BBA further requires agencies to adjust their civil penalties on January 15 of each year thereafter to account for inflation during the preceding year.

Pursuant to the Inflation Adjustment Act, as amended, the Department has promulgated a series of rules adjusting the civil money penalties for inflation. Readers may refer to the **SUPPLEMENTARY INFORMATION** (also known as the preamble) of the Department's prior inflation adjustment rules for additional background information regarding the