(c) Approval of acquisition and development of scenic strips on completed Interstate should be conditioned on a showing that the acquisition of scenic strips was considered under the Highway Beautification Program for that particular section of Interstate.

§ 752.10 Abandoned vehicles.

(a) Abandoned motor vehicles may be removed from the right-of-way and from private lands adjacent to Federal-aid highways for the restoration, preservation, or enhancement of scenic beauty as seen from the traveled way of the highway as a landscape or roadside development project.

(b) The State shall obtain permission or sufficient legal authority to go on private land to carry out this program. Where feasible, an agreement should be made with the owner that he will not in the future place junk, or allow junk to be placed, on his land so as to create an eyesore to the traveling public. The permission or authority and the agreement may be informal.

(c) The collection of abandoned motor vehicles from within the right-of-way must be a development project and not a maintenance operation. Once a State completes a development project for the removal of abandoned motor vehicles from within the highway right-of-way, it is obligated to continue the removal of future abandoned motor vehicles from within the development project limits without further participation.

§ 752.11 Federal participation.

(a) Federal-aid highway funds, but generally excluding Interstate construction funds, are available for landscape development; for the acquisition and development of safety rest areas, scenic overlooks, and scenic lands; for the development of information centers and systems; and for the removal of abandoned motor vehicles.

(b) Federal-aid highway funds may participate in any landscaping project undertaken pursuant to paragraph (a) of this section provided that at least one-quarter of one percent of funds expended for such landscaping project is used to plant native wildflower seeds or seedlings or both. The Administrator may, upon the request of a State highway agency, grant a waiver to this requirement provided the State certifies that:

(1) Native wildflowers or seedlings cannot be grown satisfactorily; or

(2) There is a scarcity of available planting areas; or

(3) The available planting areas will be used for agricultural purposes.

(c) Subject to the requirement of paragraph (b) of this section, Federal-aid highway funds may participate in plant establishment periods in or associated with landscape development.

(d) Notwithstanding the provisions of paragraph (b) of this section, Federal-aid highway funds may participate in the planting of flowering materials, including native wildflowers, donated by garden clubs and other organizations or individuals.

(e) The value of donated plant materials shall not count toward the one-quarter of one percent minimum expenditure required by paragraph (b) of this section.

(f) Federal-aid funds may not be used for assemblage, printing, or distribution of information materials; for temporary or portable information facilities; or for installation, operation, or maintenance of vending machines.

[52 FR 34638, Sept. 14, 1987]

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, 315, 325, 326, and 327; 49 U.S.C. 303; 49 U.S.C. 24201; 40 CFR parts 1500–1508; 49 CFR 1.81, 1.85, 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 Public Law 114–94, 129 Stat. 1312, Sections 1304 and 1432.

SOURCE: 83 FR 54493, Oct. 29, 2018, unless otherwise noted.

§ 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), and supplements the NEPA regulations of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulations). 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, 325, 326, and 327; 49 U.S.C. 303; 49 U.S.C. 24201; 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 the environmental review document required by this part.[1]

(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 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, 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

[1] FHWA, FRA, and FTA have supplementary guidance on environmental documents and procedures for their programs available on the internet at *http://www.fhwa.dot.gov*, *http://www.fra.dot.gov*, and *http://www.fta.dot.gov*, or in hardcopy by request.

program or procedural activity required by or developed pursuant to this part.

§ 771.107 Definitions.

The definitions contained in the CEQ regulations 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. The FHWA, FRA, or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the FHWA, FRA, or FTA, or a State when the State is functioning as the FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. A reference herein to the FHWA, FRA, or FTA means the State when the State is functioning as the FHWA, FRA, or FTA respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 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.

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

Lead agencies. The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulations.

Participating agency. A Federal, State, local, or federally recognized Indian Tribal governmental unit that may have 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).

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this part and the CEQ regulations apply to actions where the Administration exercises sufficient control to condition the permit, project, or other approvals. 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) This part does not apply to or alter approvals by the Administration made prior to November 28, 2018.

(3) For FHWA and FTA, environmental documents accepted or prepared after November 28, 2018 must be developed in accordance with this part.

(4) FRA will apply this part to actions initiated after November 28, 2018.

(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. The FHWA will ensure that this is accomplished as a part of its stewardship and oversight responsibilities. The 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 that 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 lead agencies are responsible for managing the environmental review process and the preparation of the appropriate environmental review 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 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 the CEQ regulations. 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 the CEQ regulations 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 section 102(2)(D) of NEPA, may prepare the EIS and other environmental review documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) Subject to paragraph (e) of this section, the role of a project sponsor that is a private institution or firm is limited to providing technical studies and commenting on environmental review documents.

(7) 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.

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

(e) When FRA is the lead Federal agency, the project sponsor is a private entity, and there is no applicant acting as a joint-lead agency, FRA and the project sponsor may agree to use a qualified third-party contractor to prepare an EIS. Under this arrangement, a project sponsor retains a contractor to assist FRA in conducting the environmental review. FRA selects, oversees, and directs the preparation of the EIS and retains ultimate control over the contractor's work. To enter into a third-party contract, FRA, the project sponsor, and the contractor will enter into a memorandum of understanding (MOU) that outlines at a minimum the conditions and procedures to be followed in carrying out the MOU and the responsibilities of the parties to the MOU. FRA may require use of a third-party contractor for preparation of an EA at its discretion.

§ 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 review 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 40 CFR parts 1500 through 1508, 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.

(3) Applicants intending to apply for funds or request Administration action should notify the Administration at the time that 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 probable 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 that may have 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.[2] 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

[2] The Administration has guidance on 23 U.S.C. 139 available at *http://www.fhwa.dot.gov* or in hard copy upon request.

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 of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS 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 project 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 and CEQ regulations.

(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 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 that 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 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 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) pursuant to 40 CFR 1506.6. 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 that the proposed action requires an EIS. The notice of intent will establish a 30-day period for comments on the purpose and need, alternatives, and the scope of the NEPA analysis.

(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 findings of no significant impact (FONSIs), combined final environmental impact statements (final EISs)/records of decision (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.fhwa.dot.gov*. Information on the FRA environmental process may be obtained from: FRA Chief, Environmental and Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, Washington, DC 20590, or *www.fra.dot.gov*. Information on the FTA environmental process may be obtained from: FTA Director, Office of Environmental Programs, Federal Transit Administration, Washington, DC 20590 or *www.fta.dot.gov*.

§ 771.113 Timing of Administration activities.

(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.

(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. A programmatic approach may be used for any class of action.

(a) *EIS (Class I).* Actions that significantly affect the environment require an EIS (40 CFR 1508.27). 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 (Class II).* Actions that do not individually or cumulatively 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 pursuant to § 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 (Class III).* Actions for which the Administration has not clearly established the significance of the environmental impact. 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 meet the definition contained in 40 CFR 1508.4, and, based on FRA'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, either individually or cumulatively, 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 the CEQ regulation (40 CFR 1508.4) and 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 that 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 that is 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 that 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 that 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 that 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 meet the definition contained in 40 CFR 1508.4, and, based on FHWA'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, either individually or cumulatively, 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 the CEQ regulations (40 CFR 1508.4) and 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 that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish 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 that is 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), that is 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) That receive 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.fta.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) that would not require 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 the CEQ regulations (40 CFR 1508.4) and 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 that 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 that would result in any residential or nonresidential 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 that facilitate 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 that meet the criteria for a CE under 40 CFR 1508.4, 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 meet the definition contained in 40 CFR 1508.4, and, 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, either individually or cumulatively, 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 the CEQ regulation (40 CFR 1508.4) and 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 standalone 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 revegetation.

(4) Planning and administrative activities that do not involve or lead 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 that is 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 that make use of the acquired or transferred property.

(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result 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 that occupy substantially the same geographic footprint and do not result 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), that is 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, 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.

(13) Federally funded projects:

(i) That receive 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.fta.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.

(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 the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FTA approval. 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) 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 that development of the land would preclude future transportation use and that 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, has been 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 have been 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 is not a CE and does not clearly require the preparation of an EIS, or where the Administration concludes an EA would assist in determining the need for an EIS.

(2) When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor

must execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. 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).

(3) When FRA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor must execute an FRA conflict of interest disclosure statement. In the absence of an applicant, FRA may require private project sponsors to provide a third-party contractor to prepare the EA as described in 771.109(e).

(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 and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; 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 that announces 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, that 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, that 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 (See 40 CFR 1501.4(e)(2)). 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 that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(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), it will issue a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(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.

(c) If another Federal agency has issued a FONSI on an action that includes an element proposed for Administration funding or approval, the Administration will evaluate the other agency's EA/FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's EA/FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

§ 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 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 (40 CFR 1508.22) 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) After publication of 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, 23 CFR part 450 Appendix A, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500–1508. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. 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) 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). The draft EIS must evaluate all reasonable 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 may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c). When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor must execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. 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). When FRA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor must execute an FRA conflict of interest disclosure statement.

(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 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 that is being considered in the environmental review process.[3]

(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 a 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 that is 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 in accordance with 40 CFR 1506.9. 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;

[3] FHWA Order 6640.1A clarifies the Federal Highway Administration's (FHWA) policy regarding the permissible project related activities that may be advanced prior to the conclusion of the NEPA process.

(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 placed in a newspaper 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 (40 CFR 1506.10) 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 agencies, 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 that are 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 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 as specified in 40 CFR 1505.2, 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) and 40 CFR 1503.4(c), 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 (40 CFR 1506.10) 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 that are 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 that 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 that:

(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 that can be 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 that is 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 in accordance with 40 CFR 1502.19. 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) and 40 CFR 1503.4(c).

§ 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 as specified in 40 CFR 1505.2, 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. 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 that was not identified as the preferred alternative but was 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.

§ 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 that:

(1) Changes to the proposed action would result in significant environmental impacts that were 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 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 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 that 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 (40 CFR 1506.11) 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. The 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) 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.

§ 771.139 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 that 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.[5] 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.

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

AUTHORITY: 23 U.S.C. 109(h) and (i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b).

SOURCE: 75 FR 39834, July 13, 2010, unless otherwise noted.

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public's health, welfare and livability, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

§ 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(1). All highway projects which are developed in conformance with this regulation shall be deemed to be in accordance with the FHWA noise standards.

§ 772.5 Definitions.

Benefited receptor. The recipient of an abatement measure that receives a noise reduction at or above the minimum threshold of 5 dB(A), but not to exceed the highway agency's reasonableness design goal.

Common Noise Environment. A group of receptors within the same Activity Category in Table 1 that are exposed to similar noise sources and levels; traffic volumes, traffic mix, and speed; and topographic features. Generally, common noise environments occur between two secondary noise sources, such as interchanges, intersections, crossroads.

Date of public knowledge. The date of approval of the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision (ROD), as defined in 23 CFR part 771.

Design year. The future year used to estimate the probable traffic volume for which a highway is designed.

Existing noise levels. The worst noise hour resulting from the combination of natural and mechanical sources and human activity usually present in a particular area.

Feasibility. The combination of acoustical and engineering factors considered in the evaluation of a noise abatement measure.

Impacted Receptor. The recipient that has a traffic noise impact.

L10. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration, with L10(h) being the hourly value of L10.

Leq. The equivalent steady-state sound level which in a stated period of

[5] The FHWA published a detailed discussion of the Department's interpretation of 23 U.S.C. 139(l), in appendix E to the 'SAFETEA-LU Environmental Review Process: Final Guidance,' dated November 15, 2006. The implementation procedures in appendix E apply only to FHWA projects. The setion 6002 guidance, including appendix E, is available at *http://www.fhwa.dot.gov/*, or in hard copy by request.