attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006) are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), and (i) of this AD.

(m) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 12, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–29617 Filed 11–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771 and 774

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2015–0011]

FHWA RIN 2125–AF60
FTA RIN 2132–AB26

Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM provides interested parties with the opportunity to comment on proposed revisions to the FHWA and FTA joint regulations that implement the National Environmental Policy Act (NEPA) and Section 4(f) of the Department of Transportation Act. The revisions are prompted by the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires rulemaking to address programmatic approaches. This NPRM proposes to revise the FHWA/FTA Environmental Impact and Related Procedures and Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites regulations due to MAP–21 changes to the environmental review process that FHWA and FTA have not previously captured in other rulemakings, such as the use of programmatic agreements and the use of single final environmental impact statement/record of decision documents. In addition, FHWA and FTA propose changes to the regulatory text to improve readability and to reflect current practice, consistent with an Executive order to improve regulations and regulatory review. The FHWA and FTA seek comments on the proposals contained in this notice.

DATES: Comments must be received on or before January 19, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

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

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

Instructions: You must include the agency name and docket number or the Regulatory Identifier Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Neel Vanikar, Office of Project Development and Environmental Review, (202) 366–2068, or Diane Mobley, Office of Chief Counsel, (202) 366–1366. For FTA: Megan Blum, Office of Planning and Environment, (202) 366–0463, or Helen Serassio, Office of Chief Counsel, (202) 366–1974. The FHWA and FTA are both located at 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141, 126 Stat. 405), which contains new requirements that FHWA and FTA, hereafter referred to as the ''Agencies,'' must meet in complying with NEPA (42 U.S.C. 4321 *et seq.*), as well as a requirement to initiate a rulemaking to allow for the use of programmatic approaches. 23 U.S.C. 139(b)(3)(A). Through this NPRM, the Agencies propose to revise their regulations that implement NEPA at 23 CFR part 771—Environmental Impact and Related Procedures, and 23 U.S.C. 138 and 49 U.S.C. 303 (hereafter referred to as Section 4(f) [1]) at 23 CFR part 774—Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. The proposed revisions would reflect MAP–21 requirements and better reflect current Agency practice, as well as improve readability consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review'' (2011).

General Discussion of the Proposals

The following bullets are sections of MAP–21 that affect 23 CFR parts 771 and 774; the list does not include the sections of MAP–21 that have been the subject of other rulemakings:

- Section 1119(c)(2) revised the Section 4(f) exception for park road and parkway projects to apply to Federal lands transportation facilities, which affects the Section 4(f) exception in 774.13(e);
- Section 1122 replaced the former ''transportation enhancement projects program'' with a new ''transportation alternatives projects program,'' which affects the Section 4(f) exception in 774.13(g);
- Section 1302 amended 23 U.S.C. 108 to address advance acquisition of real property interests, which affects the

[1] Section 4(f) of the Department of Transportation Act of 1966 was repealed in 1983 when it was codified without substantive change at 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138. This regulation continues to refer to Section 4(f) as such because the policies Section 4(f) engendered are widely referred to as ''Section 4(f)'' matters.

timing of administrative activities in section 771.113;

- Section 1305 amended 23 U.S.C. 139(b)–(e) concerning programmatic approaches for environmental reviews; the Secretary's designation of lead Federal agency for projects with more than one modal administration; participating agency roles and responsibilities; and project initiation information, which affects early coordination, public involvement, and project development as described in section 771.111;

- Section 1315 expanded the emergency actions covered by categorical exclusion (CE), which were addressed in a previous rulemaking, but also affected information in section 771.131, emergency action procedures, which are addressed in this rule;

- Section 1319 provided for the preparation of a final environmental impact statement (EIS) using errata sheets in certain circumstances and requiring the combination of final EISs with records of decision (ROD) to the maximum extent practicable if certain circumstances are met. This requirement affects definitions in § 771.107 as well as final EISs and RODs in §§ 771.125 and 771.127, respectively;

- Section 1320(d) provided a definition of ''early coordination activities;''

- Section 20003 amended 49 U.S.C. 5301 and struck minimization of environmental impacts from the statement of policies and purposes so the reference to section 5301 has been removed from § 771.101;

- Section 20016 amended 49 U.S.C. 5323 by striking requirements for public review and comment and public hearings for capital projects that will not substantially affect a community or its public transportation service, which affects references in §§ 771.101 and 771.125; and

- Section 20017 amended 49 U.S.C. 5324 by striking requirements for findings of no significant impacts (FONSI) and RODs to have a written statement that no adverse environmental effect is likely from the project or no reasonable and prudent alternative exists and all attempts have been made to minimize effects, which affects a reference in § 771.125.

In addition to the proposed MAP–21-related changes, this proposed rule includes other proposed changes to provide clarification and guidance. All proposed changes are discussed in the next section.

Section-by-Section Discussion of the Proposals

NEPA Regulation Changes (Part 771)

Section 771.101 Purpose

The Agencies propose to remove outdated references from and include new references in § 771.101 in accordance with MAP–21. The Agencies propose to revise the last sentence in section 101 to include MAP–21 references and updated U.S. Code references: ''This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, 327; 49 U.S.C. 303, and 5323(q); and Pub. L. 112–141, 126 Stat. 405, sections 1301, and 1319.''

Section 771.103 [Reserved]

The Agencies propose no changes to section 771.103 in this NPRM.

Section 771.105 Policy

The Agencies propose to remove references to specific guidance documents in the footnote to paragraph (a). The revised footnote would continue to refer to the Agencies' Web sites for the most recent guidance documents. These changes will allow the regulation to stay current as the Agencies release new guidance documents.

The Agencies propose to add a new paragraph (b) to support development of programmatic approaches consistent with MAP–21 Section 1305(a) (23 U.S.C. 139(b)): it is the Administration's policy that ''[p]rogrammatic approaches be developed for compliance with environmental requirements, coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.'' Addressing programmatic approaches in this section and under a separate paragraph refects the Agencies' intent to encourage their broader use.

With the addition of proposed paragraph (b), current paragraphs (b), (c), (d), (e), and (f) would be re-lettered as paragraphs (c), (d), (e), (f), and (g), respectively. The Agencies propose no change in wording to any of these paragraphs.

Section 771.107 Definitions

The Agencies propose to modify the first sentence of the definition of ''Administration action'' from passive voice to active voice without losing the original intent of the definition: ''FHWA or FTA approval of the applicant's request for Federal funds for construction.'' The rest of the definition would not change.

The Agencies propose to modify the definition of ''applicant'' by adding the word ''Federal'' to include Federal governmental units as potential applicants. This change would provide for instances when the Federal Lands program is an FHWA applicant.

The Agencies propose to add a definition for ''programmatic approaches'' to § 771.107 consistent with MAP–21 Section 1305(a) (23 U.S.C. 139(b)). The proposed definition is ''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, while maintaining appropriate consideration for the environment'' and is taken in large part from 23 U.S.C. 139(b)(3)(A). The Agencies do not propose adding or deleting any other definitions.

The Agencies propose to modify the definition of ''Project sponsor'' by adding ''Federal funding'' to the definition and clarifying that the project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant. This change would slightly broaden the definition of project sponsor and make it consistent with other parts of the regulation, as well as clarify that the project sponsor and the applicant are not always one and the same entity. The proposed revised definition is ''[t]he 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. The project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant.''

The Agencies propose to modify the definition of ''Section 4(f)'' to include a reference to the current implementing regulations for Section 4(f) (23 CFR part 774), and to delete footnote 2, which is discussed in 23 CFR part 774.

Structurally, the Agencies propose reorganizing the definitions within this section by organizing them in alphabetical order and removing the lettering of paragraphs. This change is consistent with other regulations (*e.g.,* 23 CFR part 774), and will aid reader comprehension, as definitions are typically in alphabetical order. In addition, this change would reduce future associated formatting changes to the regulation should definitions be added or removed.

Section 771.109 Applicability and Responsibilities

The Agencies propose several changes to § 771.109 that provide greater clarity on Agency, project sponsor, and applicant responsibilities, as well as improve the organizational structure of

the section. For example, the Agencies propose to reorganize paragraph (b) by renumbering it as paragraph (b)(1) and to modify the language of proposed paragraph (b)(1) by adding the phrase ''unless the Administration approves of their deletion or modification in writing'' to the end of the first sentence. This text is not new; the Agencies propose to move this concept from the last clause in paragraph (d) of this section and revise the language to be in active voice, clarifying that the Administration performs the action (*i.e.,* the Agencies will approve of any deletions or modifications of mitigation measures previously committed to in the environmental documents prepared pursuant to this regulation). In addition to that change, the Agencies propose to modify the language of proposed paragraph (b)(1) by clarifying the responsibilities of FHWA in the second sentence. The current phrase, ''program management,'' would be replaced with ''stewardship and oversight,'' and the phrase, ''that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections,'' would be deleted. The Agencies propose this change to reflect the customary practice and responsibilities of FHWA. In summary, paragraph (b)(1) would read, ''The applicant, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation unless the Administration approves of their deletion or modification in writing. The FHWA will assure that this is accomplished as a part of its stewardship and oversight responsibilities. The FTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.''

The Agencies propose creating a new paragraph (b)(2) that reaffirms FHWA's commitment to ensuring that the State highway agency with which it partners fulfills all environmental commitments as listed in approved environmental review documents. The language found in proposed paragraph (b)(2) was previously found in section 771.109(d), though the last clause of paragraph (d) was added to paragraph (b)(1) as explained above. The Agencies moved the language to its new position in paragraph (b)(2) in order to improve the logical sequence of the section; paragraphs (b)(1) and (b)(2) both address mitigation measures.

The Agencies propose to add a new paragraph (c)(7) that clarifies the responsibility of a participating agency: ''[a] participating agency is responsible for providing input, as appropriate, during the times specified in the coordination plan under 23 U.S.C. 139(g), and providing comments and concurrence on a schedule if included within the coordination plan.'' This change is proposed in accordance with MAP–21 Section 1305(e) (23 U.S.C. 139(g)(1)(B)(i)).

As noted in the discussion above, the Agencies propose to delete paragraph (d), as these responsibilities are now articulated through revisions to paragraph (b)(1) and in proposed new paragraph (b)(2).

Section 771.111 Early Coordination, Public Involvement, and Project Development

Upon review of § 771.111, the Agencies found the beginning of the section to be out of logical order. The Agencies propose to reorganize paragraph (a) into three subparagraphs, keeping much of the same information: Paragraph (a)(1) addresses early coordination activities; paragraph (a)(2) covers the transportation planning process in relation to the environmental review process; and paragraph (a)(3) remains focused on class of action identification. The proposed new sentence in paragraph (a)(1) would discuss the benefits of early coordination activities: ''These [early coordination] activities contribute to reducing or eliminating delay, duplicative processes, and conflict by incorporating planning outcomes that have been reviewed by agencies and Indian tribal partners in project development.'' The Agencies developed this language after considering the language in section 1320(a)(1) of MAP–21, which essentially contains the goals of early coordination. Early coordination activities include: (1) Technical assistance on identifying potential impacts and mitigation issues; (2) the potential appropriateness of using planning products and decisions in later environmental reviews; and (3) the identification and elimination from detailed study in the environmental review process of the issues that are not significant or that have been covered by prior environmental reviews (for the list of activities, *see* MAP–21 Section 1320(d)). The Agencies propose deleting the second sentence currently in paragraph (a)(1) (''This involves the exchange of information from the inception of a proposal for action to preparation of the environmental review documents.'') because it is duplicative of the concepts addressed in paragraph (a)(2) (now proposed paragraph (a)(2)(i)).

The Agencies propose modifying current paragraph (a)(2) by renumbering it as paragraph (a)(2)(i) and updating the citations to read ''40 CFR parts 1500 through 1508, 23 CFR part 450, or 23 U.S.C. 168'' in order to be more encompassing of the referenced statute and regulations. In addition, a new paragraph (a)(2)(ii) would address the inclusion of mitigation actions in the planning process: ''The planning process described in paragraph (a)(2)(i) 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.'' Programmatic mitigation plans are the subject of a separate on-going MAP–21 rulemaking action (*see* 79 FR 31784, June 2, 2014); in the event the Agencies publish a final rule, the Agencies would revise the proposed paragraph (a)(2)(ii) text to include a reference to the applicable regulation. The Agencies propose including the reference to programmatic mitigation plans to further encourage the link between the planning and environmental processes.

Finally, paragraph (a)(3) would include the class of action identification language currently found in the last two sentences of paragraph (a)(1): ''Applicants intending to apply for funds 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 23 CFR 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.'' Generally, this is a non-substantive change in that most of the information found in proposed new paragraph (a)(3) comes from the current paragraph (a)(1). But the Agencies clarified that the Administration may advise applicants of the need for specific studies and findings that would normally be developed during the environmental review process by replacing ''concurrently with'' with ''during,'' and ''documents'' with ''process.'' The Agencies want to highlight through these changes that the focus is on the environmental review process, not documents, and the studies and findings performed are completed as part of the process.

In paragraph (c), the Agencies propose to replace the word ''project'' with

''action'' to be consistent within 23 CFR part 771 and to more accurately reflect the work of the Agencies, which is not solely devoted to projects but to actions taken in advancement of projects. ''Action'' is defined in section 771.107.

In paragraph (d), the Agencies propose to delete the outdated footnote (footnote 4): ''The FHWA and FTA have developed guidance on 23 U.S.C. Section 139 titled ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006, and available at *http://www.fhwa.dot.gov* or in hard copy upon request.'' The Agencies are updating the guidance regarding section 139 to reflect MAP–21 changes and may update the guidance in response to future transportation bills. In order to maximize the flexibility of these regulations, the Agencies propose deleting the specific reference to the 2006 document.

In paragraph (e), the Agencies propose to revise the second sentence to read: ''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.'' This replaces the provision that the ''Administration will prepare a written evaluation of any significant unresolved issues.'' The change reflects current practice and is consistent with the responsibilities of the Agencies. The Agencies also replaced the references to environmental assessments and draft EIS documents with the broader term ''environmental review process'' because the Agencies may provide direction on any class of action. Although a CE will not have significant unresolved issues, the Agencies could provide early input on an action with significant unresolved issues that allow for the use of a CE.

Paragraph (f) would notably be modified to include CEs. The Agencies propose replacing ''In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:'' with ''Any action evaluated through a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) shall:''. This change would clarify that actions evaluated in a CE, EA, or EIS must comply with NEPA requirements related to connected actions and segmentation, per 40 CFR 1508.25. The Agencies recognize that projects cannot be segmented improperly, regardless of the NEPA class of action; any action evaluated must have independent utility, connect logical termini when applicable (*i.e.,* linear facilities), and not restrict consideration of alternatives for other reasonably foreseeable transportation improvements. The Agencies have presented this guidance in recent rulemakings (*e.g.,* 79 FR 60100, October 6, 2014 and 79 FR 2107, January 13, 2014). For consistency, the term ''FONSI'' would be removed from the list and replaced with ''EA.''

The Agencies propose to delete the outdated footnote in paragraph (h)(2)(viii) regarding Section 4(f) guidance (''The FHWA and FTA have developed guidance on Section 4(f) *de minimis* impact findings titled ''Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources,'' December 13, 2005, which is available at *http://www.fhwa.dot.gov* or in hard copy upon request.'') as *de minimis* guidance is now included in the Section 4(f) Policy Paper, available at *http://www.environment.fhwa.dot.gov/4f/4fpolicy.pdf.*

The Agencies propose a number of non-substantive modifications to paragraph (i) in subparagraphs (1), (3), and (4). Subparagraph (1) would be modified to improve readability and improve understanding. The term ''projects'' would be replaced with ''actions'' to better reflect the work of the Agencies in two places, and the first sentence would be changed to reflect that scoping is about the environmental review ''process,'' not simply about ''documents.'' In addition, the Agencies propose to remove the last sentence, ''For other projects that substantially affect the community or its public transportation service, an adequate opportunity for public review and comment must be provided,'' because the support for the statement (*i.e.,* 49 U.S.C. 5323) was repealed by MAP–21 Section 20016, and the opportunity for the public to review EA and EIS documents is provided for in sections 771.119 (EA) and 771.123 (draft EIS). In subparagraph (3), the Agencies would modify the first sentence to provide examples of ''NEPA documents'' by adding ''(*e.g.,* EAs and EISs),'' and would add ''environmental studies (*e.g.,* technical reports)'' and ''meeting'' minutes to the list of potential information and material that the Agencies encourage applicants for capital assistance in the FTA program to post and distribute to enhance public involvement. Finally, in subparagraph (4), the Agencies would clarify and update the list of materials FTA encourages applicants in the FTA program to post on a project Web site until the project is constructed and open for operation. This list would include FONSIs, combined final EIS/RODs, and RODs. This sentence would now read: ''Are encouraged to post all findings of no significant impact (FONSI), combined final environmental impact statement (EIS)/records of decision (ROD), and RODs on a project Web site until the project is constructed and open for operation.''

Paragraph (j) would be modified to include updated contact information for FTA, and the Web site address for each Agency. These changes are meant simply to provide complete contact information for both Agencies.

Section 771.113 Timing of Administration Activities

The Agencies propose modest changes to each of the four paragraphs in § 771.113. In paragraph (a), the Agencies propose revising the paragraph by replacing the phrase ''(if not a lead agency)'' with ''and project sponsor as appropriate,'' in the first sentence. This change recognizes that the applicant and the project sponsor are not always the same entity and may not be identified as ''lead agencies,'' but they may work with the lead agencies to ''perform the work necessary to complete the environmental review process.'' As noted in the previous sentence, the Agencies would also revise the sentence by replacing the text, ''a finding of no significant impact (FONSI) or a record of decision (ROD) and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process'' with the text, ''the environmental review process.'' This modification changes the focus from the completion of a FONSI or a ROD to the completion of the environmental review process, which is a broader term and more accurately reflects the Agencies' goals. In addition, the Agencies propose revising the second sentence to more clearly provide examples of work that takes place during the review process. This sentence would be changed from, ''This work includes environmental studies, related engineering studies, agency coordination and public involvement'' to ''This work includes drafting environmental documents and completing studies, related engineering studies, agency coordination, and public involvement.'' Finally, the Agencies propose reorganizing the last sentence to bring the exception clause forward to lend greater reader comprehension; there is no content change to the last sentence.

In subparagraph (a)(1), the Agencies propose to update the document types that indicate the environmental review process is complete. In (a)(1)(i), the

Agencies would simply use ''CE.'' In paragraph (a)(1)(ii), the Agencies would reword the sentence to make clear that the Administration issues a FONSI by replacing passive language with active language and by adding the text ''The Administration has issued a'' before ''FONSI'' and deleting ''has been approved.'' In paragraph (a)(1)(iii), the Agencies would replace the text, ''A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed'' with ''The Administration has issued a combined final EIS/ROD or a final EIS and ROD.'' This change would be in compliance with MAP–21 Section 1319.

Paragraph (b) would be reworded to clarify that it applies to FHWA alone. The phrase ''For activities proposed for FHWA action'' would be added to the beginning of the sentence.

In paragraph (d), the Agencies propose several modifications pursuant to MAP–21, including MAP–21 Section 1302 (and as implemented in 23 CFR part 710, subpart E, Property Acquisition Alternatives), MAP–21 Section 20008, and MAP–21 Section 20016. Generally, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction cannot proceed until the proposed action has been classified as a CE or a decision document has been issued. Exceptions to that prohibition, however, are found in paragraph (d). The Agencies propose modifying the text for subparagraph (d)(1) to read, ''Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA.'' This exception refers the reader to FHWA property acquisition regulations for the acquisition compliance requirements. The FTA's existing exception in subparagraph (d)(1) (*i.e.,* the second sentence) would not change. To summarize, this subparagraph states that acquisition of land for hardship or protective purposes may occur prior to the completion of NEPA for Agency actions. Subparagraph (d)(2) pertains to FTA only; the text, revised as proposed, would no longer refer to FTA's ''acquisition of right-of-way'' CE, specifically, but would refer to the broader corridor preservation statute and guidance, pursuant to MAP–21 Section 20016. The proposed text for subparagraph (d)(2) would read: ''The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.'' The Agencies propose deleting subparagraphs (d)(3) and (d)(4) because the proposed language in subparagraph (d)(1) broadly encompasses 23 CFR part 710; therefore, the current references to 23 CFR 710.503 and 23 CFR 710.501 would no longer be necessary. Finally, subparagraph (d)(5) would be renumbered as subparagraph (d)(3), and the statutory reference at the end of the sentence would be updated to reflect changes to 49 U.S.C. 5309 by MAP–21 Section 20008: ''A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).'' These are non-substantive changes.

Section 771.115 Classes of Actions

The Agencies propose several minor modifications to § 771.115 to clarify this section. In the introductory paragraph, the Agencies would add the sentence ''A programmatic approach may be used for any class of action'' to be consistent with MAP–21 Section 1305 (23 U.SC. 139(b)).

In paragraph (a), the Agencies would move the acronym ''EIS'' to the beginning of the sentence and move ''Class 1'' to parentheses to aid in readability.

Paragraph (a) states that ''actions that significantly affect the environment require an EIS'' and provides examples of actions that normally require an EIS in the subsequent subparagraphs. In subparagraph (a)(3), FTA proposes to modify the current example, ''Construction or extension of a fixed transit facility (*e.g.,* rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way,'' by inserting the term ''primarily'' before ''within an existing transportation right-of-way.'' This addition would be in response to FTA's recent revisions to its list of CEs since 2012, including the ''assembly or construction of facilities'' CE (23 CFR 771.118(c)(9)). The FTA has categorically excluded some actions from requiring an EIS or EA when they take place primarily or entirely within existing transportation right-of-way; therefore, FTA proposes adding ''primarily'' to subparagraph (a)(3) in order to distinguish clearly that actions *not* primarily within existing transportation right-of-way will normally require an EIS.

In subparagraph (a)(4), the Agencies would add ''For FHWA actions'' to the beginning of the sentence, but no other modifications are proposed to the subparagraph: ''For FHWA actions, new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.'' The Agencies propose this change because the Agencies propose adding a new subparagraph (a)(5) to reflect FTA actions. The subparagraph (a)(5) language would be similar to subparagraph (a)(4) language, but it would not refer to high occupancy vehicles because they are not typically part of the FTA program. In addition, the subparagraph would include the ''not located *primarily* within an existing transportation right-of-way'' condition (*emphasis added*) to reflect FTA's program, as discussed above for subparagraph (a)(3). Proposed subparagraph (a)(5) would read: ''For FTA actions, new construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.''

As the Agencies propose for paragraph (a), the Agencies propose moving the acronym for CEs to the beginning of the sentence in paragraph (b), and moving the acronym for EAs to the beginning of the sentence in paragraph (c) to aid in readability, followed by their class in parentheses. Finally, the Agencies propose to slightly reword the first sentence in paragraph (c) to clarify that it is the Administration's responsibility to determine the significance of the environmental impact, and where significance is not clearly established, then an EA would be the appropriate class of action. The first sentence in paragraph (c) would read, ''Actions in which the Administration has not clearly established the significance of the environmental impact.''

Section 771.117 FHWA Categorical Exclusions

The Agencies propose no changes to § 771.117 in this NPRM.

Section 771.118 FTA Categorical Exclusions

The Agencies propose no changes to § 771.118 in this NPRM.

Section 771.119 Environmental Assessments

The Agencies propose modifications to paragraphs (a) through (f) and paragraph (h) in § 771.119. In paragraph (a), the Agencies would revise the first sentence from passive voice to active voice. It would instead read as, ''The applicant shall prepare an EA. . .'' This would make it clear that it is the applicant's responsibility to prepare an EA. In addition, the Agencies would reorganize the paragraph as subparagraph (a)(i). This change would aid in readability. It would also support a second proposed modification to paragraph (a): New subparagraph (a)(ii).

The Agencies propose adding a new subparagraph (a)(ii) that would apply to FTA actions alone. Subparagraph (a)(ii)

would read, ''For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor shall 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 will not be finalized until the early coordination activities or scoping process found in paragraph (b) is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).'' This new subparagraph would address two issues. First, it would specify that if the applicant selects a contractor to prepare the EA, the contractor must execute an FTA conflict of interest disclosure statement (statement) attesting to the lack of a conflict of interest in the NEPA process, pursuant to 40 CFR 1506.5. The Agencies propose that the statement must be maintained in the FTA Regional Office and with the applicant. This addition to our regulation is not a major change from how FTA and its applicants currently prepare EAs, but it updates our regulation to reflect current practice. Second, proposed subparagraph (a)(ii) would require that the contractor's scope of work for the preparation of the EA not be finalized until the early coordination activities or scoping process found in paragraph (b) has been completed. Under this proposal, the contractor's scope of work would not be finalized until FTA and the applicant have approved the scope, in terms of NEPA, of the EA analysis and documentation. This addition would emphasize the importance that FTA places on early coordination activities and scoping for its NEPA documents, with the goal being more refined analyses that focus on significant issues rather than all potential impacts. Although scoping as a formal process is associated with EISs, a less formal type of scoping may be conducted for projects evaluated with EAs. Regardless of the form early coordination takes, FTA believes this addition will lead to better decisionmaking and documentation. Note, the language proposed for subparagraph (a)(ii) is similar to language proposed in a previous NPRM (*see* 77 FR 15310, March 15, 2012), but the language was never finalized. The FTA considered the comments received during the previous NPRM comment period when developing the language proposed in this rule.

In paragraph (b), the Agencies would revise the last two sentences regarding early coordination activities to read, ''The applicant shall accomplish this through early coordination activities or through a scoping process. The applicant shall summarize the public involvement process and include the results of agency coordination in the EA.'' The Agencies changed the reference from ''an early coordination process (*i.e.,* procedures under § 771.111)'' to ''early coordination activities'' for consistency with other early coordination references proposed in this rule and MAP–21 Section 1320. The Agencies modified the last sentence by (1) revising language from passive voice to active voice and (2) identifying the applicant as the entity responsible for summarizing the public involvement process and including the results of agency coordination in the EA, which reflects current practice.

In paragraph (c), the Agencies would revise the sentence to clearly state in a reader-friendly manner that the Administration must approve the EA before it is made available to the public. Paragraph (c) would read: ''The Administration must approve the EA before it is made available to the public as an Administration document.''

In paragraph (d), the Agencies would revise the text from passive voice to active voice, clearly identify the responsibilities of the applicant, and make this paragraph easier to read and understand overall. Paragraph (d) would read: ''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 in accordance with paragraphs (e) and (f) of this section. The applicant shall send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, State, and local government. The applicant shall also send notice to the State intergovernmental review contacts established under Executive Order 12372.'' Other than clearly identifying the applicant's role in this paragraph, there are no changes regarding content.

In paragraph (e), the Agencies would revise the first sentence by changing the text from ''as part of the application for Federal funds'' to ''as part of the environmental review process for an action.'' This change more accurately reflects current practice and is consistent with other changes proposed in this rule (*e.g.,* use of ''environmental review process'' and ''action''). In addition, the Agencies propose revising the second and third sentence of paragraph (e) by clarifying the applicant's role in providing notice of the public hearing and availability of the EA and clarifying when comments are accepted on the EA, respectively. The second and third sentences of paragraph (e) would read: ''The applicant shall 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.'' These changes are minor but improve the quality of the written language.

The Agencies propose revising the last sentence in paragraph (f) to reflect the changes proposed for the last sentence in paragraph (e) regarding comment submittal during the EA public availability period. Paragraph (f) would read: ''When a public hearing is not held, the applicant shall 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 shall 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.'' This is a non-substantive change proposed for consistency between paragraphs.

Lastly, the Agencies propose to limit paragraph (h) to FHWA actions only by replacing ''Administration'' with ''FHWA'' at the beginning of the paragraph. For FTA project sponsors, application of the Council on Environmental Quality's (CEQ) regulatory provision alone aligns better with how transit projects are planned, developed, and reviewed. The FTA would direct its applicants and project sponsors to rely on the CEQ NEPA Implementing Regulations, specifically 40 CFR 1501.4(e)(2), which requires that in certain circumstances the FONSI be available for public review for 30 days before FTA makes its final determination and before the action may begin. This requirement applies when the proposed action is (or is closely similar to) one that normally requires the preparation of an EIS pursuant to § 771.115, or when the nature of the proposed action is one without precedent.

Section 771.121 Findings of No Significant Impact

The Agencies propose minor text revisions to all three paragraphs in § 771.121. In paragraph (a), the Agencies propose to reword the first sentence to reflect existing practice: ''The Administration will review the EA, comments submitted on the EA (in writing or at public hearings/meetings), and other supporting documentation, as appropriate.'' This is a non-substantive change and is meant to improve readability.

Similarly, in paragraph (b), the Agencies propose to reword the first sentence in active voice and to make it clear to the reader that the Administration issues a FONSI. The first sentence would be rewritten to read, ''After the Administration issues a FONSI . . .'' This non-substantive change does not affect the responsibility of the Administration in issuing a FONSI, and it does not affect the applicant's responsibility in providing notice of availability of the FONSI to affected units of Federal, State, and local government or any other responsibilities noted within this section.

In paragraph (c), the Agencies propose a slight modification to include those times when the Administration may have an approval role for another Federal agency's action (*e.g.,* when FHWA issues Interstate Access Point Approval). The modification would add ''or approval'' after ''Administration funding'' in the first sentence: ''If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding or approval . . .'' In these rare situations, the Administration would evaluate the other agency's ''EA/FONSI'' (replacing the term ''FONSI'' at the end of the first sentence) in determining whether to issue its own FONSI incorporating the other agency's ''EA/FONSI'' (again, replacing the term ''FONSI'' but at the end of the second sentence). The Administration could also issue a CE for the element of the project proposed for Administration funding or approval if it determines that a CE would be appropriate.

Section 771.123 Draft Environmental Impact Statements

The Agencies propose a number of modifications to § 771.123. In paragraph (b), the Agencies would revise the language in the first sentence to reference CEQ's NEPA Implementing Regulations (40 CFR parts 1500 through 1508), and replace ''which'' with ''that.'' In addition, the Agencies propose deleting the reference to the FHWA in the third sentence and deleting the fourth sentence pertaining to FTA; the revised third sentence would apply to both Agencies. The Agencies propose paragraph (b) read: ''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, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500 through 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 local level.'' These minor changes would update the text to be more encompassing of the environmental review requirements and more readable.

In paragraph (d), the Agencies would add language requiring a conflict of interest disclosure for FTA actions. This change would be consistent with proposed modifications to section 771.119(a)(ii) and 40 CFR 1506.5(c). Paragraph (d) would read, ''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). For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor shall 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) is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content).'' *See* the discussion above in § 771.119 for a more robust discussion regarding this proposed addition.

The Agencies propose to add a new paragraph (e). Proposed new paragraph (e) would encourage identification of the preferred alternative in the draft EIS: ''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.'' This addition would update the regulations in response to changes created by MAP–21 Section 1319 and is consistent with the Agencies' ''Interim Guidance on MAP–21 Section 1319 Accelerated Decisionmaking in Environmental Reviews'' (January 14, 2013) (''Section 1319 Guidance''). It would also provide for the cases where the preferred alternative is not identified in the draft EIS. Section 1319(b) directs the lead agency, to the maximum extent practicable, to expeditiously develop a single document that consists of a final EIS and ROD, unless certain conditions exist. By identifying the preferred alternative in the draft EIS, the lead agencies more easily facilitate issuance of a combined final EIS/ROD document.

The Agencies would also add a new paragraph (f). Proposed new paragraph (f) would allow the lead agency to develop the preferred alternative (or portion thereof) for a project to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with requirements for permitting: ''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 requirements for 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.'' This concept is not new to the Agencies, as it was codified in 23 U.S.C. 139 via the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) in 2005; the Agencies propose including a direct copy of the codified language (23 U.S.C. 139(f)(4)(d)) in this section. It is important to note that although the development of such higher level of detail is acceptable in some circumstances as noted in the proposed language, the lead agency must make an impartial decision among the alternatives considered in the environmental review process. Including this proposed paragraph would help streamline the environmental review process, particularly in terms of fulfilling permitting requirements and possibly in terms of complying with MAP–21 Section 1319(b). It also would safeguard

the impartiality of the alternative analysis done during the NEPA process.

With the addition of proposed new paragraphs (e) and (f), current paragraphs (e), (f), (g), (h), and (i) would be re-lettered as paragraphs (g), (h), (i), (j), and (k), respectively.

In paragraph (g), the Agencies propose to add a sentence that encourages including a notice on the cover sheet that the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude it. This change would be consistent with MAP–21 Section 1319(b). Paragraph (g) would read: ''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.''

The Agencies propose modifying the first sentence of paragraph (i) (existing paragraph (g)) to read, ''The applicant, on behalf of the Administration, shall circulate the draft EIS for comment.'' This change is non-substantive and would change the current text from passive voice to active voice. In addition, two subparagraphs of paragraph (i) would be slightly modified. In subparagraph (i)(2), the Agencies propose to replace ''Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action,'' with ''Cooperating and participating agencies,'' because the types of agencies listed are typically cooperating or participating agencies in the Agencies' environmental review process. This change is consistent with 23 U.S.C. 139 and 40 CFR 1508.5, and provides additional consistency within the Agencies' regulations. In proposed subparagraph (i)(3), the Agencies would correct a small grammatical error; the word ''which'' would be replaced with ''that.'' This change would be non-substantive.

The Agencies propose to delete the first two sentences found in existing paragraph (h), which contain specific FHWA and FTA references. The Agencies also propose to revise the third sentence to include a general reference to § 771.111, which would broaden the existing language to clearly apply to both agencies. These changes would be reflected in proposed paragraph (j); the first sentence would read: ''When a public hearing on the draft EIS is held (if required by 23 CFR 771.111), the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing.'' This rewriting would not change the substance of the paragraph or current practice; a draft EIS would still be required to be available at the public hearing and for a minimum of 15 days in advance of the public hearing, should one be held on the draft EIS, and the reader is directed to § 771.111 for specific Agency information. The remainder of the paragraph would remain unchanged.

Section 771.124 Final Environmental Impact Statement/Record of Decision

The Agencies propose to add new § 771.124 to address MAP–21 Section 1319(b) development of a combined final EIS/ROD. Section 1319(b) directs Agencies, to the maximum extent practicable, to expeditiously develop a single document that consists of a final EIS and ROD, unless certain conditions exist.

Proposed paragraph (a)(1) would make the section 1319(b) requirement clear and identify the conditions when a combined final EIS/ROD document would not be appropriate: ''After circulation of a draft EIS and consideration of comments received, the lead agencies, in cooperation with the applicant (if not a lead agency), shall combine the final EIS and record of decision (ROD), to the maximum extent practicable, unless (1) the final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns, or (2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.'' This language is consistent with the MAP–21 language and the Agencies' Section 1319 Guidance.

The existing applicable requirements for both a final EIS and ROD must be met for issuance of a combined final EIS/ROD document. Proposed paragraph (a)(2) clarifies this and refers the reader to other applicable requirements: ''When the combined final EIS/ROD is a single document, it shall 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 title.''

Proposed paragraph (a)(3) establishes that both provisions of MAP–21 Section 1319 (*i.e.,* paragraphs (a) and (b)) may be used in concert with each other. The proposed language is: ''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, which together shall then become the combined final EIS/ROD document.'' Errata sheets are not new to the Agencies, but the Agencies are including them in this section in response to MAP–21 Section 1319(a) to highlight their potential use, especially with the new combined final EIS/ROD document type. When both errata sheets and a combined final EIS/ROD are used, the combined final NEPA document would consist of the draft EIS, errata sheets, and any additional information required in a final EIS and ROD.

Proposed paragraph (a)(4) establishes that a combined final EIS/ROD must meet legal sufficiency requirements. The proposed language is: ''A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration.'' Legal sufficiency involves ensuring adequate documentation exists to support the final agency action/decision, as well as determining whether the combined final EIS/ROD complies with minimum legal standards of NEPA and other procedural or substantive requirements. It is not new to the Agencies' environmental review process; it is included in this section for consistency with § 771.125.

Proposed paragraph (a)(5) would address Administration approval of the combined final EIS/ROD: ''The Administration shall 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.''

Proposed paragraph (b) would make clear that the **Federal Register** public availability notice does not establish a comment period for the combined final EIS/ROD: ''The **Federal Register** public availability notice published by EPA (40 CFR 1506.10) does not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD.''

Section 771.125 Final Environmental Impact Statements

The Agencies propose deleting paragraph (d) (''The signature of the FTA approving official on the cover sheet also indicates compliance with 49 U.S.C. 5324(b) and fulfillment of the grant application requirements of 49

U.S.C. 5323(b).'') because sections 20016 and 20017 of MAP–21 repealed the environmental review process-related requirements previously found through those statutory references for FTA.

Due to the proposed deletion of paragraph (d), existing paragraphs (e), (f), and (g) would be re-lettered as paragraphs (d), (e), and (f), respectively.

The Agencies propose to modify paragraph (e), previously paragraph (f), by replacing the word ''printing'' with the word ''publication.'' This change would address the fact that the final EIS may be produced by electronic means and that paper hardcopies are not required except as necessary to meet State requirements.

The Agencies propose to add a new paragraph (g) that states: ''The final EIS may take the form of an errata sheet pursuant to 40 CFR 1503.4(c).'' As noted above, this change would make the Agencies' regulations consistent with MAP–21 Section 1319(a), which provides for the preparation of a final EIS by attaching errata sheets to the draft EIS if certain conditions are met. The use of errata sheets is appropriate when comments received on a draft EIS are minor, and the lead agency's responses to those comments are limited to factual corrections or explanations of why the comments do not warrant further response.

Section 771.127 Record of Decision

The Agencies propose to modify paragraph (a) to reflect that the minimum 30-day period between final EIS and ROD is incompatible with the publication of a combined final EIS/ROD, as required by MAP–21 Section 1319. The modification would be made by adding the phrase, ''When the final EIS is not combined with the ROD,'' to the beginning of the first sentence in this paragraph. This change would make clear that the 30-day waiting period between final EIS and ROD applies only for those instances where the final EIS is not combined with the ROD. Under the scenario where the Administration signs a combined final EIS/ROD document, there is no waiting period. In addition, the Agencies propose to remove the last sentence from paragraph (a) (''Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1'') because it is duplicative of § 771.113 and unnecessary to repeat in this section. The changes presented to this paragraph are, therefore, non-substantive.

In paragraph (b), the Agencies propose to modify the language to reflect the possibility of an amended ROD, as well as to include a reference to the combined final EIS/ROD process. In the discussion of a revised ROD, the Agencies would add the text ''or amended'' before the term ''ROD'' in both sentences to reflect FTA current practice. Examples of when the Agencies would amend a ROD include where (1) the Administration previously signed a combined final EIS/ROD or ROD and subsequently decides to approve an alternative that was not identified as the preferred alternative but was fully evaluated in the final EIS, or (2) the Administration proposes to make substantial changes to the mitigation measures or findings discussed in the combined final EIS/ROD or ROD. To provide for the combined final EIS/ROD process requirements, the Agencies propose inserting ''§ 771.124(a) or'' prior to the existing reference to § 771.125(c) at the end of the first sentence, and removing ''pursuant to § 771.125(g)'' from the second sentence.

Section 771.129 Re-Evaluations

The Agencies propose to add introductory text before paragraph (a) to provide the purpose and timing of re-evaluations. The introductory text would read: ''The Administration shall 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 below. . . .'' This change would clarify the Administration's responsibility regarding re-evaluations and provide a link to existing paragraphs (a) through (c).

In paragraph (a), the Agencies propose a non-substantive change that changes passive voice to active voice. The Agencies would add the text ''The applicant shall prepare a'' to the beginning of this paragraph and remove ''shall be prepared by the applicant'' from later in the sentence. This change clearly states that the applicant is responsible for preparing the written evaluation of the draft EIS.

In paragraph (b), the Agencies propose similar modifying language to clarify that the applicant is responsible for preparing a written evaluation of the final EIS before further Administration approvals may be granted. The first sentence would be modified to read: ''The applicant shall prepare a written evaluation of the final EIS before the Administration may grant further approvals if major. . . .'' This change clarifies the actions of the applicant and Administration and is consistent with current practice.

The Agencies propose revising the first sentence in paragraph (c) to include combined final EIS/ROD documents in the list of environmental documents that the Administration issues and to clearly state the Administration's role. Paragraph (c) would be revised to read: ''After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant. . . .'' The original language noted ''approval'' of the ROD, FONSI, or CE designation, but did not state who approved the document nor did the use of ''approval'' accurately reflect the Administration's role. The proposed change would clarify that it is the Administration that issues environmental decision documents, which is consistent with other proposals in this rule.

Section 771.130 Supplemental Environmental Impact Statements

The Agencies propose to delete paragraph (e) from this section (''A supplemental draft EIS may be necessary for major new fixed guideway capital projects proposed for FTA funding if there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.''). The FTA proposes deleting this paragraph because it is not necessary to refer specifically to major new fixed guideway capital projects; a supplemental document may be needed for a variety of public transportation projects.

The Agencies propose to modify existing paragraph (f) (proposed paragraph (e) if the deletion noted above is finalized) to add EAs as a supplemental document type that may be used to analyze issues of limited scope; the addition of EAs to this paragraph is consistent with § 771.130(c). The modification would be made by revising the first sentence: ''In some cases, an EA or supplemental EIS may be required . . .'' In addition, the Agencies would replace the term ''EIS'' with ''document'' in the last sentence of the paragraph and the last sentence of subparagraph (e)(3) to account for the possibility of completing an EA for the supplemental analyses.

Section 771.131 Emergency Action Procedures

The Agencies propose to add an introductory sentence to the current paragraph in this section to address

emergency and disaster-related CEs. This change would reflect the recently updated Agencies' CEs in §§ 771.117 and 771.118 for FHWA and FTA, respectively. The introductory sentence would read: ''Responses to some emergencies and disasters are categorical exclusions under § 771.117 for FHWA or § 771.118 for FTA.'' In the second sentence, the Agencies would add ''Otherwise,'' to the beginning of the sentence to account for those actions that do not qualify for a CE and must follow current emergency action procedures.

Section 771.133 Compliance With Other Requirements

The Agencies are proposing to modify the current paragraph by reorganizing the section and adding or modifying text. The existing paragraph would be listed as paragraph (a) and, in accordance with Section 1319 of MAP–21, paragraph (a) would be modified to include ''combined final EIS/ROD'' as a document type that should comply with requirements of all applicable environmental laws, Executive orders, and other related requirements. In the last sentence of paragraph (a), the Agencies propose changing the reference to ''the Administration'' to ''the FHWA'' because the report requirements referenced in the paragraph and found in 23 U.S.C. 128 do not apply to FTA. This is a minor change that accurately reflects legal requirements and current practice.

The Agencies propose to add a new paragraph (b) to provide for the possibility that applicants may want to meet compliance requirements with other laws, regulations or Executive orders through programmatic approaches, consistent with MAP–21 Section 1305(a) (23 U.S.C. 139(b)). This new paragraph would read, ''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.''

Section 771.137 International Actions

The Agencies propose no changes to § 771.137 in this NPRM.

Section 771.139 Limitations on Actions

The Agencies propose to modify this section by replacing the 180-day statute of limitations for claims arising under Federal law seeking judicial review of any final decisions by the Administration or by other Federal agencies on a transportation project announced in the **Federal Register** with a 150-day time period. The Agencies would replace the text ''180'' with ''150''. This modification would make the paragraph consistent with MAP–21 Section 1308 (23 U.S.C. 139(l)).

Section 4(f) Regulation Changes (Part 774)

Section 774.11 Applicability

In paragraph (i), the Agencies propose to revise the examples of documentation that would be adequate to show that a transportation facility and a Section 4(f) property were concurrently or jointly planned or developed: ''(1) Formal reservation of a property for a future transportation use can be demonstrated by a government document created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include: (A) A government map that depicts a transportation facility on the property; (B) a land use or zoning plan depicting a transportation facility on the property; or (C) a fully executed real estate instrument that references a future transportation facility on the property. (2) Concurrent or joint planning or development can be demonstrated by a government document created after, contemporaneously with, or prior to the establishment of the Section 4(f) property. Examples of an adequate document to demonstrate concurrent or joint planning or development include: (A) A government document that describes or depicts the designation or donation of the property for both the potential transportation facility and the Section 4(f) property; or (B) a government agency map, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.'' This would expand the current text that provides more limited direction to applicants as to what the Agencies will accept as adequate documentation of concurrent or joint planning or development of a transportation facility and a park, recreation area, or wildlife and waterfowl refuge.

Section 774.13 Exceptions

In paragraph (e), the Agencies propose to revise the exception to read: ''Projects for the Federal lands transportation facilities described in 23 U.S.C. 101(a)(8).'' This replaces: ''Park road or parkway projects under 23 U.S.C. 204.'' This change is necessary due to the restructuring of the Federal Lands Highway Program by MAP–21, and more specifically, to implement Section 1119(c)(2) of MAP–21, which revised and broadened the Section 4(f) exception for park road and parkway projects to apply to Federal lands transportation facilities. Federal lands transportation facilities are public highways, roads, bridges, trails, and transit systems that are located on, adjacent to, or provide access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appear on the national Federal lands transportation facility inventory described in 23 U.S.C. 203(c).

In paragraph (g), the Agencies propose to revise the exception to read: ''Transportation enhancement activities, transportation alternatives projects, and mitigation activities . . .'' This replaces: ''Transportation enhancement projects and mitigation activities . . .'' This change is necessary because Section 1122 of MAP–21 replaced the former ''transportation enhancement projects program'' with a new ''transportation alternatives projects program.'' This exception would continue to be limited to situations where the official(s) with jurisdiction over the Section 4(f) resource agrees that ''the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection.''

Statutory/Legal Authority for This Rulemaking

The Agencies derive explicit authority for this rulemaking action from 49 U.S.C. 322(a), which provides authority to ''[a]n officer of the Department of Transportation [to] prescribe regulations to carry out the duties and powers of the officer.'' The Secretary delegated this authority to the Agencies in 49 CFR 1.81(a)(3), which provides that the authority to prescribe regulations contained in 49 U.S.C. 322(a) is delegated to each Administrator ''with respect to statutory provisions for which authority is delegated by other sections in [49 CFR part 1].'' The Secretary has delegated authority to the Agencies to implement NEPA and Section 4(f), the statutes implemented by this rule, in 49 CFR 1.81(a)(4) and (5). Moreover, the CEQ regulations that implement NEPA provide at 40 CFR 1507.3 that agencies shall continue to review their policies and NEPA implementing procedures

and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA.

Rulemaking Analyses and Notices

The agencies will consider all comments received before the close of business on the comment closing date indicated above and will be available for examination in the docket (FHWA–2015–0011) at regulations.gov. Comments received after the comment closing date will be filed in the docket and the Agencies will consider them to the extent practicable. In addition to late comments, the Agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. The Agencies may publish a final rule at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Agencies have determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 nor would it be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures (44 FR 11032, February 26, 1979). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Agencies anticipate that the economic impact of this rulemaking would be minimal. The Agencies do not have specific data to assess the monetary value of the benefits from the proposed changes because such data does not exist and would be difficult to develop.

This NPRM proposes to modify 23 CFR parts 771 and 774 in order to be consistent with changes introduced by MAP–21 as well as to provide clarification and make the regulation more consistent with the Agencies' practices. These proposed changes would not adversely affect, in any material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required. The Agencies anticipate that the changes in this NPRM would enable projects to move more expeditiously through the Federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA or Section 4(f) while still ensuring that projects are built in an environmentally responsible manner. The Agencies request comment, including data and information on the experiences of project sponsors, on the likely effects of the changes being proposed.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The proposed revisions are expected to expedite environmental review and thus are anticipated to be less than any current impact on small business entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Agencies analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The Agencies invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175 (Tribal Consultation)

The Agencies have analyzed this action under Executive Order 13175, and determined that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

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

Executive Order 12372 (Intergovernmental Review)

The DOT's regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities (49 CFR part 17) apply to this program. Accordingly, the Agencies solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or

require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* and DOT Order 5610.2(a), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive order and the DOT Order in all rulemaking activities. In addition, both Agencies have issued additional documents relating to administration of the Executive order and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm*). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients,* 77 FR 42077 (July 17, 2012) (available online at *http://www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this proposed rule under the Executive order, the DOT Order, the FHWA Order, and the FTA Circular. The Agencies have determined that the proposed changes to 23 CFR part 771, if finalized as proposed, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

At the time the Agencies apply the NEPA implementing procedures in 23 CFR part 771, the Agencies would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects resulting from a proposed Agency action covered under any of the NEPA classes of action in 23 CFR part 771, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. *See* DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed, outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies have determined that no further EJ analysis is needed and no mitigation is required in connection with the proposed revisions to the Agencies' NEPA and Section 4(f) implementing regulations (23 CFR parts 771 and 774).

Executive Order 13045 (Protection of Children)

The Agencies have analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks.* The Agencies certify that this action would not be an economically significant rule and would not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The changes proposed in this rule are part of those agency procedures, and therefore establishing the proposed changes does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental review process, Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mitigation plans, Programmatic approaches, Public lands, Recreation areas, Reporting and recordkeeping requirements.

23 CFR Part 774

Environmental protection, Grant programs-transportation, Highways and roads, Historic preservation, Mass Transportation, Public Lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

49 CFR Part 622

Environmental impact statements, Environmental review process, Grant programs—transportation, Mitigation plans, Programmatic approaches, Public transportation, Recreation areas, Reporting and recordkeeping requirements, Transit.

Issued in Washington, DC, on November 10, 2015, under authority delegated in 49 CFR 1.85 and 1.91.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

Therese W. McMillan,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Agencies propose to amend title 23, Code of Federal Regulations parts 771 and 774, and title 49, Code of Federal Regulations part 622, as follows:

TITLE 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 1. Revise authority citation for part 771 to read as follows:

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; 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.

■ 2. Revise § 771.101 to read as follows:

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FTA and Department of Transportation (DOT) requirements under NEPA for the processing of highway and public transportation projects. This regulation 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 and 5323(q); and Public Law 112–141, 126 Stat. 405, sections 1301 and 1319.

■ 3. Revise § 771.105 and its footnote to read as follows:

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, 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 regulation.[1]

(b) Programmatic approaches be developed for compliance with environmental requirements, 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 fo 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 program or procedural activity required by or developed pursuant to this regulation.

■ 4. Revise § 771.107 to read as follows:

§ 771.107 Definitions.

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

Action. A highway or transit project proposed for FHWA or FTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

Administration. The FHWA or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the FHWA, or FTA, or a State when the State is functioning as the FHWA 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 or FTA means the State when the State is functioning as the FHWA 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 or FTA.

Administration action. FHWA or FTA approval of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which 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 regulation.

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

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

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, while maintaining appropriate consideration for the environment.

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. The project sponsor, if not the applicant, may conduct some of the activities on behalf of the applicant.

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

■ 5. Amend § 771.109 by revising paragraph (b) and adding paragraph (c)(7) to read as follows:

§ 771.109 Applicability and responsibilities.

* * * * *

(b)(1) The applicant, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation unless the Administration approves of their deletion or modification in writing. The FHWA will assure that this is accomplished as a part of its stewardship and oversight responsibilities. The FTA will assure 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 shall 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) * * *

(7) A participating agency is responsible for providing input, as appropriate, during the times specified in the coordination plan under 23 U.S.C. 139(g), and providing comments and concurrence on a schedule if included within the coordination plan.

* * * * *

■ 6. Revise § 771.111 to read as follows:

§ 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 document 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 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, or 23 U.S.C. 168.

(ii) The planning process described in paragraph (a)(2)(i) 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 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 23 CFR 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.

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

(c) When both the FHWA and FTA are involved in the development of an action, or when the FHWA or FTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139. Agencies with special expertise may be invited to become cooperating agencies. Agencies with jurisdiction by law must be requested 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 shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.

(f) Any action evaluated through a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) shall:

(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 regulation.

(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 which 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 shall 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.

(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.

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 49 U.S.C. 303(d).

(i) Applicants for capital assistance in the FTA program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seeking 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 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, 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 and the alternatives.

(3) Are encouraged to post and distribute materials related to the environmental review process, including but not limited to, NEPA 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 Web sites. Applicants are encouraged to keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Are encouraged to post all findings of no significant impact (FONSI), combined final environmental impact statement (FEIS)/records of decision (ROD), and RODs on a project Web site until the project is constructed and open for operation.

(j) Information on the FTA environmental process may be obtained from: Director, Office of Environmental Programs, Federal Transit Administration, Washington, DC 20590, or *www.fta.dot.gov.* Information on the FHWA environmental process may be obtained from: Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590, or *www.fhwa.dot.gov.*

■ 7. Revise § 771.113 to read as follows:

§ 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 studies, related engineering studies, agency coordination, and public involvement. 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 shall not proceed until the following have been completed:

(1)(i) The action has been classified 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 activities proposed for FHWA action, 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).

■ 8. Revise § 771.115 to read as follows:

§ 771.115 Classes of actions.

There are three classes of actions which 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 required 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) For FHWA actions, new construction or extension of a separate roadway for buses or high occupancy

vehicles not located within an existing highway facility.

(5) For FTA actions, new construction or extension of a separate roadway for buses not located primarily 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.

(c) EA (Class III). Actions in which the Administration has not clearly established the significance of the environmental impact. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

■ 9. Revise § 771.119 to read as follows:

§ 771.119 Environmental assessments.

(a)(i) The applicant shall 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 believes an EA would assist in determining the need for an EIS.

(ii) For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor shall 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 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 EA content).

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, 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 which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through early coordination activities or through a scoping process. The applicant shall 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 in accordance with paragraphs (e) and (f) of this section. The applicant shall send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, State and local government. The applicant shall also send notice to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the environmental review process for an action, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The applicant shall 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 shall 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 shall 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 shall 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 shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall 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 shall be prepared in accordance with the applicable provisions of that statute.

■ 10. Revise § 771.121 to read as follows:

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA, comments submitted on the EA (in writing or at public hearings/meetings), and other supporting documentation, as appropriate. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will make 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 shall be sent by the applicant to the affected units of Federal, State, and local government, and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which 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.

■ 11. Revise § 771.123 to read as follows:

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall 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 local level.

(b) 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, 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 local level.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall 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). For FTA actions: When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor shall 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).

(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.

(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 requirements for 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.

(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 shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which 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.

(i) The applicant, on behalf of the Administration, shall circulate the draft EIS for comment. The draft EIS shall 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 shall be transmitted to:

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

(2) Cooperating and participating agencies. Copies shall be provided 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 copies shall 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 23 CFR 771.111), the draft EIS shall 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 shall 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 shall 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) shall 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 shall identify where comments are to be sent.

■ 12. Add § 771.124 to read as follows:

§ 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), shall combine the final EIS and record of decision (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 and 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 shall 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 title.

(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, which together shall 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 shall 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) does not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD.

■ 13. Amend § 771.125 as follows:

■ a. Remove paragraph (d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f);

■ b. Revise newly redesignated paragraphs (e) through (f) and add new paragraph (g).

The revisions read as follows:

§ 771.125 Final environmental impact statements.

* * * * *

(e) The initial publication of the final EIS shall be in sufficient quantity to meet the request for copies which 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 which 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 shall 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 shall 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 shall 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.

(g) The final EIS may take the form of an errata sheet pursuant to 40 CFR 1503.4(c).

■ 14. Revise § 771.127 to read as follows:

§ 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 title.

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

■ 15. Revise § 771.129 to read as follows:

§ 771.129 Re-evaluations.

The Administration shall 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 below:

(a) The applicant shall 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 shall 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 shall 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.

■ 16. Amend § 771.130 by removing paragraph (e) and redesignating paragraph (f) as paragraph (e), and revising it to read as follows:

§ 771.130 Supplemental environmental impact statements.

* * * * *

(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 shall 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 shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental document is completed.

■ 17. Revise § 771.131 to read as follows:

§ 771.131 Emergency action procedures.

Responses to some emergencies and disasters are categorical exclusions under § 771.117 for FHWA or § 771.118

for FTA. Otherwise, requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

■ 18. Revise § 771.133 to read as follows:

§ 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.

§ 771.139 [Amended]

■ 19. Revise § 771.139 by replacing ''180'' with ''150'' in the second and third sentences.

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(f))

■ 20. Revise the authority citation for part 774 to read as follows:

Authority: 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.81 and 1.91.

■ 21. Revise § 774.11(i) to read as follows:

§ 774.11 Applicability.

* * * * *

(i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established, and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in § 774.17.

(1) Formal reservation of a property for a future transportation use can be demonstrated by a government document created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include:

(i) A government map that depicts a transportation facility on the property;

(ii) A land use or zoning plan depicting a transportation facility on the property; or

(iii) A fully executed real estate instrument that references a future transportation facility on the property.

(2) Concurrent or joint planning or development can be demonstrated by a government document created after, contemporaneously with, or prior to the establishment of the Section 4(f) property. Examples of an adequate document to demonstrate concurrent or joint planning or development include:

(i) A government document that describes or depicts the designation or donation of the property for both the potential transportation facility and the Section 4(f) property; or

(ii) A government agency map, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

■ 22. Amend § 774.13 by revising paragraphs (e) and (g) to read as follows:

§ 774.13 Exceptions.

* * * * *

(e) Projects for the Federal lands transportation facilities described in 23 U.S.C. 101(a)(8).

* * * * *

(g) Transportation enhancement activities, transportation alternatives projects, and mitigation activities, where:

(1) The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and

(2) The official(s) with jurisdiction over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.

TITLE 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 23. Amend authority citation for part 622 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; and Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319.

[FR Doc. 2015–29413 Filed 11–19–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–5863–P–01]

RIN 2506–AC40

Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: As the Nation's housing agency, HUD administers programs designed to meet the goal of ensuring decent housing and a suitable living environment for all. In furtherance of this goal, in February 2012, HUD promulgated a final rule entitled ''Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity'' (Equal Access Rule), which requires that HUD-assisted and HUD-insured housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status, and which generally prohibits inquiries into sexual orientation or gender identity for the purpose of determining eligibility for such housing or otherwise making such housing available. HUD's Equal Access Rule provides a limited exception for inquiries about the sex of an individual to determine eligibility for housing provided or to be provided to the individual when the housing is a temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or for inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled. At that time, HUD decided not to set national policy regarding how transgender persons would be accommodated in temporary, emergency shelters that involve shared sleeping quarters or shared bathing facilities, but instead decided to monitor and review