

**FOR FURTHER INFORMATION CONTACT:** Matt McManus, Division Chief, Energy Producing Countries, Department of State, Washington, D.C. 20520. (202) 647-3423.

Dated: May 19, 1999.

**Matthew McManus,**  
*Division Chief.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-119]

### Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of Canada and of the Province of Ontario Regarding Measures Affecting Tourism and Sport Fishing

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of initiation of investigation; request for written comments.

**SUMMARY:** The United States Trade Representative (USTR) has initiated an investigation under section 302(a) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(a)), with respect to certain acts, policies and practices of the Government of Canada and of the Province of Ontario that may discriminate against U.S. providers of tourism services. USTR invites written comments from the public on the matters being investigated and the determinations to be made under section 304 of the Trade Act.

**DATES:** This investigation was initiated on April 29, 1999. Written comments from the public are due on or before noon on June 25, 1999.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Mary Ryckman, Director for Canadian Affairs, (202) 395-3412, or Steven F. Fabry, Assistant General Counsel, (202) 395-3582.

**SUPPLEMENTARY INFORMATION:** On March 15, 1999, the Border Waters Coalition Against Discrimination in Services Trade filed a petition pursuant to section 302(a) of the Trade Act alleging that certain acts, policies and practices of the Government of Canada and the Province of Ontario are actionable under section 301.

In particular, the petition alleges that Ontario impairs the ability of Minnesota tourist establishments (fishing resorts,

fishing guides, outfitters, and others) to compete against their Canadian counterparts by prohibiting U.S. recreational fishermen from keeping the fish that they catch if the fishermen lodge on the Minnesota side of certain lakes that straddle the U.S.-Canadian border. U.S. fishermen who lodge instead in Ontario tourist establishments are permitted to keep their catch. The petition alleges that, as a result, U.S. resorts, fishing guides, and other businesses tied to sport fishing suffer discrimination. The petition further alleges that Canadian immigration officials require U.S. fishing guides to obtain Canadian work authorizations to guide fishing trips into Canada. The petition also alleges that these acts, policies or practices have caused a sharp fall-off in the tourism industry, which directly or indirectly generates over \$700 million in revenues per year in the Minnesota counties bordering Ontario.

### Investigation and Consultations

On April 29, 1999, the USTR determined that an investigation should be initiated to determine whether certain acts, policies and practices of the Government of Canada and the Province of Ontario regarding sport fishing and tourism are actionable under section 301.

Pursuant to section 303(b) of the Trade Act, the USTR has postponed its request for consultations with the Government of Canada for the purpose of verifying or improving the petition to ensure an adequate basis for consultation.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Canada which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before noon on June 25, 1999. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 100, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301-119) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public

inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket may be made by calling Brenda Webb at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

**William L. Busis,**

*Chairman, Section 301 Committee.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[FRA Docket No. EP-1, Notice 5]

### Procedures for Considering Environmental Impacts

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Updated Environmental Assessment Procedures.

**SUMMARY:** The FRA announces that it has revised its Procedures for Considering Environmental Impacts to update or eliminate outdated references to programs or statutory authorities that have been revised or that no longer exist, to correct inconsistencies with the Council on Environmental Quality's (CEQ) National Environmental Policy Act implementing regulations, and to improve public access to the process that governs FRA's compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation laws and regulations.

**DATES:** These revised Environmental Procedures are effective on May 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** William R. Fashouer, Office of the Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop-10, Washington, D.C. 20590 (telephone: 202-493-6033).

**SUPPLEMENTARY INFORMATION:** On June 16, 1980, the FRA published its final "Procedures For Considering Environmental Impacts" (Environmental Procedures), 45 FR 40854 (1980). These Environmental Procedures established a process for assessing the environmental impact of actions and legislation proposed by the FRA and for the preparation and processing of documents based on such assessments. As a part of a larger DOT effort to increase intermodal planning and coordination, FRA is currently participating with the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the United States Coast Guard bridge permit program in evaluating a proposal for new joint environmental regulations that would cover all four DOT operating administrations in one regulation. In advance of this effort, which is still in the very early planning stage, FRA has decided to update its existing Environmental Procedures in several minor respects and to republish them in the **Federal Register** to facilitate public access to the Procedures.

The revised Environmental Procedures have not been substantively altered. FRA has sought to achieve four principal objectives in updating the Environmental Procedures. First, obsolete statutory references have been removed or updated and references to programs for which FRA no longer has authority and program offices that no longer exist have been eliminated. As an example, FRA transferred ownership of the Alaska Railroad to the State of Alaska in 1985. In the revised procedures, all references to the Alaska Railroad have been removed.

Second, the list of categorical exclusions in section 4(c) of the Procedures has been updated to reflect additions that FRA has made over the years pursuant to section 4(e) of the Procedures. Section 4(e) authorizes FRA to adopt additional categorical exclusions when the agency determines that particular classes of action do not have a significant environmental impact. The revised Procedures afford FRA with the opportunity to publish these additional categorical exclusions for the first time.

Third, inconsistencies with the CEQ NEPA Implementing Regulations (40 CFR part 1500) have been corrected. FRA's implementing procedures are required to be consistent with the CEQ Regulations.

Fourth, improved public access to the procedures will be achieved through a new publication in the **Federal Register**. Since the original procedures were published in the **Federal Register** in

1980, they are difficult for the public to access. By republishing the Procedures, FRA achieves much wider public availability, especially through the **Federal Register** Internet Access, which is not available for the original 1980 procedures.

#### Final Procedures Revisions

FRA has published these revised Environmental Procedures without notice and an opportunity for public comment because the agency's action simply makes updating and conforming revisions to FRA's existing procedures and does not substantively alter the process FRA follows for considering the environmental impact of its actions. The agency concluded that more detailed revisions to the agency's Environmental Procedures were not needed at this time in light of the effort described above to consider a joint surface transportation environmental regulations that would address the environmental process for several DOT Operating Administrations. The public will have an opportunity to participate in the formulation of this regulation if it goes forward.

In accordance with the above, FRA revises its Procedures for Considering Environmental Impacts as follows:

#### FEDERAL RAILROAD ADMINISTRATION PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

##### TABLE OF CONTENTS

Sec.

1. Purpose.
2. Authority.
3. Definitions.
4. Actions Covered.
5. Timing.
6. Actions.
7. Applications.
8. Consultants.
9. Citizen Involvement.
10. Environmental Assessment Process.
11. Finding of No Significant Impact.
12. 4(f) Determinations.
13. Environmental Impact Statement.
14. Contents of an Environmental Impact Statement.
15. Record of Decision.
16. Effective Date.

##### 1. Purpose

This document establishes procedures for the assessment of environmental impacts of actions and legislation proposed by the Federal Railroad Administration (FRA), and for the preparation and processing of documents based on such assessments. These Procedures supplement the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 *et seq.*, hereinafter "CEQ 1500") and Department of Transportation (DOT) Order 5610.1C. Although only certain

portions of the CEQ regulations or DOT Order are specifically referenced in these Procedures, the unreferenced portions also apply.

##### 2. Authority

These Procedures implement the requirements of section 20 of DOT Order 5610.1C. This document establishes procedures for compliance by the FRA with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, hereinafter NEPA), especially NEPA section 102 (2)(C) (42 U.S.C. 4332(2)(C)); section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)); section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)); section 309(a) of the Clean Air Act (42 U.S.C. 7609(a)); section 307(c)(2) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(2)); section 2(a) of the Fish and Wildlife Coordination Act (16 U.S.C. 662(a)); section 7 of the Endangered Species Act (16 U.S.C. 1536); the Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*); and certain Executive Orders, regulations, and guidelines cited in this document which relate to environmental assessment and environmental documentation.

##### 3. Definitions

The definitions contained within CEQ 1508 apply to these Procedures. Additional or expanded definitions are as follows:

- (a) "Administrator" means the Federal Railroad Administrator.
- (b) "CEQ" means the Council on Environmental Quality.
- (c) "EIS" means an Environmental Impact Statement.
- (d) "EPA" means the U.S. Environmental Protection Agency.
- (e) "FONSI" means a Finding of No Significant Impact.
- (f) "4(f)-Protected Properties" are any publicly-owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance or any land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) within the meaning of section 4(f) of the DOT Act (49 U.S.C. 303(c)).
- (g) "4(f) Determination" is a report which must be prepared prior to the Administrator's approval of any FRA action which requires the use of any 4(f)-protected properties. This report documents both the supporting analysis and the finding required by section 4(f) of the DOT Act (49 U.S.C. 303(c)), that (1) there is no prudent and feasible

alternative to the use of such land, and (2) the proposed FRA action includes all possible planning to minimize harm to the park, recreational area, wildlife and waterfowl refuge, or historic site resulting from the use.

(h) "FRA Action" is an action taken by the Administrator or his or her delegate. FRA actions include grants, loans, financing through redeemable preference shares and loan guarantees, contracts, purchases, leases, construction, research activities, rulemaking, regulatory actions, approvals, certifications, and licensing. FRA actions also include actions only partially funded by FRA. FRA actions include FRA-sponsored proposals for legislation and favorable reports on proposed rail-related legislation, but do not include responses to Congressional requests for reports on pending legislation or appropriation requests.

(i) "Program Office" is an office within FRA which has been delegated the authority to administer a particular FRA action or program and which therefore bears primary responsibility for performing environmental assessments and preparing environmental documents in compliance with these Procedures.

(j) "P-10" refers to the Office of Environment, Energy, and Safety within the Department of Transportation.

#### 4. Actions Covered

(a) General Rule. The requirements of sections 5 through 15 of these Procedures shall apply to all FRA actions which are determined to be major FRA actions in accordance with this section.

(b) Major FRA Actions. A major FRA action for purposes of these Procedures is any FRA action which does not come within one of the classes of actions categorically or otherwise excluded in subsections (c), (d) or (e) of this section. The Program Office shall consult with the FRA Office of Chief Counsel before determining that an FRA action is not a major FRA action under subsection (c). Any determination that an FRA action is not a major FRA action based on the application of the criteria in subsection (e) of this section shall be made in writing by the Program Office and reviewed for legal sufficiency by the FRA Office of Chief Counsel. The FRA Office of Chief Counsel will, in coordination with other FRA offices, annually review actions taken under this subsection to determine whether additions should be made to the classes of action excluded in subsection (c).

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically

excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. In extraordinary circumstances, a normally excluded action may have a potentially significant environmental effect because it does not satisfy one or more of the criteria in subsection (e) of this section. In such case, the Program Office shall prepare the necessary environmental assessment and follow the appropriate FONSI or EIS process for that action. The following classes of FRA actions are categorically excluded:

(1) Administrative procurements (e.g. for general supplies) and contracts for personal services;

(2) Personnel actions;

(3) Financial assistance or procurements for planning or design activities which do not commit the FRA or its applicants to a particular course of action affecting the environment;

(4) Technical or other minor amendments to existing FRA regulations;

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

(6) Changes in plans for an FRA action for which an environmental document has been prepared, where the changes would not alter the environmental impacts of the action;

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

(8) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for rail service continuation payments and acquisition, as defined in 49 CFR 266;

(9) Guarantees of certificates for working capital under the Emergency Rail Services Act (45 U.S.C. 661 *et seq.*);

(10) Hearings, meetings, or public affairs activities;

(11) Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption "maintenance" means work, normally provided on a periodic basis, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs;

(12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure;

(13) Operating assistance to a railroad to continue existing service or to

increase service to meet demand, where the assistance will not result in a change in the effect on the environment;

(14) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for relocation costs as that term is defined in 49 C.F.R. Part 266, where the relocation involves transfer of a shipper to a site zoned for the relocated activity. This categorical exclusion shall not apply to the relocation of a shipper involved in the transportation of any material classified as a hazardous material by DOT in 49 CFR Part 172;

(15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities;

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

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

(18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line;

(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks; and

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or

noise or increased traffic congestion in any mode of transportation.

(d) Other Actions-Excluded in Accordance with CEQ Regulations. The following classes of actions have been determined to be actions not covered by NEPA as defined in CEQ 1500.6 and 1508.18(a):

(1) Operating and capital grants to Amtrak. These grants are excluded because NEPA does not apply to requests for appropriations and FRA has no discretion to withhold these grants at the funding stage if they are in accordance with the spending plan approved by Congress. Furthermore, FRA has no control over the use of such funds by Amtrak;

(2) Enforcement of safety regulations; and

(3) Issuance of emergency orders.

(e) Criteria for Exclusion of Actions. A class of FRA action not excluded under subsections (c) and (d) of this section may nevertheless be excluded from the requirements for "major FRA actions" in these Procedures if it satisfies all of the following criteria:

(1) The action is not judged to be environmentally controversial from the point of view of people living within the environment affected by the action or controversial with respect to the availability of adequate relocation housing;

(2) The action is not inconsistent with any Federal, State, or local law, regulation, ordinance, or judicial or administrative determination relating to environmental protection;

(3) The action will not have any significant adverse impact on any natural, cultural, recreational, or scenic environment(s) in which the action takes place, or on the air or water quality or ambient noise levels of such environment(s);

(4) The action will not: use 4(f)-protected properties; adversely affect properties under section 106 of the National Historic Preservation Act; involve new construction located in a wetlands area; or affect a base floodplain;

(5) The action will not cause a significant short-or long-term increase in traffic congestion, or other significant adverse environmental impact on any mode of transportation;

(6) The action is not an integral part of a program of actions which, when considered separately, would not be classified as major FRA actions, but when considered together would be so classified; and

(7) Environmental assessment or documentation is not required by any Federal law, regulation, guideline, order, or judicial or administrative

determination other than these Procedures.

(f) Class of Actions. A general class of major FRA actions, or a general class of Federally-related actions at least one of which is a major FRA action, may be covered by a single environmental assessment and subsequent documentation where the environmental impacts of all the actions (and their alternatives) are substantially similar.

(g) Programmatic Actions.

(1) A programmatic FRA action, consisting of a group of FRA actions or a broad action composed of elements which are themselves FRA actions but where no single action would be taken except in conjunction with the other related actions, shall be treated as a separate major FRA action for purposes of these Procedures. Decisions on related rail facilities, e.g. connecting lines of a railroad or consolidations, should normally be considered a programmatic action.

(2) A programmatic environmental document should identify program level alternatives and assess the program-wide environmental impacts. To the extent information is available, it should also identify the alternatives to and impacts of component FRA actions within the program, and the implications on alternative transportation systems.

(3) Where a programmatic environmental document has been prepared, the FRA program office shall examine each component FRA action making up the program to determine, in accordance with subsection (b) of this section, whether the component action is a major FRA action, which has not been assessed in the programmatic document.

(4) For any component action which constitutes a major FRA action, the Program Office shall prepare such additional environmental documentation as may be required by these Procedures, unless the documentation prepared for the programmatic action satisfies the requirements of these Procedures for the component FRA action. In preparing the site specific or component action documentation, the Program Office shall reference and summarize the programmatic document and shall limit the discussion to the unique alternatives to and impacts of the site specific or component action.

#### 5. Timing

(a) General. In general, the possible environmental effects of an FRA action must be considered at the earliest possible time along with technical and

economic studies. For purposes of designating major decision points, FRA actions can be broken into three broad categories:

(1) "Applications for Funding" which include grants, cooperative agreements, loan guarantees, and financing through redeemable preference shares;

(2) "FRA Initiated Actions" which include proposed legislation, rulemakings, and R&D activities; and

(3) "Direct FRA Projects" which include the planning and building of Federal works such as the Northeast Corridor Improvement Project, or the acquisition, use and disposal of Federal land and real property.

(b) Applications For Funding. Appropriate environmental documentation shall be commenced no later than immediately after the application is received. (CEQ 1502.5(b)). The FONSI, EIS, or categorical exclusion determination, as appropriate, shall be completed prior to a decision by the Administrator on the approval of the application and shall accompany the application through the decision-making process. In the event the Administrator disapproves of an application prior to the completion of the FONSI or EIS, the FONSI or EIS need only be completed if the disapproval is based on environmental grounds.

(c) FRA Initiated Actions. Appropriate environmental documentation shall be commenced concurrently with any planning for the action. The FONSI, EIS, or categorical exclusion determination, as appropriate, shall be completed prior to a decision by the Administrator to implement an action and shall accompany the proposed legislation, rulemaking or R&D package through the decision-making process.

Implementation includes submission of proposed legislation to the Office of Management and Budget, or procurement of an outside consultant or in-house start up of the R&D project. For informal rulemaking activities, the draft EIS should normally accompany the proposed rule.

(d) Direct FRA Projects. Appropriate environmental documentation shall be commenced at the feasibility analysis stage. (CEQ 1502.5(a)). Where a programmatic document has been prepared, the environmental document for each component action not adequately addressed in the programmatic document will be prepared along with design studies. The FONSI, EIS or categorical exclusion determination shall be completed prior to a construction decision and circulated to the Administrator as part of the decision-making process.

### 6. Joint Actions

(a) Joint Effort. Where one or more Federal agencies together with FRA either co-sponsor an action, or are directly involved in an action through funding, licenses, or permits, or are involved in a group of actions directly related because of functional interdependence or geographical proximity or both, or are involved in a single program, the Program Office shall seek to join all such agencies in performing a single joint environmental assessment and in preparing necessary environmental documentation.

Consistent with the requirements of CEQ 1506.2 and 1506.5 an applicant shall, to the fullest extent possible, serve as a joint lead agency if the applicant is a State agency or local agency, and the proposed action is subject to State or local requirements comparable to NEPA.

(b) Lead Agency. Where the FRA joins with one or more other Federal agencies in the performance of an environmental assessment and in the preparation of environmental documentation, all agencies should agree to designate a single "lead agency" to supervise the effort. Any request by FRA for CEQ resolution of lead agency designation (CEQ 1501.5(e)) shall be made only after consultation with the FRA Office of Chief Counsel and notification to P-10. Where FRA has the primary Federal responsibility, the Program Office will act as the lead agency in accordance with CEQ 1501.6(a). The lead agency should consult with the other participating agencies to ensure that the joint effort makes the best use of areas of jurisdiction and of special expertise of the participating agencies, that the views of participating agencies are considered in the course of the environmental assessment and documentation process, and that the substantive and procedural requirements of all participating agencies are met. Requests for lead agency designation by other parties should be made to the FRA Office of Policy and Program Development, which will advise the appropriate Program Office and the FRA Office of Chief Counsel.

(c) Cooperating Agency. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations. Where the FRA is a cooperating agency on a joint effort of environmental assessment and documentation, the Program Office shall perform the functions stated in CEQ 1501.6(b) and review the work of the lead agency to ensure that its work product will satisfy the requirements of

the FRA under these Procedures. The Program Office may enter into a memorandum of understanding with the lead agency substituting the lead agency's content requirements for those in sections 11(h) and 14(a)-(u). If the lead agency is another component of DOT, the 4(f) content requirements in section 12(d) may also be substituted. For every major FRA action, however, the review and approval responsibilities of these Procedures must be met for any final environmental document.

### 7. Applicants

(a) General. Each applicant for FRA financial assistance or other major FRA action may be requested to perform an environmental assessment of the proposed FRA action and to submit documentation of that assessment with the application. An applicant may also be requested to submit a proposed draft EIS or proposed FONSI in connection with the application, or to act as a joint lead agency if the applicant is a State agency with state-wide jurisdiction or is a State or local agency, and the proposed action is subject to a State requirement comparable to NEPA.

(b) Information Required. Where an applicant is required to submit environmental documentation, the Program Office shall assist the applicant by specifying the types and amounts of information, consistent with these Procedures and the published regulations, if any, under which the application is being made. The Program Office shall work with potential applicants early in the process to assist in the development of information responsive to sections 10 through 14 of these Procedures.

(c) Premature Act by Applicant. The Program Office shall inform an applicant that the applicant may not take any major action, in expectation of approval of the application, prior to completion of the environmental documentation process by the FRA, as required by these Procedures.

(d) Applicant's Use of Consultants. An applicant may use consultants in the performance of an environmental assessment and in the preparation of proposed environmental documents, subject to approval of the selected consultant by the Program Office.

(e) FRA Responsibility. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations, and cannot delegate this responsibility to applicants. The Program Office shall solicit comments from state and local governments and the public on the environmental consequences of any grant application.

The Program Office that processes an application shall make its own evaluation of the environmental issues raised by the application. The Program Office shall review environmental documentation submitted in connection with an application to insure that it satisfies the requirements of these Procedures. An environmental document may be accepted by a Program Office after such review and shall then be considered to have been prepared by that office for purposes of sections 10 through 15 of these Procedures. When necessary to perform such review, the Program Office shall seek the advice of the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel.

### 8. Consultants

(a) General. A Program Office may use consultants in the performance of environmental assessments and in the preparation of environmental documents.

(b) Conflicts of Interest. A Program Office shall exercise care in selecting consultants, and in reviewing their work, to ensure that their analysis is complete and objective. Contractors shall execute a disclosure statement prepared by the Program Office, specifying that they have no financial or other interest in the outcome of the project.

(c) FRA Responsibility. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations, and cannot delegate this responsibility to consultants. The Program Office that contracts with a consultant shall make its own evaluation of the environmental issues raised by the proposed action. The Program Office shall review any assessments performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures. When necessary to the performance of its review, the Program Office shall seek the advice of the FRA Office of Policy and Program Development and of the FRA Office of Chief Counsel. An environmental document accepted by a Program Office pursuant to this section shall be considered to have been prepared by that office for purposes of sections 10 through 15 of these Procedures.

### 9. Citizen Involvement

(a) Policy. Citizen involvement is encouraged at every stage of the environmental assessment of a proposed FRA action.

(b) Procedures. After a Program Office has made the decision to prepare a draft

EIS, the Program Office shall implement the following procedures:

(1) Develop, in cooperation with the FRA Public Affairs Office, a list of interested parties, including Federal, regional, State, and local authorities, environmental groups, individuals, and business, public service, education, labor, and community organizations. The "List of Federal Agencies and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues", published by CEQ, should be consulted.

(2) Publish a notice of intent in the **Federal Register**, in accordance with CEQ 1501.7 and 1508.22, and notify directly those officials, agencies, organizations, and individuals with particular interest in the proposal.

(3) Circulate the draft EIS to interested parties and to depositories, such as public libraries, together with an invitation to comment on the draft EIS.

(4) Publicize the availability of the draft EIS by press release, in coordination with the FRA Public Affairs Officer, by advertisement in local newspapers of general circulation, or by other suitable means. The Environmental Protection Agency (EPA) will normally publish a notice of availability in the **Federal Register**. If one or more alternative(s) include significant encroachment on a floodplain, the notice shall make reference to that fact.

(5) If necessary or desirable, as determined in consultation with the FRA Office of Chief Counsel, using the criteria in CEQ 1506.6(c), hold a hearing or hearings on the draft EIS. If a hearing is held, the draft EIS shall be made available at least 30 days prior to the hearing.

(6) Respond to all responsible comments in the final EIS in accordance with section 13(c)(11) of these Procedures and provide copies of the final EIS to all who commented on the draft.

(c) List of Contacts. Interested persons can get information on the FRA environmental process and on the status of EIS's issued by the FRA from: Office of Policy and Program Development, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Stop 15, Washington, D.C. 20590; telephone (202) 493-6400. The FRA Office of Policy and Program Development will contact the appropriate Program Office if additional information is required.

#### 10. Environmental Assessment Process

(a) Policy. The process of considering the environmental impacts of a proposed major FRA action should be begun by or under the supervision of the

Program Office at the earliest practical time in the planning process for the proposed action and shall be considered along with technical and economic studies. To the fullest extent possible, steps to comply with all environmental review laws and regulations shall be undertaken concurrently.

(b) Scope. The process of considering environmental impacts should begin by identifying all reasonable alternatives to the proposed action, including "no action" and including mitigation measures not incorporated into the design of the proposed action. It is entirely proper that the number of alternatives being considered should decrease as the environmental consideration process proceeds and as analysis reveals that certain alternatives would in fact be unreasonable. The relevant environmental impacts of all alternatives should be identified and discussed, including both beneficial and adverse impacts; impacts which are direct, indirect, and cumulative; and impacts of both long and short-term duration; and mitigation measures that would be included for each alternative. Consultation with appropriate Federal, State, and local authorities, and to the extent necessary, with the public, should be begun at the earliest practicable time. The following aspects of potential environmental impact should be considered:

- (1) Air quality;
- (2) Water quality;
- (3) Noise and vibration;
- (4) Solid waste disposal;
- (5) Ecological systems;
- (6) Impacts on wetlands areas;
- (7) Impacts on endangered species or wildlife;
- (8) Flood hazards and floodplain management;
- (9) Coastal zone management;
- (10) Use of energy resources;
- (11) Use of other natural resources, such as water, minerals, or timber;
- (12) Aesthetic and design quality impacts;
- (13) Impacts on transportation: of both passengers and freight; by all modes, including the bicycle and pedestrian modes; in local, regional, national, and international perspectives; and including impacts on traffic congestion;
- (14) Possible barriers to the elderly and handicapped;
- (15) Land use, existing and planned;
- (16) Impacts on the socioeconomic environment, including the number and kinds of available jobs, the potential for community disruption and demographic shifts, the need for and availability of relocation housing, impacts on commerce, including existing business districts, metropolitan areas, and the

immediate area of the alternative, and impacts on local government services and revenues;

- (17) Environmental Justice;
- (18) Public health;
- (19) Public safety, including any impacts due to hazardous materials;
- (20) Recreational opportunities;
- (21) Locations of historic, archeological, architectural, or cultural significance, including, if applicable, consultation with the appropriate State Historic Preservation Officer(s);
- (22) Use of 4(f)-protected properties; and
- (23) Construction period impacts.

(c) Depth. The environmental consideration process should seek to quantify each impact identified as relevant to the proposed action and to each alternative. Such quantification should properly develop, over the course of the environmental impact process, from a rough order-of-magnitude estimate of impact to finer and more precise measurements. The depth of analysis of each impact should be guided by the following factors:

- (1) The likely significance of the impact;
- (2) The magnitude of the proposed action or an alternative action;
- (3) Whether the impact is beneficial or adverse; and
- (4) Whether and to what extent the impact has been assessed in a prior environmental document.

(d) Environmental Assessment. An environmental assessment shall be prepared, in accordance with CEQ 1508.9, prior to all major FRA actions. The environmental assessment shall be used to determine the need to prepare either a FONSI or an EIS for the proposed action, in accordance with subsection (e) of this section. An environmental assessment need not be prepared as a separate document where the Program Office or an applicant has already decided to prepare an EIS for the proposed action. Evidence of consultation with appropriate Federal, State, and local authorities is especially desirable as a part of the environmental assessment. The Program Office is encouraged to seek the advice of the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel as to the sufficiency of the environmental assessment.

(e) Determination Based on the Environmental Assessment. On the basis of the environmental assessment, the Program Office shall determine: whether the proposed action will or will not have a foreseeable significant impact on the quality of the human environment; whether or not the proposed action will use 4(f)-protected

properties; whether or not the proposed action will occur in a wetlands area; and whether or not the proposed action will occur in a base flood plain. In making these four determinations, the Program Office shall seek the advice of the FRA Office of Chief Counsel and shall inform this advisory office of the ultimate determinations. Based on these four determinations, the Program Office shall take action in accordance with paragraphs (1) through (4) below, as applicable:

(1) If the Program Office determines that the proposed action will not have a foreseeable significant impact, the Program Office shall compile that determination and its supporting documentation into a FONSI and proceed in accordance with section 11 of these Procedures.

(2) If the Program Office determines that there is a foreseeable significant impact, it shall begin the scoping process (CEQ 1501.7) and proceed to prepare a draft EIS in accordance with sections 9 and 13 of these Procedures.

(3) If the Program Office determines that the proposed action contemplates using 4(f)-protected properties, it shall proceed in accordance with section 12 of these Procedures.

(4) If the Program Office determines that the proposed action will occur in a wetlands area or in a base floodplain, the Program Office shall comply with subsection 14(n)(6) or (8) of these Procedures, as applicable. If a FONSI is prepared, the reference in 14(n)(6) and (8) to final EIS should be read as reference to the FONSI.

#### 11. Finding of No Significant Impact

(a) General. A FONSI shall be prepared for all major FRA actions for which an environmental impact statement is not required, as determined in accordance with section 10(e) of these Procedures.

(b) Decisionmaking on the Proposed Action. No decision shall be made at any level of authority of the FRA to commit the FRA or its resources to a major FRA action for which a FONSI must be prepared until a FONSI covering the action has been prepared and approved in accordance with this section.

##### (c) Staff Responsibilities.

(1) A FONSI, when required, shall be prepared by the Program Office and shall be signed by the official heading that office. The Program Office shall forward a copy to the Office of Policy and Program Development and a copy to the FRA Office of Chief Counsel.

(2) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the

FONSI and shall advise the Program Office of the consistency of the FONSI with FRA policies and programs.

(3) The FRA Office of Chief Counsel shall review every FONSI and shall advise the program office in writing as to the legal sufficiency of the FONSI.

(4) After complying with subsection (d)(2) of this section, the Program Office shall submit the FONSI to the Administrator concurrently with the advice obtained from the Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(5) A FONSI may become final only upon approval by the Administrator. Title V program actions do not require a separate approving endorsement by the Administrator, where his/her signature on the formal financial assistance agreement approves the entire agreement package including the FONSI.

##### (d) Coordination.

(1) Normally an approved FONSI need not be coordinated in advance outside the FRA. Copies of the FONSI shall be made available to the public, to a Government agency, or to Congress upon request at any time.

(2) When the proposed action is, or is closely similar to, one which normally requires an EIS as identified in section 13(a) of these Procedures, or when the nature of the proposed action is one without precedent, the proposed FONSI shall be made available to the public for a period of not less than 30 days before the FONSI is finally approved and the action is implemented.

(e) 4(f) Determinations. A 4(f) determination, prepared according to section 12 of these Procedures, may be required for a proposed FRA action even though an EIS is not required. If so, the 4(f) determination shall be prepared concurrently with and integrated with the FONSI for purposes of the review process.

(f) Representations of Mitigation. Where a FONSI has represented that certain measures would be taken to mitigate adverse environmental impacts of an action, the FRA program office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures.

Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts. The program office shall, upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures they proposed and which were adopted by FRA, and shall also, upon request, make

available to the public the results of relevant monitoring.

(g) Changes and Supplements. Where, in the development of an FRA action for which a FONSI was prepared, a significant change is made which would alter environmental impacts, or where significant new information becomes available regarding the environmental impacts of such an FRA action, the Program Office shall prepare an environmental assessment in order to determine whether, because of the changes or the new information, the proposed action will or will not have a foreseeable significant impact on the quality of the human environment. In making this determination, the Program Office shall seek the advice of the FRA Office of Chief Counsel. If, because of the change or the new information, the proposed action will have a foreseeable significant impact on the quality of the human environment, the Program Office shall prepare a draft EIS and proceed in accordance with sections 9 and 13 of these Procedures. If not, the Program Office shall prepare an appropriate supplement to the original FONSI.

(h) Contents of a FONSI. A FONSI shall include the environmental assessment in accordance with CEQ 1508.13. There is no prescribed format for FONSI's. A FONSI shall contain the following:

- (1) Identification of the document as a FONSI;
- (2) Identification of the FRA;
- (3) The title of the action, including, if applicable, identification of the action as a legislative proposal;
- (4) The Program Office which prepared the document;
- (5) The month and year of preparation of the document;
- (6) The name, title, address, and phone number of the person in the Program Office who should be contacted to supply further information about the document;
- (7) A list of those persons or organizations assisting the Program Office in the preparation of the document;
- (8) A description of the proposed action;
- (9) A description of the alternatives considered;
- (10) Environmental effects;
- (11) To the extent necessary and practicable, evidence of compliance with all applicable environmental laws, e.g., a copy of letters from the State Historic Preservation Officer and the Advisory Council on Historic Preservation;
- (12) A discussion of mitigation measures that will be used;

(13) A conclusion that the proposed action will have no foreseeable significant impact on the quality of the human environment; and

(14) Signature and date indicating the approval of the Administrator required by subsection (c) of this section.

#### 12. 4(f) Determinations

(a) General. The Program Office shall obtain the approval of the Administrator for a 4(f) determination before any FRA action is taken which proposes to use 4(f) protected properties. The 4(f) determination shall be prepared concurrently with and shall be integrated with either a FONSI or an environmental impact statement, or for those projects classified as categorical exclusions, in a separate Section 4(f) determination.

##### (b) Staff Responsibilities.

(1) The Program Office shall determine whether or not a proposed action contemplates the use of 4(f)-protected properties. The Program Office shall seek the advice of the FRA Office of Chief Counsel in making this determination.

(2) If it is determined that the proposed action would use 4(f)-protected properties, the Program Office shall initiate consultations on the proposed action with the Department of the Interior and, if appropriate, with the Departments of Housing and Urban Development and of Agriculture. If State or locally-owned property is involved, the Program Office should also consult with the appropriate State or local authorities.

(3) The Program Office shall incorporate into its environmental assessment of the proposed action an analysis of whether or not there are any feasible and prudent alternatives to the proposed use of 4(f)-protected properties and of all possible planning measures which could be taken to minimize harm to such 4(f)-protected properties resulting from such use.

(4) If the Program Office determines on the basis of its analysis that there is no feasible and prudent alternative to the use in the proposed action of 4(f)-protected properties, it shall prepare a 4(f) determination for the action. The document shall evidence consultation with the Department of the Interior and, where applicable, with the Departments of Housing and Urban Development and of Agriculture. The Program Office shall forward a copy of the 4(f) determination to the FRA Office of Policy and Program Development and a copy to the office of Chief Counsel as part of the appropriate FONSI or EIS or as a separate document for those projects classified as categorical exclusions.

(5) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the 4(f) determination and shall advise the Program Office as to the consistency of the 4(f) determination with FRA policies and programs.

(6) The FRA Office of Chief Counsel shall review every 4(f) determination and shall advise the Program Office in writing as to the legal sufficiency of the 4(f) determination.

(7) The Program Office shall submit the 4(f) determination to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(8) A 4(f) determination may become final only upon approval by the Administrator.

##### (c) Representations of Mitigation.

Where a 4(f) determination has represented that certain measures would be taken to implement the planning to minimize harm to 4(f)-protected properties, the Program Office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures. Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts.

(d) Contents of a 4(f) Determination. There is no prescribed format for 4(f) determinations. The information required by Section 4(f) should normally be incorporated as an integral part of the environmental document rather than as a separate section. To the extent not already included in the environmental document, a 4(f) determination shall contain the following:

(1) Identification of the document as containing a 4(f) determination made pursuant to section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c).

(2) Identification of the FRA;

(3) The title of the action;

(4) The Program Office which prepared the document;

(5) The month and year of preparation of the document;

(6) A description of the proposed action in its entirety;

(7) A description of the 4(f)-protected properties proposed to be affected, including information about their size, uses, patronage, unique qualities, and relationship to other lands in the vicinity of the action; and an explanation of the significance of the properties as determined by the Federal, State, or local officials having jurisdiction thereof;

(8) A detailed description of the use which the FRA action proposes to make of the affected 4(f)-protected properties;

(9) A similarly detailed description of every reasonable alternative location, routing, or design to the one proposed, including the alternative of "no action". Each description should analyze, as appropriate, the technical feasibility, cost estimates (with figures showing percentage differences in-total project costs), the possibility of community or ecosystem disruption, and other significant environmental impacts of each alternative, so as to evidence that the financial, social, or ecological costs or adverse environmental impacts of each alternative other than that proposed would present unique problems or reach extraordinary magnitudes;

(10) A description of all planning undertaken to minimize harm to the 4(f)-protected properties from the proposed action. This should include a description of actions which will be taken to mitigate adverse environmental impacts, such as beautification measures, replacement of land or structures or their equivalents on or near their existing site(s), tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, installation of noise barriers, or establishment of pedestrian or bicycle paths;

(11) Evidence of concurrence or of efforts to obtain concurrence of the public official or officials having jurisdiction over the 4(f)-protected properties regarding the proposed action and the planning to minimize its harm;

(12) In a FONSI or a final EIS, evidence of consultation with the Department of the Interior and, where appropriate, with the Departments of Housing and Urban Development and of Agriculture;

(13) In a FONSI or a final EIS, a conclusion that there is no feasible and prudent alternative to the proposed use of 4(f)-protected properties and that the proposal includes all possible planning to minimize harm to such properties resulting from such use; and

(14) In a FONSI or a final EIS, signature and date indicating the approval of the Administrator as required by subsection (b)(8) of this section.

#### 13. Environmental Impact Statement

(a) General. The FRA shall prepare and include a final EIS in every recommendation on proposals for major FRA actions significantly affecting the quality of the human environment, as determined in accordance with section 10 of these Procedures. There are no



actions which FRA has determined always require an EIS; however, an EIS shall be prepared for all major FRA actions significantly affecting the quality of the environment. This normally includes any construction of new major railroad lines or new major facilities or any change which will result in a significant increase in traffic.

(b) Decisionmaking on the Proposed Action. No decision shall be made at any level of FRA to commit the FRA or its resources to a major FRA action for which an EIS must be prepared until the later of the following dates:

(1) Thirty (30) days after a final EIS covering the action has been submitted to the EPA, as measured from the date the EPA publishes a notice of the final EIS's availability in the **Federal Register**; or

(2) Ninety (90) days after a draft EIS has been made available to the public, as measured from the date the EPA publishes a notice of the draft EIS's availability in the **Federal Register**. The Program Office may seek a waiver from the EPA to shorten these time limits for compelling reasons of national policy. In emergency circumstances, alternative arrangements can be made through CEQ. Any proposed waiver of time limits should be requested only after consultation with the FRA Office of Chief Counsel which will submit the request through P-10 to EPA or CEQ as appropriate.

(c) Staff Responsibilities and Timing.

(1) The Program Office shall begin the preparation of a draft EIS as soon as it determines, or the environmental assessment performed in accordance with section 10 of these Procedures discloses, that the proposed action will significantly affect the quality of the human environment.

(2) As soon as a decision to prepare a draft EIS has been made, if FRA is the lead or only agency, the Program Office, in consultation with the FRA Office of Chief Counsel, shall undertake the scoping process identified in CEQ 1501.7.

(3) In preparing a draft EIS, the Program Office shall perform such research and consultation as may be required in accordance with section 14 of these Procedures or as may be considered desirable as a result of the scoping process. The completed draft EIS shall be signed by the head of the Program Office. The Program Office shall forward a copy to the FRA Office of Policy and Program Development and a copy to the FRA Office of Chief Counsel.

(4) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the

draft EIS and shall advise the Program Office in writing as to the consistency of the draft EIS with FRA policies and programs.

(5) The FRA Office of Chief Counsel shall review every draft EIS and shall advise the program office in writing as to the legal sufficiency of the draft EIS.

(6) The Program Office shall submit the draft EIS to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(7) A draft EIS may be formally released outside the FRA only after approval by the Administrator.

(8) The Program Office shall direct distribution of the draft EIS as follows: EPA (five copies); the Office of the Assistant Secretary of Transportation for Policy and International Affairs (two copies); all interested FRA regional offices; appropriate DOT Regional Representatives; the FRA Office of Policy and Program Development; the FRA Office of Chief Counsel; all Federal agencies which have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action; State and local government authorities and public libraries in the area to be affected by the proposed action; and all other interested parties identified during the preparation of the draft EIS pursuant to section 9(b)(1) of these Procedures.

(9) The draft EIS shall be made available for public and agency comment for at least 45 days from the Friday following the week the draft EIS was received by EPA. The time period for comments on the draft EIS shall be specified in a prominent place in the document, but comments received after the stated time period expires should be considered to the extent possible.

(10) Where a public hearing is to be held on the draft EIS, as determined in accordance with section 9(b)(5) of these Procedures, the draft EIS shall be made available to the public at least 30 days prior to the hearing.

(11) The Program Office shall consider all comments received on the draft EIS, issues raised through the citizen involvement process, and new information, and shall revise the text into a final EIS accordingly. (See CEQ 1503.4). If the proposed final EIS is not submitted to the Administrator within three years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared to determine if the draft EIS remains applicable, accurate, and valid. If not, a supplement to the draft EIS or a new draft EIS shall be prepared and circulated as required

by paragraphs (1) through (9) of this subsection. If the draft EIS remains applicable, accurate, and valid, the final EIS shall be signed by the head of the Program Office and copies forwarded to the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel.

(12) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the final EIS and shall advise the Program Office in writing as to the consistency of the final EIS with FRA policies and programs.

(13) The FRA Office of Chief Counsel shall review every final EIS and shall advise the Program Office in writing as to its legal sufficiency.

(14) The Program Office shall submit the final EIS to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and the FRA Office of Chief Counsel.

(15) The final EIS may become final only upon approval by the Administrator.

(16) After approval by the Administrator, the Program Office shall direct distribution of the final EIS as follows: EPA (five copies); appropriate DOT Regional Representatives; all interested FRA regional offices; the FRA Office of Policy and Program Development; the FRA Office of Chief Counsel; State and local authorities and public libraries in the area affected by the proposed action; Federal agencies and other parties who commented substantively on the draft EIS in writing or at a public hearing; and all agencies, organizations, or individuals requesting copies.

(17) If major steps toward implementation of the proposed action have not commenced, or a major decision point for actions implemented in stages has not occurred within three years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary. If major steps toward implementation of the proposed action have not occurred within the time frame, if any, set forth in the final EIS, or within five years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary. A decision that a new or supplemental EIS is not necessary must be processed in accordance with paragraph (14) of this subsection (c).

(d) Legislative EIS. An approved draft legislative EIS may be forwarded to the appropriate Congressional committee(s) up to 30 days later than the proposed legislation. If a final EIS is prepared as required by CEQ 1506.8(b)(2), it shall be forwarded to the appropriate Congressional committee as soon as it becomes available. Comments on the draft EIS and FRA's responses thereto shall be forwarded to the appropriate Congressional committee(s).

(e) Changes and Supplements. Where, in the development of an FRA action for which a draft or final EIS has been prepared, a significant change is made which would alter environmental impacts, or where significant new information becomes available regarding the environmental impacts of such an FRA action, the Program Office shall prepare an appropriate supplement to the original draft or final EIS for that portion of the FRA action affected. Such a supplement shall be processed in accordance with paragraphs (3) through (17) of subsection (c) of this section. If a formal administrative record is required for any FRA action for which a supplemental EIS is prepared, the supplemental EIS shall be introduced into the formal administrative record. The Program Office, in consultation with the FRA Office of Chief Counsel, shall determine whether and to what extent any portion of the proposed action is unaffected by the planning change or new information. FRA decisionmaking on portions of the proposed action having utility independent of the affected portion may go forward regardless of the concurrent processing of the supplement.

(f) Representations of Mitigation. Where a final EIS has represented that certain measures would be taken to mitigate the adverse environmental impacts of an action, the FRA program office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures. Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts. The program office shall, upon request, inform cooperating and commenting agencies on progress in carrying out mitigation measures they proposed and which were adopted by FRA and shall also, upon request, make available to the public the results of relevant monitoring.

(g) 4(f) Determinations. Where a 4(f) determination as well as an EIS is required for a proposed FRA action, it shall be prepared in accordance with section 12 of these Procedures and shall

be integrated with the draft and final EIS.

(h) Contents of an EIS. The specific contents of both a draft and final EIS are prescribed by section 14 of these Procedures. Prescribed format for or page limitations on EIS's shall be those set out in CEQ 1502.7 and 1502.10. An EIS shall be prepared so as to focus on the significant issues, as identified by the environmental assessment and the process of public comment, and so as to avoid extraneous data and discussion. The text of an EIS should be written in plain language comprehensible to a lay person, with technical material gathered into appendices. Graphics and drawings, maps and photographs shall be used as necessary to clarify the proposal and its alternatives. The sources of all data used in an EIS shall be noted or referenced in the EIS.

#### *14. Contents of an Environmental Impact Statement*

To the fullest extent possible, the Program Office shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related studies required by the various environmental review laws and Executive Orders listed in subsection (n) below.

In addition to the requirements of CEQ 1502.11 through 1502.18, and subject to the general provisions of section 13(h) of these Procedures, a draft or final EIS shall contain the following:

(a) If appropriate, identification of the document as containing a 4(f) determination made pursuant to section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c).

(b) If appropriate, a citation to section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f).

(c) Identification of the FRA.

(d) The Program Office that prepared the document.

(e) The month and year of preparation of the document.

(f) In a draft EIS, the name and address of the person in the FRA to whom comments on the document should be addressed, and the date by which comments must be received to be considered.

(g) A list of those persons, organizations, or agencies assisting the FRA in the preparation of the document.

(h) In a draft EIS, a list of agencies, organizations, and persons to whom copies of the document are being sent.

(i) In a final EIS, a list of all agencies, organizations, or persons from whom comments were received on the draft EIS.

(j) A table of contents.

(k) A brief statement of the purpose and need to which the alternatives described in subsection (l) respond, including, where applicable, the legislative authority on which it is based; and the extent to which other Federal, State, or local agencies are funding or otherwise participating in or regulating the alternatives.

(l) A description of all reasonable alternative courses of action which could satisfy the purpose and need identified in subsection (k). The description should include the "no action" alternative and alternatives not currently within the authority of the FRA, as well as a description of feasible mitigation measures which have not been incorporated into the proposed action. The draft EIS may and the final EIS shall identify which alternative is the proposed action.

(m) A short description of the environment likely to be affected by the proposed action, by way of introduction to the environmental impact analysis, including a list of all States, counties, and metropolitan areas likely to be so affected.

(n) An analysis of the environmental impacts of the alternatives, including the proposed action, if identified. The discussion under each area of impact should cover the proposed action and all alternatives, even if only to point out that one or more alternatives would have no impact of that kind. Under each area of impact, the discussion should focus on alternatives which might enhance environmental quality or avoid some or all adverse impacts of the proposed action. Attachment 2 to DOT Order 5610.1C provides guidance on the contents of this section. Analysis should be focused on areas of significant impact: beneficial and adverse; direct, indirect, and cumulative; and both long- and short-term. There should be evidence of consultation with appropriate Federal, State and local officials. At a minimum, the following areas should be considered in the environmental analysis, although their discussion in the EIS is dependent on their relevance.

(1) Air quality. There should be an assessment of the consistency of the alternatives with Federal and State plans for the attainment and maintenance of air quality standards.

(2) Water quality. There should be an assessment of the consistency of the alternatives with Federal and State standards concerning drinking water, storm sewer drainage, sedimentation control, and non-point source discharges such as runoff from construction operations. The need for any permits under sections 402 and 404

of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344) for the discharge of dredged or fill material shall be discussed.

(3) Noise and vibration. The alternatives should be assessed with respect to applicable Federal, State, and local noise standards, especially those enforced by the FRA for railroad equipment, yards and facilities including 49 CFR Part 210 "Railroad Noise Emission Compliance Regulations."

(4) Solid waste disposal. The alternatives should be assessed with respect to State and local standards for sanitary landfill and solid waste disposal.

(5) Natural ecological systems. The EIS should assess both construction period and long-term impacts of the alternatives on wildlife and vegetation in the affected environment. Where an alternative proposes to control or modify a stream or other body of water in some way, it shall contain evidence of consultation with the U.S. Fish and Wildlife Service of the Department of the Interior and with the agencies exercising administration over the wildlife resources of affected States, as required by section 2(a) of the Fish and Wildlife Coordination Act, 16 U.S.C. 662(a).

(6) Wetlands. In accordance with E.O. 11990 (May 24, 1977), and DOT Order 5660.1A, the Program Office shall determine whether any of the alternatives will be located in a wetland area. If so, the procedures in DOT Order 5660.1A should be followed including consultation with the appropriate representative of the Department of the Interior, and with responsible Federal, State or local officials with special expertise, concerning the impacts of the proposal on the wetland areas affected. If the proposed action is located in a wetland area, the final EIS shall document a determination that there is no practicable alternative to such location, and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(7) Endangered species. If applicable, the EIS shall discuss the impacts of the alternatives on endangered or threatened species of wildlife. The Department of the Interior lists such species in 50 CFR Part 17. There should be evidence of consultation with the Department of the Interior as required by section 7 of the Endangered Species Act, 16 U.S.C. 1536.

(8) Flood hazard evaluation and floodplain management. In accordance with E.O. 11988 (May 24, 1977), and DOT Order 5650.2, the Program Office

shall determine whether any of the alternatives will affect a base floodplain. Base floodplain limits shall be determined by using Department of Housing and Urban Development floodplain maps, or, if one or more are not available for a particular area, on the best available information. If one or more alternatives will affect a base floodplain, the draft EIS shall discuss: any risk associated with each such alternative; the impacts on natural and beneficial floodplain values; the degree to which the alternative supports incompatible development in the base floodplain; and the adequacy of the methods proposed to minimize harm. In the final EIS, this discussion should concentrate on the proposed action. If the proposed action involves a significant encroachment on a base floodplain, the final EIS shall contain a finding, made in writing by the Administrator, that the proposed significant encroachment is the only practicable alternative. This finding shall be supported by a description of why the proposed action must be located in the floodplain, including the alternatives considered and why they were not practicable and accompanied by a statement that the action conforms to applicable State and/or local floodplain protection standards. This finding shall be provided to interested parties. Guidance on the definition of significant encroachment and other matters is provided in DOT Order 5650.2.

(9) Coastal zone management. If applicable, the EIS should discuss to what extent the alternatives are consistent with approved coastal zone management programs in affected States, as required by section 307(c)(2) of the Coastal Zone Management Act. 16 U.S.C. 1456(c)(2).

(10) Production and consumption of energy. The EIS shall assess in detail any irreversible or irretrievable commitments of energy resources likely to be involved in each alternative and any potential energy conservation, especially those alternatives likely to reduce the use of petroleum or natural gas, consistent with the policy outlined in Executive Order 12185.

(11) Use of natural resources other than energy, such as water, minerals, or timber. The EIS shall assess in detail any irreversible or irretrievable commitments of these resources likely to be involved in each alternative.

(12) Aesthetic environment and scenic resources. The EIS should identify any significant changes likely to occur in the natural landscape and in the developed environment. The EIS should also discuss the consideration

given to design quality, art, and architecture in project planning and development as required by DOT Order 5610.4.

(13) Transportation. The EIS should assess the impacts on both passenger and freight transportation, by all modes, from local, regional, national, and international perspectives. The EIS should include a discussion of both construction period and long-term impacts on vehicular traffic congestion.

(14) Elderly and handicapped. The EIS shall assess impacts of the alternatives on the transportation and general mobility of the elderly and handicapped.

(15) Land use. The EIS should assess the impacts of each alternative on local land use controls and comprehensive regional planning as well as on development within the affected environment, including, where applicable, other proposed Federal actions in the area. Where inconsistencies or conflicts exist, this section should describe the extent of reconciliation and the reason for proceeding notwithstanding the absence of full reconciliation. As required by 42 U.S.C. 4332(2)(D)(iv), the Program Office shall provide early notification to, and solicit the views of, any State or Federal land management entity with respect to any alternative which may have significant impacts upon such entity and, if there is any disagreement on such impacts, prepare a written assessment of such impacts and views for incorporation into the final EIS.

(16) Socioeconomic environment. The EIS should assess the number and kinds of available jobs likely to be affected by the alternatives. Also discussed should be the potential for community disruption or cohesion, the possibility of demographic shifts, and impacts on local government services and revenues. The need for and availability and adequacy of relocation housing should be assessed, using as a guide section 6 of Attachment 2 to DOT Order 5610.1C. The positive and negative consequences of each alternative on commerce in the community and its surrounding metropolitan area, specifically on existing business districts and the immediate project areas should be analyzed.

(17) Public health.

(18) Public safety. The EIS should assess the transportation or use of any hazardous materials which may be involved in the alternatives, and the level of protection afforded residents of the affected environment from construction period and long-term operations associated with the alternatives.

(19) Recreation areas and opportunities. Impacts of the alternatives on sites devoted to recreational activities should be assessed, including impacts on non-site-specific activities, such as hiking and bicycling, and impacts on non-activity-specific sites such as designated "open space". Where land acquired with Federal grant money such as Department of Housing and Urban Development "open space" funds or Bureau of Outdoor Recreation "land and water conservation" funds is involved, there should be evidence of consultation with the grantor agency concerning the proposed action, and of any approvals required by Section 6(f) of the Land and Water Conservation Fund Act (16 U.S.C. 4601-8(f)).

(20) Environmental Justice. The EIS should address environmental justice considerations as required by Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" and the DOT Order on Environmental Justice.

(21) Sites of historical, archeological, architectural, or cultural significance. In accordance with section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), the EIS shall identify all properties which may be affected by the alternatives that are included in or eligible for inclusion in the National Register of Historic Places. For a property not included in the National Register, the criteria for inclusion may be found in 36 CFR Part 60. There should be evidence of consultation with the appropriate State Historic Preservation Officer and in case of disagreement with the Department of the Interior as to whether a property is eligible for the National Register. The criteria of effect on historic properties found in 36 CFR Part 800 should be discussed with regard to each alternative. In the final EIS, there should be evidence of consultation, concerning the impacts of the proposed action on historic properties, with the appropriate State Historic Preservation Officer(s), and with State or local historical societies, museums, or academic institutions having special expertise. In the event that the FRA in consultation with the State Historic Preservation Officer finds that a proposed action will have an adverse effect on such property, there should also be evidence in the final EIS of subsequent consultation with the Advisory Council on Historic Preservation. A 4(f) determination may also be required in the EIS, as provided in section 12 of these Procedures.

(22) Construction impacts. The EIS should identify and assess the impacts

associated with the construction period of each alternative, if any.

(o) A summary of unavoidable adverse impacts of the alternatives and a description of mitigation measures planned to minimize each adverse impact. Impacts and mitigation measures should be identified in this table as either long-term, short-term, or construction-period. If a proposed action will have an adverse effect on a property included in or eligible for inclusion in the National Register of Historic Places, this part of the final EIS shall include a copy of any Memorandum of Agreement with, or other response to comments by, the Advisory Council on Historic Preservation, in accordance with 36 CFR Part 800. This part of the EIS should also include a summary of any irreversible or irretrievable commitments of resources and any foreclosures of future options that would be likely to result from the alternatives.

(p) A brief discussion of the relationship between local short-term uses of the environment affected by the alternatives, and the maintenance and enhancement of long-term productivity in that environment.

(q) Any 4(f) determination covering the same proposed action as the EIS.

(r) A compilation of all applicable Federal, State and local permits, licenses, and approvals which are required before the proposed action may commence. The final EIS should reflect that there has been compliance with the requirements of all applicable environmental laws and orders. If such compliance is not possible by the time of final EIS preparation, the EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

(s) In a final EIS, a compilation of all responsible comments received on the draft EIS, whether made in writing or at a public hearing, and responses to each comment. Comments may be collected and summarized except for comments by Federal agencies and where otherwise required by Federal law or regulation. Every effort should be made to resolve significant issues before the EIS is put into final form. The final EIS should reflect such issues, consultation and efforts to resolve such issues, including an explanation of why any remaining issues have not been resolved.

(t) An index, if possible and useful.

(u) Signature and date indicating the approval of the Administrator as required by section 13(c) of these Procedures.

### 15. Record of Decision

(a) General. The Program Office shall prepare a draft record of decision at the point in which the FRA is prepared to make a final decision on the proposed action. The timing of the agency's decision shall follow the requirements of CEQ 1506.10. The record of decision shall follow the same approval process as the final EIS, as described in section 13(c)(12) through (16) of these Procedures.

(b) Contents. The draft record of decision shall include a description of the proposed action and the environmental information specified in CEQ 1505.2 as well as proposed findings pursuant to section 4(f), the DOT Wetlands Order (DOT 5660.1A), and the DOT Floodplains Order (DOT 5650.2), as appropriate.

(c) Changes. If the Administrator, or his or her designee, wishes to take an action which was not identified as the preferred action in the final EIS, or proposes to make substantial changes in the mitigation measures or findings discussed in the draft record of decision, the revised record of decision shall be processed internally in the same manner as EIS approval, in accordance with section 13(c) of these Procedures.

### 16. Effective Date

These Procedures were effective as of July 30, 1979 and apply to all FRA actions undertaken after that date.

Dated: May 18, 1999.

**Jolene M. Molitoris,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is