

**U.S. DOT Federal Railroad Administration  
Office of Passenger and Freight Programs**

**Monitoring Procedure 32B – Environmental Review**

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**1.0 PURPOSE**

This Monitoring Procedure (MP) describes FRA requirements for the Monitoring and Technical Assistance Contractor (MTAC) when evaluating the Grantee's processes and work products related to the environmental review of projects.

**2.0 KEY PRINCIPLES**

The Council on Environmental Quality (CEQ) encourages integrating environmental reviews required by the National Environmental Policy Act (NEPA) with other planning and environmental reviews, to avoid duplicative or inconsistent processes and facilitate quicker, more informed decision-making.<sup>1</sup>

Consistent with CEQ, FRA's review process ensures that environmental values are integrated into project decision-making processes by considering the environmental impacts of proposed actions and all reasonable alternatives to those actions. FRA also ensures that information on environmental impacts and alternatives is publicly available before decisions are made and actions occur.

FRA staff work with Grantees and other parties in the preparation of environmental studies and documents. Through collaboration with FRA, state and local agencies provide environmental review services and prepare documents on behalf of FRA. The environmental documents are used and issued as FRA agency documents.

The MTAC should obtain direction from FRA staff regarding the MTAC's role in the environmental process. The MTAC may be asked to assist FRA staff in the review and preparation of NEPA and related documents, and other aspects of the environmental review process.

**3.0 REQUIRED DOCUMENTS**

The MTAC should obtain direction from FRA staff regarding applicable documents from the Grantee, such as:

1. Grant Agreement
2. Service Development Plan materials
3. Alternative analysis materials
4. Scoping documents
5. Public participation materials
6. Design documents

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<sup>1</sup> In March 2012, CEQ issued Final Guidance to Promote Efficient Environmental Reviews, available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/efficiencies-guidance>.

7. Materials related to analysis and compliance with
  - a. 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)); including mitigation information; including decision documents such as CE, FONSI, and ROD
  - b. Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c))
  - c. Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f))
  - d. Section 309(a) of the Clean Air Act (42 U.S.C. 7609(a))
  - e. Section 307(c)(2) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(2))
  - f. Section 2(a) of the Fish and Wildlife Coordination Act (16 U.S.C. 662(a))
  - g. Section 7 of the Endangered Species Act (16 U.S.C. 1536)
  - h. Noise Control Act of 1972 (42 U.S.C. 4901 et seq.) and
  - i. Executive Orders, regulations, and guidelines cited in Appendices A and B of this MP

#### 4.0 SCOPE OF WORK

Since FRA is responsible for compliance with environmental regulations the MTAC must understand its role as evaluator/recommender to FRA. The MTAC must check in with FRA before proceeding with a course of action related to a Grantee's environmental process and products, or its own work, for example, application of methodologies, agency coordination, handling letters and public responses. The MTAC must obtain agreement on the approach by the following individuals:

- FRA Regional Manager or Project Manager (Team Lead)
- FRA Environmental Protection Specialist (Subject Lead and Manager of the environmental review process)
- FRA Chief of Planning and Environment Division or Environmental Team Lead

Once the approach is set, the MTAC may be responsible to do the following:

1. Set up meetings with the individuals above—as frequently as required, weekly, monthly, or periodically—and obtain their concurrence, approval, and input.
8. Study and evaluate the Grantee's environmental processes and documents, provide a professional opinion on the adequacy of those documents, and make recommendations to FRA for improvements or actions.
9. Review for adequacy and timing the Grantee's approach to incorporating environmental requirements, including restrictions contained in the project's NEPA documents, into the project design documents and the Grantee's plan.
10. During design and construction, check, review, and update the design documents when changes occur in environmental requirements. Check for consistency. Assess the level to which environmental impacts and avoidance or mitigation measures are reflected in project design documents. Check constructability, cost, and time effects of implementing the mitigation measures.
11. Verify that necessary agreements and permits are identified.
12. Verify that impacts to third parties, especially to those in the railroad environment, stakeholders, and parties to agreements, are identified in the environmental document and listed at their current addresses for distribution of the document. Confirm that the Grantee has received comments, if any, from such third parties.

13. As a possible further step, prior to the NEPA decision, encourage the Grantee to document resolution of railroad operation impacts and mitigations, and to obtain sign-off of this plan by affected parties.
14. During construction, verify that the contract documents and/or interagency or public-private partnership agreements are being followed and that the project itself and the related mitigation measures are being implemented consistent with the environmental decision document.

#### 4.1 NEPA Basics

The National Environmental Policy Act (NEPA) is the national charter for protecting the environment. Refer to 42 USC 4321-4347 (available at <http://www.dot.gov/regulations/42-usc-sec4321-4347>).

The purposes of NEPA are:

- “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment
- To promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man
- To enrich the understanding of the ecological systems and natural resources important to the nation
- To establish a Council on Environmental Quality”<sup>2</sup>

The implementing regulations for NEPA written by CEQ are applicable to and binding on all Federal agencies. These regulations are listed in 40 CFR 1500-1518 (available at <http://www.gpo.gov/fdsys/pkg/CFR-2004-title40-vol30/pdf/CFR-2004-title40-vol30-chapV.pdf>).

FRA implementation of CEQ regulations is through the *FRA Procedures for Considering Environmental Impacts* as amended (available in Appendix B and at <http://www.fra.dot.gov/eLib/details/L02561> and <http://www.fra.dot.gov/Page/PO215>).

The NEPA process consists of an evaluation of the environmental effects of a Federal action, using three levels of analysis:

- Categorical Exclusion (CE)  
“Means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3 Agency Procedures) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.”<sup>3</sup> (ref.1508.4)  
“Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” (ref. 1508.4)

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<sup>2</sup> <http://www.dot.gov/sites/dot.dev/files/docs/NEPA%20of%201969.txt>

<sup>3</sup> NEPA Implementing Regulations by CEQ, 40CFR1500-1518, <http://www.gpo.gov/fdsys/pkg/CFR-2004-title40-vol30/pdf/CFR-2004-title40-vol30-chapV.pdf>

- Environmental assessment (EA)
  - “(a) Means a concise public document for which a Federal agency is responsible that serves to:
    - (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
    - (2) Aid an agency’s compliance with the Act when no environmental impact statement is necessary.
    - (3) Facilitate preparation of a statement when one is necessary.
  - (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” (ref. 1508.9)

If through the EA process, the Federal agency determines the project would have no significant impact, the agency issues a finding of no significant impact (FONSI). “Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.” (ref. 1508.13)

- Environmental impact statement (EIS)
  - “Means a detailed written statement as required by section 102(2)(C) of the Act.”<sup>4</sup> (ref. 1508.11) If the EA determines that the action will have a significant effect on the human environment, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. After a final EIS is prepared and at the time of its decision, a Federal agency will prepare a public record stating what the decision was; identifying all alternatives considered; stating whether all practicable means to avoid or minimize environmental harm from the alternative selected were adopted, and if not, why they were not. It also includes a monitoring and enforcement program for mitigation. This is the Record of Decision (ROD).

A NEPA analysis can be conducted during the planning or preliminary engineering phase as described in Section 4.2, but it must be completed before a project starts final design or is released for a design-build contract. The implementing regulations state “Agencies shall not commit resources prejudicing the selection of alternatives before making a final decision.” (ref. 1506.1 Limitation on Actions during NEPA process)<sup>5</sup>

## 4.2 FRA and NEPA

To Grantees and the industry at large, FRA provides information and resources on environmental issues relating to the planning and development of the nation’s railroad system. These issues range from hazardous materials, safety, noise, and invasive species to climate change and community livability. For

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<sup>4</sup> Ibid

<sup>5</sup> NEPA Implementing Regulations by CEQ, 40CFR1500-1518, <http://www.gpo.gov/fdsys/pkg/CFR-2004-title40-vol30/pdf/CFR-2004-title40-vol30-chapV.pdf>

railroad projects, FRA implements Federal environmental laws and policies and conducts environmental impact assessments of pending actions and projects. For rail planning, actions typically involve infrastructure and service changes over very long and linear geographic areas across multiple jurisdictions. Rail projects tend to be more localized.

Since NEPA regulations require consideration of all reasonable alternatives to inform decision making, the integration of planning and NEPA allows for an effective and efficient process to make decisions. Environmental documents are intended to “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made” (ref. 1502.2(g)).

During Planning, for complex corridor conditions, in tandem with development of the Service Development Plan described in MP 32A, a Tier 1 or Programmatic environmental review is performed (ref. 1508.28 Tiering) to address broad questions and environmental effects in an entire corridor. For rail projects, a “Service NEPA” is completed with the Tier 1 to address questions and effects relating to alternatives for route, stations, and other facilities; and alternatives for service including type, level of service, and operating technology.<sup>6</sup> The NEPA process concludes with FRA’s issuance of a decision document (FONSI or ROD) that may include mitigation measures to minimize impacts. State environmental reviews are ideally conducted in concert with NEPA.

At its best, planning is a rational, open, and transparent process that encourages informed decision making with public input. Agencies are required to include the public in preparing and implementing NEPA procedures. For FRA projects, this typically means participation by the Grantee’s executive leadership, boards of directors of partner agencies, advisory groups, community and business groups, resource agencies, affected entities and property owners, the general public, and other stakeholders.

During Preliminary Engineering, project-specific environmental reviews build on the Tier 1 NEPA work, with additional public input.

For more information on FRA’s approach to NEPA reviews, see appendices on the following pages:

- Appendix A: Environmental Documentation
- Appendix B: FRA Procedures for Considering Environmental Impacts
- Appendix C: NEPA Project Checklist

For a list of CEs, see FRA’s Categorical Exclusion Guidance at <http://www.fra.dot.gov/Page/P0550>.

## **5.0 REFERENCES – SEE MP 01**

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<sup>6</sup> “Service NEPA” is a term coined by FRA.

## APPENDIX A

### Environmental Documentation - Federal Register Volume 75 No. 126

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*Federal Register / Vol. 75, No. 126 / Thursday, July 1, 2010 / Notices pg. 38361  
DEPARTMENT OF TRANSPORTATION , Federal Railroad Administration , High-Speed Intercity Passenger Rail (HSIPR) Program , AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT). ACTION: Notice of funding availability for individual projects; issuance of interim program guidance.*

#### **Appendix 2.2 Environmental Documentation**

The environmental review process required by NEPA applies to all Federal grant programs. NEPA requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA also mandates that all reasonable alternatives be considered, and to that end, an alternatives analysis is typically conducted during the environmental review process. Agencies must also make information on these impacts and alternatives publicly available before decisions are made and actions occur.

##### **Appendix 2.2.1 Corridor-Wide Environmental Documentation (“Service NEPA”)**

As part of the Service Development Program planning phase applicants must complete an environmental review, which addresses the full extent of the overall Service Development Program and its related actions. Within the context of the HSIPR program, this evaluation is referred to as “Service NEPA.”

Service NEPA involves at least a programmatic/Tier 1 environmental review (using tiered reviews and documents), or a project environmental review, that addresses broad questions and likely environmental effects in the entire corridor relating to the type of service(s) being proposed, including alternative cities and stations served, geographical route alternatives, service levels and frequencies, choice of operating technologies (e.g., diesel vs. electric operation and maximum operating speeds), ridership projections, major infrastructure components, and identification of major terminal area or facility capacity constraints. Standard Service Development Programs are often best addressed with project NEPA documentation; while more complex Major Service Development Programs often call for a tiered approach.

Service NEPA is intended to support a Federal decision concerning whether or not to implement a Service Development Program. For major Service Development Programs, FRA generally prefers to use a tiered NEPA process and a Tier-1 environmental impact statement (EIS) to satisfy Service NEPA at a point prior to Preliminary Engineering that is required to support a more detailed, comprehensive “project NEPA” document. Furthermore, completion of a tiered Service NEPA EIS allows for the significant narrowing of the alternatives to be considered in preparing subsequent project NEPA documents, allowing for reduced Preliminary Engineering costs.

While FRA anticipates that most Major Service Development Programs will follow a tiered approach towards NEPA document development (including preparation of a Service NEPA EIS during the planning phase), FRA will consider a non-tiered service NEPA approach where appropriate and conducive to the efficient progression of the project and the consideration of environmental impacts. In general, FRA will

## APPENDIX A

### Environmental Documentation - Federal Register Volume 75 No. 126

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consider using project NEPA for Service Development Programs where one or more of the following factors apply:

- There are no routing decisions required for the proposed service;
- The projects necessary to implement the proposal are likely to be modest in scale and unlikely to cause significant environmental impacts;
- The Preliminary Engineering effort for the Service Development Program is likely to be modest in scale, cost, and duration; and
- The project sponsor will be providing all necessary funding, from non-HSIPR program sources, to complete Preliminary Engineering and site-specific environmental analysis.

For Service Development Programs that meet these criteria and for which FRA has decided not to tier, NEPA will be satisfied through a unified project-level document developed during the PE/NEPA phase.

#### **Appendix 2.2.2—Project Environmental Documentation (“Project NEPA”)**

As part of the PE/NEPA phase of project development, a project NEPA document and other required environmental documentation to satisfy other Federal laws are prepared for the specific design alternative identified through Preliminary Engineering and other reasonable alternatives (integrated with the design alternatives analysis performed as part of Preliminary Engineering). Additionally, the design and engineering outputs of Preliminary Engineering will serve as inputs into the evaluation of environmental impacts just as identified impacts are inputs for design and engineering. Therefore, it is essential that Preliminary Engineering and project NEPA be closely coordinated and performed in tandem with one another.

#### **Appendix 2.2.3—NEPA Roles and Responsibilities**

FRA, as the Federal sponsoring agency, has primary responsibility for assuring compliance with NEPA and related environmental laws for projects funded under the HSIPR program. While NEPA compliance is a Federal agency responsibility and the ultimate decisions remain with the Federal sponsoring agency, FRA encourages applicants to take a leading role in preparing environmental documentation, consistent with existing law and regulations.

In the varied and flexible HSIPR program no single approach to NEPA compliance will work for every proposal. Therefore, FRA will work closely with applicants to assist in the timely and effective completion of the NEPA process in the manner most pertinent to the applicant’s proposal.

#### **Appendix 2.2.4—FRA NEPA Compliance**

All NEPA documents must be supported by environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations. Such analyses must be conducted in accordance with the Council on Environmental Quality’s regulations implementing NEPA (40 CFR part 1500 et seq.), FRA’s “Procedures for Considering Environmental Impacts” (45 FR 40854, June 16, 1980, as revised May 26, 1999, 64 FR 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations, and other related laws and regulations such as the Clean Water Act and the Endangered Species Act.

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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TOC and Sections 1, 2, 3, 10, 13, 14 from:

*Federal Register /Vol. 64, No. 101 /Wednesday, May 26, 1999 /Notices pg. 28545*

**USDOT, FRA Procedures for Considering Environmental Impacts**

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

*ACTION: Notice of Updated Environmental Assessment Procedures.*

Note: this is available in full at <http://www.fra.dot.gov/eLib/details/L02561>

#### 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

**APPENDIX B**  
**FRA Procedures for Considering Environmental Impacts – Excerpts**

---

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

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

---

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.

#### 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

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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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:

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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(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.

### 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) Decision making 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.

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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(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.

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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(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

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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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 decision making 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.

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

---

#### 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.

## APPENDIX B

### FRA Procedures for Considering Environmental Impacts – Excerpts

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(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. . .
- (2) Water quality. . .
- (3) Noise and vibration. . .
- (4) Solid waste disposal. . .
- (5) Natural ecological systems. . .
- (6) Wetlands. . .
- (7) Endangered species. . .
- (8) Flood hazard evaluation and floodplain management. . .
- (9) Coastal zone management. . .
- (10) Production and consumption of energy. . .
- (11) Use of natural resources other than energy, such as water, minerals, or timber. . .
- (12) Aesthetic environment and scenic resources. . .
- (13) Transportation. . .
- (14) Elderly and handicapped. . .
- (15) Land use. . .
- (16) Socioeconomic environment. . .
- (17) Public health. . .
- (18) Public safety. . .
- (19) Recreation areas and opportunities. . .
- (20) Environmental Justice. . .
- (21) Sites of historical, archeological, architectural, or cultural significance. . .
- (22) Construction impacts. . .

(o) A summary of unavoidable adverse impacts of the alternatives and a description of mitigation measures planned to minimize each adverse impact. . .

(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.

**APPENDIX B**  
**FRA Procedures for Considering Environmental Impacts – Excerpts**

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(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. . .

(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. . .

(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.