PAGE 5 ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1980 AS OF 09/26/79 13:48

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-79
National Alcohol Fuels Commission									
Salaries and expenses	BA	D80-28	250		10 1 79				250
National Commission on Social Security									
Salaries and expenses	BA	D80-29	250		10 1 79				250
Navajo & Hopi Indian Relocation Commission									
Salaries and expenses	BA	D80-30	5,300		10 1 79				5,300
Tennessee Valley Authority									
Tennessee Valley Authority fund	BA	D80-31	17,000		10 1 79				17,000
OTHER INDEPENDENT AGENCIES									
TOTAL	BA		35,653						35,653
TOTAL	BA		1,000,441						1,000,441
TOTAL	O		2,735						2,735

[FR Doc. 79-31755 Filed 10-12-79; 8:45 am]
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federal register

Monday
October 15, 1979

Part V

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Environmental Impact and Related Procedures; Proposed Rulemaking and Notice of Proposed Supplementary Guidance and Procedures

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 771

49 CFR Part 622

[FHWA Docket No. 79-26]

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration [FHWA] and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 29, 1978, the Council on Environmental Quality (CEQ) issued regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). The CEQ regulations require each Federal agency to publish implementing procedures that apply the CEQ regulations to programs administered by the agencies. The proposed regulations published here are the coordinated responses of FHWA and UMTA to the CEQ regulations and the implementing procedures issued by the Department of Transportation (DOT). The FHWA/UMTA regulations will establish requirements for applicants for Federal funds under the programs of these two agencies and procedures for UMTA and FHWA to follow.

DATES: Comments must be received on or before November 14, 1979. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 79-26, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Dale Wilken, Office of Environmental Policy, 202-426-0106, or Irwin Schroeder, Office of the Chief Counsel, 202-426-0791. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday. UMTA: Peter Benjamin, Office of Transit Assistance, 202-472-2435, or John Collins, Office of the Chief Counsel, 202-426-1906. Office hours for UMTA are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: After an extensive public comment period the CEQ issued final regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.). The CEQ regulations were published on November 29, 1978 (43 FR 55978), and codified as 40 CFR Parts 1500-1508. The original draft of the CEQ regulations was published on June 9, 1978, and over 300 comments were received and considered in the development of the final version.

CEQ said in its regulation that:

> The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and the spirit of the Act. (40 CFR 1500.1(a))

In response to the CEQ regulations, the Department of Transportation (DOT) published DOT Order 5610.1C for comment on May 31, 1979 (44 FR 31341) and in final form on October 1, 1979 (44 FR 56420). The DOT Order establishes general procedures and requirements for the consideration of environmental impacts by agencies within DOT. The CEQ regulations and the DOT Order should be consulted as source materials on environmental procedures. Both encourage operating administration such as FHWA and UMTA to develop implementing procedures consistent with theirs. Because neither the CEQ regulations nor the DOT Order contain specific procedures necessary for the grant programs administered by FHWA and UMTA, both administrations decided to issue their own procedures.

FHWA and UMTA were originally developing separate procedures to implement the CEQ regulations and the DOT Order. However, in an effort to reduce red tape for applicants for funds from FHWA and UMTA and to enhance the consideration of alternatives that are developed as part of the environmental review process, FHWA and UMTA redirected their efforts to develop the coordinated regulations that are published here. As an aid to applicants who deal only with FHWA or only with UMTA, the proposed FHWA regulation will be published separately as 23 CFR Part 771 and the proposed UMTA regulation will be published separately as 49 CFR Part 622. However, for those agencies and individuals that are involved with projects of both FHWA and UMTA, the similarities of the two proposed regulations should be readily apparent.

First, the 23 sections of each proposed regulation have a one-to-one correspondence with each other so that provisions can be easily compared. For example, 23 CFR 771.*211* and 49 CFR 622.*211* contain the requirements for draft environmental impact statements for FHWA and UMTA respectively. Subpart A of each proposed regulation establishes basic ground rules that are identical for the two agencies. The procedures in Subpart B of each are different, but this is due to differences in the statutory programs (most significant FHWA programs are formula based and are funded from a Trust Fund while UMTA manages a large discretionary program that is funded from general revenues), differences in the type of applicants (FHWA deals mainly statewide agencies that enjoy a special status under NEPA while UMTA generally does not deal with statewide agencies), and differences in the degree of Federal decentralization (FHWA has offices in each state while UMTA only has 10 regional offices). Both proposed regulations refer to related sections of the CEQ regulations in parentheses where appropriate.

FHWA and UMTA are also coordinating efforts in the development of major urban transportation projects. On December 7, 1978, FHWA and UMTA issued a notice of proposed rulemaking titled "Major Urban Transportation Investments" (43 FR 57478). The proposed rule would require a cost-effectiveness analysis of alternatives for major highway and mass transportation investments proposed for urbanized areas. Under this proposal, there will be a number of projects jointly administered by UMTA and FHWA for which the cost-effectiveness analysis will be summarized in the environmental documents prepared for the projects.

The CEQ regulations require agencies to publish their implementing procedures by July 30, 1979. FHWA and UMTA have consulted with CEQ in the development of these procedures as requested by CEQ. In April of 1979, FHWA and UMTA jointly requested an extension of time beyond July 30, to permit an opportunity for public comment on their procedures in proposed form. The request was denied by CEQ.

Based on the considerations discussed above, FHWA and UMTA had intended to issue their procedures as "emergency regulations" within the meaning of Executive Order 12044 (43 FR 12661; March 24, 1978) and the DOT regulatory

policies and procedures (44 FR 11034; Feb. 26, 1979) which implement that executive order. Public comment would have been invited for a period of 60 days from the date of publication, and final regulations would then have been issued after review of the comments received. This approach was changed in response to a June 13 memorandum from CEQ to all Federal agency NEPA Liaisons emphasizing the importance of receiving public comments before making any new NEPA procedures effective. Thus, the Administrators of FHWA and UMTA have decided to publish these procedures as a notice of proposed rulemaking.

Although, with the notable exception of Federal-aid highway project development, the operations of FHWA and UMTA have been governed directly by the CEQ regulations since July 30, it is still very important to their respective grant programs that final regulations be promulgated as soon as possible. In light of the need to expedite the issuance of final regulations, and in recognition of the public's previous opportunity to comment on both the CEQ regulations and DOT Order 5610.1C, it has been determined to offer a 30-day period for public comment.

Comments are invited on the procedures, format, and substance of these proposed regulations. Comments are also requested on the possibility of further combining, consolidating and simplifying the FHWA and UMTA procedures.

In addition to implementing the procedural provisions of NEPA and the CEQ regulations, the proposed regulations also contain a section on Section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f); also 23 U.S.C. 138). Comments are also requested on these Section 4(f) provisions and, in particular, on § 771.223(c) and § 622.223(c) of the proposed regulations which would alter the manner by which DOT determines the significance of historic sites for the purpose of determining the applicability of Section 4(f) to these sites. Under regulations (36 CFR Parts 63 and 800) developed in response to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470 et seq.), historic sites of national, State, or local significance are identified and receive Section 106 protection based on a determination by the Secretary of the Interior that such sites are eligible for or should be placed on the National Register of Historic Places. State and local officials are given ample opportunity to participate in this process under the Section 106 regulations. Similarly, Section 4(f) applies to historic sites which are determined to have national, State, or local significance by the Federal, State, or local officials having jurisdiction over the site. The Section 106 procedures assure that all such significant and potentially significant sites are identified. (See 36 CFR Part 63; 36 CFR 800.4(a).) The requirements of Section 4(f) can then be applied when the land from the site in question will be used by an FHWA or UMTA funded project. Therefore, to lessen the administrative overlap between the two statutes, it is proposed that Section 4(f) would apply only to those sites included on or eligible for inclusion on the National Register of Historic Places.

All responses to this publication will be available for examination by any interested person at the above address both before and after the closing date for comments. Final regulations will be issued after review of the comments received from other agencies, the public, and CEQ. The proposed FHWA/UMTA regulations will also be revised, as necessary, to be consistent with the final DOT Order.

The final FHWA regulation will also be issued as Volume 7, Chapter 7 Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2), which is provided directly to the States and is available for inspection and copying under 49 CFR Part 7, Appendix D. Based on past experience, FHWA has found that housekeeping procedures (e.g., distribution instructions) and detailed explanatory guidance (e.g., suggested format and content of environmental documents) are more useful in the form of separate reference documents. FHWA thus plans to issue that material in appendices to FHPM 7-7-2. These proposed appendices are being published for public information and comment in this same special part of today's **Federal Register** under the "Notice" heading. Comments on the proposed appendices should also be submitted to FHWA Docket No. 79-26.

Note.—The Federal Highway Administration and the Urban Mass Transportation Administration have determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Dale Wilken or Peter Benjamin at the address specified above.

In consideration of the foregoing, and under the authority of 42 U.S.C. 4321 et seq., 23 U.S.C. 315 and 49 U.S.C. 1601 et seq., and the delegations of authority at 49 CFR 1.48(b) and 1.51, it is proposed to amend Chapter I of Title 23 and Chapter VI of Title 49, Code of Federal Regulations, by revising Part 771 and adding Part 622, respectively, as set forth below.

Issued on: October 10, 1979.

Karl S. Bowers,

Federal Highway Administrator.

Lillian C. Liburdi,

Acting Urban Mass Transportation Deputy Administrator.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT STATEMENTS

Subpart A—General Provisions

Sec.

Subpart B—Program and Project Procedures

Authority: 42 U.S.C. 4312 *et seq.*; 23 U.S.C. 315; 49 CFR 1.48(b).

Subpart A—General Provisions

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) for implementing the National

Environmental Policy Act (NEPA) and related environmental statutes, regulations and orders. It explains how the regulations of the Council on Environmental Quality (CEQ) and the procedures of the U.S. Department of Transportation (DOT) apply to actions of FHWA.

§ 771.103 Authority and related statutes and orders.

(a) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969, as amended;

(b) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act of 1970;

(c) 23 U.S.C. 138 and 49 U.S.C. 1653(f) (Section 4(f) of the Department of Transportation Act of 1966);

(d) 23 U.S.C. 109(j);

(e) 23 U.S.C. 315;

(f) 40 CFR 1500 *et seq.*, CEQ regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(g) 49 CFR 1.48(b), DOT Delegations of Authority;

(h) DOT Order* 5610.1C, Procedures for Considering Environmental Impacts;

(i) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991;

(j) 42 U.S.C. 7401 *et seq.*, Clean Air Act, as amended;

(k) 33 U.S.C. 1251 *et seq.*, Clean Water Act, as amended;

(l) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(m) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(n) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(o) 16 U.S.C. 1533, Section 7 of the Endangered Species Act, as amended;

(p) Executive Order 11988, Flood Plain Management, as implemented by 23 CFR Part 650, Subpart A;

(q) Executive Order 11990, Protection of Wetlands, as implemented by DOT Order* 5660.1A.

§ 771.105 Policy.

(a) It is the policy of the FHWA that in the development of agency actions:

(1) A systematic interdisciplinary approach be used to assess the beneficial and adverse social, economic, and environmental effects;

(2) Efforts be made to improve the relationship between human-kind and the envrionment and to preserve the urban environment and natural and cultural resources in rural and urban areas;

(3) Significant agency actions be conducted in consultation with local, State, and Federal agencies and with the public;

(4) Decisions be made in the best overall public interest and alternative courses of action be evaluated based upon a balanced consideration of the need for safe and efficient transportation and public services and of national, State and local environmental goals; and

(5) To the fullest extent practicable, all studies, reviews and consultations under NEPA and related statutes be coordinated and accomplished as part of FHWA's compliance with NEPA.

(b) It is also the policy of FHWA that measures necessary to mitigate adverse impacts resulting from FHWA actions are eligible for funding with Federal-aid funds. Appropriate mitigation measures will be incorporated into FHWA actions when it is determined that

(1) The impacts for which mitigation is proposed actually result from the FHWA action, and

(2) The proposed mitigation represent a reasonable public expenditure when weighed against other social, economic, and environmental values.

§ 771.107 Definitions.

(a) The definitions contained in the CEQ Regulations (40 CFR Part 1508) are applicable to this regulation.

(b) "Environmental studies" are technical investigations of specific impacts. These studies provide the background technical data necessary to determine the environmental impacts of a proposed action.

(c) The "highway agency (HA)" is the agency with primary responsibility for initiating and carrying forward the action. For highway improvements financed with Federal-aid funds, the HA will normally be the appropriate State HA or the State HA in cooperation with a county or city HA. For highway improvements financed with other funds, such as forest highways, park roads, etc., the HA will be the appropriate Federal or State agency with the primary responsibility for initiating and carrying forward the action.

§ 771.109 Applicability.

(a) As supplemented by this regulation, the provisions of the CEQ Regulations (40 CFR Parts 1500 *et seq.*) are directly applicable to FHWA actions.

(b) The provisions of this regulation apply to any action over which the FHWA exercises sufficient control and responsibility to alter the development or action being planned, including any action implemented under "Certification Acceptance" procedures (23 U.S.C. 117).

(c) Where FHWA acts as a joint lead agency with other Federal agencies as provided in 40 CFR 1501.5(b), mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis with the other lead agencies, consistent with the purpose and policy of this regulation.

(d) The provisions of this regulation do not apply to or in any way affect or alter decisions, approvals, rulemaking, or authorizations which were given by FHWA pursuant to directives valid and in effect at the time of that decision, approval, rulemaking, or authorization.

(e) Section 771.111 of this regulation applies to adoption of regulations by FHWA and § 771.113 applies to proposals for legislation which are initiated by FHWA. The appropriate FHWA Washington Headquarters office (rather than the HA, Division Administrator, or Regional Administrator) will be responsible for implementing any provisions contained in this regulation which apply to adoption of regulation which apply to adoption of regulations or proposals for legislation (early coordination, draft EIS circulation, etc.).

§ 771.111 Adoption of regulations.

(a) All proposals for regulations will be evaluated by the Director of the initiating office to determine whether the regulatory proposal (1) is classified as a categorical exclusion; or (2) will require the development of an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS).

(b) If the regulation does not qualify for classification as a categorical exclusion, the Director of the initiating office will be responsible for preparation of the EA and FONSI or EIS (both draft and final) in accordance with §§ 771.207, 771.209, 771.211, and 771.213 of this regulation.

§ 771.113 Proposals for legislation (40 CFR 1506.8).

The FHWA Washington Headquarters office initiating a legislative proposal will be responsible for evaluating the environemental impacts of the proposal and, if significant impacts are involved, preparing a legislative EIS and processing it in accordance with paragraph 15(b) of DOT Order* 5610.1C.

Subpart B—Program and Project Procedures

§ 771.201 Highway improvements.

(a) In order to ensure meaningful evaluation of alternatives to proposed highway improvements and to avoid commitments to additional highway improvements before they are evaluated under this regulation, each evaluation prepared under this regulation shall address an improvement which:

(1) Is useable and a reasonable expenditure even if no additional highway improvements in the area are accomplished; and

(2) Will not restrict significant alternative routes or route locations for other reasonably foreseeable transportation improvements.

(b) The HA will complete all design work required to make those engineering and environmental decisions necessary to complete a FONSI or an EIS or to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with these processes. However, other design activities, right-of-acquisition (other than hardship cases or protective buying in accordance with current FHWA regulations), or construction shall not proceed until the following actions have been completed:

(1) The Division Administrator has received and accepted the public hearing transcripts and certifications required by 23 U.S.C. 128; and

(2) Either the action has been classified as a categorical exclusion, or a FONSI has been adopted, or a final EIS has been published and available for the prescribed length of time and a record of decision has been prepared and signed (40 CFR 1506.10).

§ 771.203 Early coordination and scoping (40 CFR 1501.7).

(a) The identification and evaluation of the social, economic, and environmental effects of a highway improvement or other Federal action and the identification of all reasonable measures to mitigate adverse impacts shall be initiated early in project planning and shall be considered along with engineering and safety factors throughout the development of the highway improvement or other Federal action. Procedures addressing the development of Federal-aid highway improvements are provided in the State Action Plans required under Part 795 of this chapter, Process Guidelines (For the Development of Environmental Action Plans).

(b) Early coordination with appropriate local, State, and Federal agencies shall be accomplished to assist in the identification of all reasonable alternatives and the evaluation of the social, economic, and environmental impacts of any proposed action and measures to mitigate adverse impacts which result from that action. (See § 795.10(b) of this chapter.)

(c) Early coordination with metropolitan planning organizations shall be accomplished where appropriate to identify regional impacts which have been assessed as part of the planning process required under 23 U.S.C. 134. (See § 795.10(b)(5) of this chapter.)

(d) In most instances, early coordination can be effectively accomplished through correspondence, meetings, etc. Formal scoping meetings may be appropriate for complex projects which involve several Federal agencies.

(e) As part of the early coordination and scoping process, all applicable Federal requirements shall be identified so that appropriate studies, analyses, and consultation can be accomplished concurrently with NEPA requirements.

(f) Any Federal agency, including Executive agencies, having or expected to have permit approval or concurrence authority or commenting responsibility on an FHWA action shall be requested to be a cooperating agency. The views of cooperating agencies shall be solicited and coordination with them continued through all stages of development of the appropriate environmental document. This coordination will be accomplished in order to preclude the necessity for any subsequent and duplicative NEPA reviews by cooperating agencies.

(g) Early notification of and solicitation of views from other States and Federal land management entities shall be accomplished by the FHWA Division Administrator as required by Section 102(2)(D)(iv) of the NEPA. The notification to other States should be mailed to the clearinghouses of those States unless a Governor has designated an agency other than the clearinghouse. The HA, in consultation with the FHWA Division Administrator, shall review any comments received from this early notification and where appropriate identify all reasonable alternatives and evaluate alternative measures to mitigate anticipated adverse impacts. The FHWA Division Administrator shall prepare a written evaluation of any issues identified during the early coordination efforts which indicate a significant disagreement with respect to an impact of the proposed action or any of the alternatives. This evaluation is to be furnished to the HA for incorporation into the EA or draft EIS.

§ 771.205 Categorical exclusions (40 CFR 1508.4).

(a) Actions which will normally be classified as categorical exclusions are those which do not involve substantial planning, time, resources, or expenditures. These actions will not induce significant, foreseeable alterations in land use, planned growth, development patterns, traffic volumes, travel patterns, or natural or cultural resources. Examples of the types of actions which are ordinarily classified as categorical exclusions are listed in the Appendix to this regulation.

(b) The HA, after appropriate environmental studies and consultation with the FHWA Division Administrator, shall identify those proposed actions that meet the criteria for categorical exclusions and shall recommend that classification to the Division Administrator. The FHWA Division Administrator, after review of the recommendations and supporting data, including consideration of environmental effects, may determine that the proposed actions are categorical exclusions or may request additional information for further study.

(c) There will be actions which may ordinarily be classified as categorical exclusions, but for which the FHWA Division Administrator may decide that special consideration is appropriate because of controversy, involvement with other Federal agencies, etc. For such actions, the FHWA Division Administrator may, when deemed appropriate, require preparation of an EA or EIS. Actions ordinarily classified as categorical exclusions which involve significant environmental impacts will require preparation of an EIS.

§ 771.207 Environmental assessment (EA) (40 CFR 1508.9).

(a) An EA shall be prepared by the HA in consultation with FHWA for each Federal action that is not classified as a categorical exclusion and for which the environmental studies and early coordination indicate that the proposed action will not have a significant impact on the quality of the human environment.

(b) The FHWA Division Administrator shall review the EA and, if satisfied that it complies with NEPA requirements, take responsibility for the EA by signing and dating the title sheet before it is made available to the public.

(c) An EA need not be circulated for comment, but its availability for public inspection shall be included in any notice for a public hearing or notice of opportunity for a public hearing.

(d) When a public hearing notice is not required, the HA shall place a notice

in a local newspaper(s), similar to a public hearing notice and at a similar stage of development, advising the public of the availability of an EA and where information concerning the Federal action may be obtained. Those who believe that the Federal action for which an EA has been prepared does in fact involve a significant impact on the human environment or who believe that the analysis of the social, economic, and environmental impacts presented in the EA is inadequate to assess their significance shall be invited to furnish written comments to the HA or FHWA summarizing the specific basis for their position. Such comments are to be furnished to the HA or FHWA within 30 days of publication of the notice in the newspaper.

(e) The HA shall provide to the FHWA Division Administrator a copy of the EA (revised, if appropriate) as well as a summary of any comments received (written or from a public hearing) and responses thereto.

§ 771.209 Finding of no significant impact (FONSI) (40 CFR 1508.13).

(a) The FHWA Division Administrator, after review of the EA and an examination of the social, economic, and environmental issues, shall, if in agreement, indicate FHWA adoption of the EA as a FONSI by changing the cover sheet designation to "Finding of No Significant Impact" and signing and dating the document.

(b) The FONSI shall be reevaluated by the HA in consultation with FHWA prior to proceeding with major project approvals or authorizations, for the purpose of determining whether there has been a substantial change in the social, economic, or environmental effects of the proposed action. If there are substantial changes in the proposed action that would significantly affect the quality of the human environment, draft and final EIS's shall be prepared and processed in accordance with this regulation. It would not be necessary, in such instance, to hold a public hearing solely for the purpose of presenting the draft EIS.

(c) Projects in the categories described in § 771.213(e) (1) and (2) of this regulation will ordinarily require preparation of an EIS. If a project in these categories is processed with an EA, copies of a draft EA will be provided to appropriate Federal, State and local agencies and made available to the public at least 30 days before the FONSI is made. Copies should also be provided for information to the FHWA Washington Headquarters.

§ 771.211 Draft EIS's (40 CFR 1502).

(a) A decision to prepare an EIS for a proposed Federal action may be made when that action clearly involves significant impacts on the human environment, or when the environmental studies and early coordination indicate significant impacts, or when review of the EA in light of comments received so indicates. When the decision has been made that an EIS shall be prepared, the FHWA Division Administrator shall forward to the FHWA Washington Headquarters the information for the "Notice of Intent" publication in the **Federal Register.**

(b) The draft EIS shall be prepared by the HA, in consultation with FHWA, for Federal actions which significantly affect the quality of the human environment. The FHWA Division Administrator should document FHWA involvement in the development of the EIS, particularly the consultations with the HA on environmental determinations, conclusions, and decisions.

(c) The FHWA Division Administrator shall review the draft EIS and, if satisfied that it complies with NEPA requirements, take responsibility for the draft EIS by signing and dating the title page before it is circulated for comment.

(d) The draft EIS shall be circulated for comment by the HA on behalf of FHWA and made available to the public no later than the publication date of the first notice for a public hearing or notice of opportunity for a hearing, and at least 30 days before the public hearing. The availability of the draft EIS shall be included in any public hearing notice. When no hearing is held, a notice shall be placed in the newspaper similar to the public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where comments should be sent.

(e) The draft EIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having or expressing an interest in the proposed action or the draft EIS; and

(2) Government agencies expected to have jurisdiction, responsibility, interest, or expertise in the proposed action or its impacts. The letter transmitting the draft EIS to cooperating agencies shall identify the areas requiring comments or coordination.

(f) The **Federal Register** public availability notice (40 CFR 1506.10(a)) will establish a 45-day period for the return of comments on the draft EIS.

(g) Comments which are received after the allotted time, but before the final EIS is forwarded to the Regional Federal Highway Administrator, are to be appended to the final EIS, where practicable, with an explanation that the comments were received late, and with an indication of the extent to which the issues raised were evaluated in the final EIS.

(h) The initial printing of the draft EIS shall be of sufficient quantity to meet requests for copies which can be reasonably expected from agencies, organizations, and individuals. Copies are to be furnished free of charge unless, in unusual circumstances, the FHWA Division Administrator concludes that a fee which is not more than the actual printing cost should be charged. The HA shall inform the FHWA of requests for draft EIS's which it is unable to fill with free copies. In these instances, the FHWA Division Administrator may ask the HA to direct the party to the nearest location where the party may review the statement.

(i) Upon request, the FHWA Division Administrator shall provide interested parties with information or status reports on EIS's and other elements of the NEPA process.

(j) The HA shall furnish copies of the draft EIS to other States and Federal land management entities which may be significantly impacted by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the FHWA Division Administrator, in writing, of any disagreement with the evaluation of impacts in the statement. Copies of the draft EIS are to be furnished to clearinghouses of other impacted States unless a Governor has designated an agency other than the clearinghouse. The FHWA Division Administrator shall review the comments received and forward them to the HA along with a written assessment of the disagreements for incorporation into the final EIS.

§ 771.213 Final EIS's (40 CFR Part 1502).

(a) A final EIS which identifies the preferred alternative shall be prepared for FHWA actions which significantly affect the quality of the human environment. The final EIS should also document compliance to the extent possible with all applicable environmental laws and executive orders, or else provide reasonable assurance that their requirements can be met. Final EIS's for highway projects shall be prepared by the HA in consultation with FHWA.

(b) The HA and FHWA Division Administrator shall make every effort to resolve interagency disagreements on proposed projects before processing the final EIS.

(c) A pending (not yet adopted) final EIS which is being processed in an

FHWA office shall be made available for review, in that FHWA office, by any individual who requests such an opportunity. Any pending final EIS available for review shall be clearly marked "PENDING, SUBJECT TO REVISION."

(d) The Regional Federal Highway Administrator shall review the final EIS, including the comments received (and the responses thereto) which are attached before processing the statement. The final EIS shall be reviewed for legal sufficiency by the FHWA Chief Counsel or his/her designee. When the Regional Federal Highway Administrator is satisfied that the final EIS complies with NEPA requirements, the final EIS shall be processed in the manner specified by paragraphs (e) through (i) of this section.

(e) The Regional Federal Highway Administrator may adopt and sign the final EIS after the regional office review is completed, except for final EIS's in the following categories:

(1) Highways on a new alignment in a metropolitan area of over 100,000 population (the metropolitan area is defined as the area designated for the purposes of 23 U.S.C. 134 transportation planning);

(2) Any new freeway, including projects which will upgrade existing highways to freeway standards for access control;

(3) Highway improvements to which a Federal, State or local government agency has expressed (i) opposition on environmental grounds (which has not been resolved to the satisfaction of the objecting agency), or (ii) intention to refer the matter to CEQ (40 CFR Part 1504); or

(4) Highway improvements for which the Federal Highway Administrator requests the Regional Federal Highway Administrator to send the final EIS to the FHWA Washington Headquarters for review.

(f) Final EIS's (with the proposed record of decision) prepared for projects in the categories in paragraph (e) of this section shall be submitted to the FHWA Washington Headquarters for prior concurrence. The FHWA Washington Headquarters will notify the Regional Federal Highway Administrator when the final EIS may be released to the public and EPA, at which time the Regional Federal Highway Administrator will adopt and sign the final EIS and ensure that distribution of the final EIS is made in accordance with current procedures.

(g)(1) After review of a draft EIS for a project in the categories in paragraph (e) of this section, the FHWA Washington Headquarters and the Office of the Secretary of Transportation may determine that individual final EIS's in these categories may be processed without prior concurrence. This determination will be based upon the following:

(i) Adequacy of early coordination with other Federal, State, and local government agencies; and

(ii) Adequacy of the draft EIS in identifying the environmental impacts of and the reasonable alternatives to the proposed action.

(2) Any determination made under this paragraph is subject to review and withdrawal at any time prior to the date the final EIS is adopted.

(h) One copy of all adopted final EIS's which are not included in the categories listed in paragraph (e) of this section shall be provided to the FHWA Washington Headquarters for program management and record keeping purposes.

(i) Copies of the final EIS should be furnished free of charge unless, in unusual circumstances, the FHWA Division Administrator concludes that a fee which is not more than the actual printing or reproduction cost should be charged.

(j) The final EIS shall be available for public review at the HA headquarters and appropriate field offices, at the FHWA Washington Headquarters, and at FHWA regional and division offices. A copy should also be made available, as appropriate, to public institutions, such as local governments, public libraries, and schools, to allow them to make it available for public review.

(k) The final EIS shall be reevaluated by the HA in consultation with FHWA prior to proceeding with major project approvals or authorizations for the purpose of determining whether there has been a substantial change in the social, economic, or environmental effects of the proposed action.

§ 771.215 Predecision referrals to CEQ (40 CFR Part 1504).

(a) Any FHWA field office which receives notice of an intended referral from another agency shall provide a copy of the notice to FHWA Washington Headquarters.

(b) The FHWA Washington Headquarters will be responsible for coordinating the response to CEQ which is necessitated by a referral.

§ 771.217 Supplemental statements.

A draft EIS or final EIS may be supplemented at any time. Supplements will be necessary when substantial changes are made in the proposed action that will introduce a new or changed environmental effect of significance to the quality of the human environment or significant new information becomes available concerning the action's environmental impacts. The decision to prepare and process a supplement to the final EIS shall not require withdrawal of previous FHWA approval actions, or void or alter previously authorized development of the highway improvement not directly affected by the changed condition or new information. A supplement is to be processed in the same manner as a new EIS (draft and final, with a record of decision).

§ 771.219 Record of decision (40 CFR 1505.2).

The Regional Federal Highway Administrator shall complete and sign a record of decision no sooner than 30 days after the **Federal Register** public availability notice for the final EIS or 90 days after such notice for the draft EIS, whichever is later. Any required Section 4(f) determinations shall be incorporated in the record of decision.

§ 771.221 Emergency action procedures.

Requests for deviations from these procedures in emergency situations shall be referred to the FHWA Washington Headquarters for evaluation and decision.

§ 771.223 Application of 23 U.S.C. 138 (commonly called Section 4(f)).

(a)(1) No FHWA project will use land from a significant publicly owned park, recreation area, or wildlife refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Accurate and detailed information is needed to support these determinations. Supporting information must demonstrate that there are unique problems or unusual factors present and that the cost, environmental impacts, or community disruption resulting from alternative routes reaches extraordinary magnitudes.

(b) Consideration under 23 U.S.C. 138 is not required when the Federal, State, or local official having jurisdiction over a park, recreation area or refuge determines that it is not significant. The FHWA Division Administrator shall review the official's nonsignificance determination to assure its reasonableness. In the absence of such a determination, the Section 4(f) land will be considered to be significant.

(c) The National Register of Historic Places lists historic properties of national, State and local significance. Therefore, for purposes of 23 U.S.C. 138, a historic site is significant only if it is included on or is eligible for inclusion on the National Register of Historic Places.

(d) The provisions of this section and 23 U.S.C. 138 apply to publicly owned lands that are administered for multiple uses only if the portion of land to be taken is in fact being used for park, recreation, wildlife, waterfowl, or historic purposes, or there is a definite formulated plan for such use, as determined by the official having jurisdiction over such lands. The FHWA Division Administrator shall review the official's land use determination to assure its reasonableness. (For multiple use lands, the significance determination required by paragraph (b) of this section shall be applied only to the lands actually being used for Section 4(f) purposes.)

(e) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made, and significance determinations changed, late in the development of a highway improvement. In such cases, a project may proceed without consideration under 23 U.S.C. 138 if the property interest in the Section 4(f)-type lands was acquired prior to the designation or change in significance.

(f) Any involvement with a Section 4(f) property shall be evaluated early in the planning phase of project development when alternatives for the proposed action are under study. These (draft) evaluations shall be presented in the EA or the draft EIS or, for those projects classified as categorical exclusions, in a separate draft Section 4(f) evaluation.

(g) The EA, draft EIS, or draft Section 4(f) evaluation shall be provided for coordination and comment to the public official having jurisdiction over the Section 4(f) property, and to the designated offices of the Department of the Interior and, where appropriate, the Departments of Agriculture and Housing and Urban Development. A time limit of not less than 45 days shall be established for receipt of these comments.

(h) After receipt and consideration of comments resulting from the coordination required in paragraph (g) of this section, and if the selected alternative requires the use of land from a Section 4(f) property, the HA and the FHWA Division Administrator shall ensure that the final EIS, EA, or final Section 4(f) evaluation includes information sufficient to support a Section 4(f) determination.

(i) The discussion in the final EIS, EA, or separate Section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a Section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) property.

(j) Where a project classified as a categorical exclusion has a Section 4(f) involvement, the HA shall not proceed with the activities noted in § 771.201(b) of this regulation until notified by FHWA that the Section 4(f) determination has been made.

(k) The FHWA Regional Federal Highway Administrator shall review the Section 4(f) evaluation for completeness and adequacy before making the determination required by 23 U.S.C. 138. Section 4(f) determinations for projects processed with EIS's shall be included in the record of decision. For all other actions, required Section 4(f) determinations will be prepared as a separate document.

(l) Circulation of a separate Section 4(f) evaluation will be required when (1) a modificatin of the alignment or design causes the use of Section 4(f) property after the categorical exclusion, FONSI, or final EIS is processed; (2) a modification of the alignment or design which significantly increases the impact to a Section 4(f) area is made after the Section 4(f) determination has been made; or (3) another agency is the lead agency for the environmental process. In such cases the Section 4(f) evaluation would not need to be accompanied by further NEPA documentation unless, after consultation with the FHWA offices which had review authority for the original NEPA document, a decision is made to provide supplemental NEPA documentation. In any other circumstances, separate circulation of the Section 4(f) evaluation may be authorized by the FHWA Associate Administrator for Right-of-Way and Environment.

§ 771.225 Executive Order (EO) 11988, Flood Plain Management.

The requirements of this EO are implemented in Part 650, Subpart A of this chapter, Hydraulic Design of Highway Encroachments on Flood Plains. The required "only practicable alternative finding" shall be included in the FONSI or final EIS and shall be supported by a summary of the studies and coordination which have been accomplished.

§ 771.227 Executive Order (EO) 11990, Protection of Wetlands.

(a) The provisions of this EO have been implemented by DOT Order* 5660.1A, Preservation of the Nation's Wetlands, dated August 24, 1978. With the exception of the wetlands "finding" requirement (DOT Order 5660.1A, paragraph 7h), the provisions of the DOT Order are applicable to all FHWA actions involving construction in wetlands.

(b) All EA's and draft EIS's for projects involving construction in wetlands shall include sufficient information to describe impacts to the wetlands and to allow evaluation of alternatives which would avoid and/or mitigate these impacts.

(c) For projects classified as categorical exclusions, the FHWA Division Administrator shall ensure that the project files document the evaluation of alternatives and the measures to minimize harm.

(d) The "finding" required by paragraph 7h of DOT Order* 5660.1A shall be included in the final EIS or FONSI and shall be supported by information contained in the final EIS or FONSI. The FHWA signature on the cover sheet of the final EIS or FONSI shall document FHWA adoption of the finding.

§ 771.229 Air quality conformity statement.

Draft and final EIS's shall contain a discussion of the relationship between each alternative under consideration and the transportation control measures in the applicable State air quality implementation plan. This discussion shall address conformity with the transportation control measures in the air quality implementation plan and priority towards implementation.

§ 771.231 Other agency statements.

(a) The FHWA review of statements prepared by other agencies will consider the environmental impact of the proposal on areas within FHWA's functional area of responsibility or special expertise.

(b) In general, agencies wishing comments on highway impacts usually forward the draft EIS to the FHWA Washington Headquarters for comment. The FHWA Washington Headquarters will normally distribute these EIS's to the appropriate region. The transmittal to the region will indicate to whom the region should send comments.

(c) When a regional office has received a draft EIS directly from

*DOT Orders are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

another agency, it may comment directly to the agency if the proposal does not fall within the types indicated in paragraph (d) of this section. Copies of the region's comments should be distributed as follows:

(1) Requesting agency—original and one copy.

(2) Office of the Secretary of Transportation, Office of Environment and Safety, P–20—one copy.

(3) DOT Secretarial Representative—one copy.

(4) Environmental Protection Agency (EPA)—five copies.

(5) FHWA Washington Headquarters (HEV–10)—one copy.

(d) The following types of actions contained in a draft EIS require FHWA Washington Headquarters review and such EIS's are to be forwarded to the Associate Administrator for Right-of-Way and Environment along with regional comments for processing:

(1) Actions with national implications;

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance;

(3) Legislation, regulations having national impacts, or national program proposals;

(4) Projects regarding the transportation of hazardous materials and natural gas and liquid-products pipelines; and

(5) Water resource projects.

(e) Any requests by the public for copies of comments should be referred to the agency originating the EIS.

Appendix—Categorical Exclusions

The following are examples of FHWA actions which are ordinarily considered to be categorical exclusions:

(1) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (weaving, climbing, speed change, etc.), and correcting substandard curves and intersections;

(2) Lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and railroad protective devices;

(3) Safety projects such as grooving, glare screen, safety barriers, energy attenuators, etc.;

(4) Reconstruction of existing bridges, unless on or eligible for the National Register of Historic Places;

(5) Highway landscaping and rest area projects;

(6) Construction of bus shelters and bays;

(7) Alterations to existing buildings to provide for noise attenuation, and installation of noise barriers;

(8) Temporary replacement of a highway facility which is commenced immediately after the occurrence of a natural disaster or catastrophic failure to restore the highway for the health, welfare, and safety of the public;

(9) Approval of utility installations along or across a highway;

(10) Approval of the annual Highway Safety Work Programs involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(11) Rulemaking by the Bureau of Motor Carrier Safety;

(12) Promulgation of regulations and directives to implement statutory or Executive Order requirements;

(13) Federal-aid highway system revisions under 23 U.S.C. 103;

(14) Programming activities under 23 U.S.C. 105; and

(15) Federal actions taken to administer the transportation planning process under 23 U.S.C. 134 and 307.

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—General Provisions

Sec.

Subpart B—Program and Project Procedures

Authority: 49 U.S.C. 1601 et seq.; 49 CFR 1.51(f)

Subpart A—General Provisions

§ 622.101 Purpose

This regulation prescribes the policies and procedures of the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act (NEPA) and related environmental statutes, regulations and orders. It explains how the regulations of the Council on Environmental Quality (CEQ) and the procedures of the Department of Transportation (DOT) apply to actions of UMTA.

§ 622.103 Authority and related statutes and orders.

(a) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969 as amended;

(b) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act;

(c) 49 U.S.C. 1653(f), Section 4(f) of the Department of Transportation Act of 1966;

(d) Sections 3(d), 5(h), and 5(i) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*);

(e) Section 14 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1610);

(f) 40 CFR 1500 *et seq.*, CEQ regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(g) 49 CFR 1.51 DOT Delegations of Authority;

(h) DOT Order * 5610.1C, Procedures for Considering Environmental Impacts (Draft version published 5/31/79, 44 FR No. 166, pp. 31341–31351);

(i) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991;

(j) 42 U.S.C. 7401 *et seq.*, Clean Air Act, as amended;

(k) 33 U.S.C. 1251 *et seq.*, Clean Water Act, as amended;

(l) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(m) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(n) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(o) 16 U.S.C. 1533, Section 7 of the Endangered Species Act, as amended;

(p) Executive Order 11988, Flood Plain Management, implemented by DOT Order * 5650.2;

(q) Executive Order 11990, Protection of Wetlands, as implemented by DOT Order * 5660.1A;

(r) UMTA Policy on Major Urban Mass Transportation Investments, (41 FR 41512, September 22, 1976).

§ 622.105 Policy.

(a) It is the policy of the UMTA that in the development of agency actions:

(1) A systematic interdisciplinary approach be used to assess the beneficial and adverse social, economic, and environmental effects;

(2) Efforts be made to improve the relationship between man and the environment and to preserve the urban environment and natural and cultural resources in rural and urban areas;

(3) Significant agency actions be conducted in consultation with local, State, and Federal agencies and with the public;

(4) Decisions be made in the best overall public interest and alternative courses of action be evaluated based upon a balanced consideration of the need for safe and efficient transportation and public services and of national, State and local environmental goals; and

(5) To the fullest extent practicable, all studies, reviews and consultations under NEPA and related statutes will be coordinated and accomplished as part of UMTA's compliance with NEPA.

(b) It is also the policy of the UMTA that measures necessary to mitigate adverse impacts resulting from UMTA actions are eligible for funding with Federal grant funds. Appropriate mitigation measures will be incorporated into UMTA actions when it is determined that

(1) The impacts for which mitigation is proposed actually result from the UMTA action, and

(2) The proposed mitigation measures represent a reasonable public expenditure when weighed against other social, economic, and environmental values.

§ 622.107 Definitions.

(a) The definitions contained in the CEQ Regulations (40 CFR Part 1508) are applicable to this regulation. Terms which are defined by CEQ and used in this regulation include:

Categorical Exclusion.
Cooperating Agency.
Environmental Assessment.
Environmental Document.
Environmental Impact Statement (EIS).
Federal Agency.
Finding of No Significant Impact.
Jurisdiction By Law.
Lead Agency.
Legislation.
Major Federal Action.
Mitigation.
NEPA Process.
Notice of Intent.
Proposal.
Referring Agency.
Scope.
Special Expertise.
Significantly.
Tiering.

(b) UMTA defines the following words for the purpose of this regulation:

"Applicant" means a local public body or other organization that seeks financial assistance directly from UMTA under the authority provided in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) (the "UMT Act").

"Approving Official" means an employee of UMTA who has the authority to approve environmental documents (40 CFR 1508.10).

"Environmental studies" means technical investigations of specific impacts. These studies provide the background technical data necessary to assess and to determine the environmental impacts of a proposed action.

"Responsible Official" means an UMTA employee who has overall responsibility to direct, furnish guidance and participate in the preparation of environmental impact statements, to make decisions on the scope and content of statements, and to independently evaluate the statements before approval.

"UMTA in cooperation with the Applicant" means that UMTA has the responsibility to manage the preparation of the draft and final environmental impact statements. The role of the Applicant is determined by UMTA in accordance with the CEQ regulations as described below. If the Applicant qualifies for more than one role, UMTA will determine which role the Applicant will assume. Whichever role the Applicant is permitted to assume, UMTA, acting through the Responsible Official, is responsible for the decisions made on the scope and depth of analysis of the EIS, including the analysis of alternatives.

(1) *Statewide Agency.* If the Applicant is a public agency that has statewide jurisdiction and meets the requirements of Section 102(2)(D) of NEPA, the Applicant may prepare the draft and final environmental impact statements itself with the Responsible Official exercising a periodic review, comment and oversight role. This is authorized by 40 CFR 1506.2(a) of the CEQ regulations.

(2) *Joint Lead Agency.* If the Applicant is a public agency and is subject to state or local requirements comparable to NEPA, then UMTA and the Applicant may prepare the environmental impact statement as joint agencies. The Applicant may be given substantial autonomy in developing substantive portions of the draft and final EIS. This is authorized by 40 CFR 1501.5(b) of the CEQ regulations.

(3) *Cooperating Agency.* If the Applicant is a public agency that has special expertise in the proposed project, the Applicant may be a Cooperating Agency with the responsibilities described in 40 CFR 1501.6(b) of the CEQ regulations. An Applicant for Section 3 and 5 assistance under the UMT Act is presumed to be a cooperating agency. During the environmental process, UMTA discusses the scope and content of the draft and final EIS documents with the Applicant before UMTA makes decisions on the scope and depth of the analysis of the EIS. UMTA may direct the Applicant to carry out these decisions.

(4) *Other.* In all other cases, the role of the Applicant is limited to providing environmental studies and commenting on UMTA's draft and final EIS's. For example, all private institutions or firms are limited to this role.

§ 622.109 Applicability.

(a) As supplemented by this regulation, the provisions of the CEQ regulations (40 CFR 1500 *et seq.*) are directly applicable to UMTA actions.

(b) The provisions of this regulation apply to any action over which UMTA exercises sufficient control and responsibility to alter the development or action being planned.

(c) Where UMTA acts as a joint lead agency with other Federal agencies, as provided in 40 CFR 1501.5(b), mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis with the other lead agencies, consistent with the purpose and policy of this regulation.

(d) The provisions of this regulation do not apply to or in any way affect of alter decisions, approvals, rulemaking, or authorizations which were given by UMTA pursuant to directives valid and in effect at the time of that decision, approval, rulemaking, or authorization.

(e) Section 622.111 of this regulation applies to adoption of regulations by UMTA and Section 622.113 applies to proposals for legislation which are initiated by UMTA. The appropriate UMTA headquarters office will be responsible for implementing any provisions contained in this regulation which apply to adoption of regulations or proposals for legislation (early coordination, draft EIS circulation, etc.).

§ 662.111 Adoption of regulations.

(a) All proposals for regulations will be evaluated by the director of the initiating office to determine whether the regulatory proposal is (1) classified as a categorical exclusion; of (2) will require the development of an environmental assessment (EA) and a finding of no significant impact (FONSI) or an environmental impact statement (EIS).

(b) If the regulation does not qualify for classification as a categorical exclusion, the director of the initiating office will be responsible for preparation of the EA and FONSI or EIS (both draft and final) in accordance with §§ 622.207 through 622.213 of this regulation.

(c) Proposed regulations will be circulated for internal UMTA comment in accordance with UMTA Circular* 1320.1A, "UMTA Directives System."

§ 662.113 Proposals for legislation (40 CFR 1506.8).

The UMTA headquarters office initiating a legislative proposal will be responsible for evaluating the environmental impacts of the proposal and, if significant impacts are involved, preparing a legislative EIS and processing it in accordance with paragraph 15(b) of DOT Order* 5610.1C.

Subpart B—Program and Project Procedures

§ 662.201 Timing of UMTA actions.

(a)(1) *Segmentation of Actions.* The proposed action covered by the environmental document should have independent utility. "Independent utility" means that the action is such that it is useful in itself and not only as part of a subsequent project. Where relevant, there should be logical termini to allow consideration of reasonable alternatives to the proposed action as well as subsequent extensions. If the action is part of a larger project to be implemented in increments, the larger project should be identified in the environmental document.

(2) The environmental document must include other projects proposed for Federal involvement which are currently under consideration and which may combine with the primary project to have significant interrelated environmental effects. If these other projects have not yet received commitments of Federal funds then the environmental document must consider the environmental impact of the primary project both with and without the additional projects.

(b) *Limitation on UMTA Approvals.* UMTA will not authorize project development (other than grants necessary to obtain engineering and environmental data to prepare an environmental document or to comply with other environmental laws and regulations), land acquisition (other than hardship cases or protective buying), or construction until the following actions have been completed:

(1) The action has been classified as a categorical exclusion, or

(2) A finding of no significant impact has been approved, or

(3) At least 30 days have elapsed since the final EIS was filed with EPA (**Federal Register** publication date) and made available to commenting agencies and the public.

§ 662.203 Early coordination.

(a) *Classes of Action.* (40 CFR 1501.4(a)) There are three classes of action which prescribe the level of documentation required in the NEPA process. Using the early notification procedure described in § 622.203(b), UMTA determines the class of action and, thus, the environmental document required. This involves a determination of whether or not an action significantly affects the quality of the human environment. Judging the significance of an action and its effects requires consideration not only of the severity of the impacts but also of the setting and context of the action. Guidance in determining the significance of an action and its effects is given in 40 CFR 1508.27 of the CEQ regulations. The three classes of action are:

Class 1

Actions that normally have significant impact on the environment and thus require an environmental impact statement. Procedures to be followed are described in §§ 622.211 and 622.213. These actions are—

—New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway). These projects would be expected to cause major shifts in travel patterns and land use.

—Major transit-related development whose construction involves demolition of a large number of existing buildings, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns.

Class 2

Actions that normally do not have significant impact on the environment and thus do not require an environmental impact statement or environmental assessment. These actions are termed categorical exclusions. Procedures to be followed are described in § 622.205. These categorical exclusions are:

—Operating assistance to transit authorities to continue existing service or increase service to meet demand.

—Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

—Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing service facilities or new facilities which themselves are within a categorical exclusion.

—Track and railbed maintenance and improvement when carried out within existing exclusive rights-of-way.

—Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the use of the facility.

—Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

—Installation of signs, small passenger shelters, and traffic signals where no substantial land acquisition or traffic disruption will occur.

—Construction of new bus storage and maintenance facilities in areas predominantly zoned for industry and located on or near an arterial street with adequate capacity to handle anticipated bus traffic.

—Advance land acquisition in which the property will not be modified, the land use will not be changed, displacements will not occur and which is undertaken for the sole purpose of preserving alternatives under consideration in the environmental process. Advance land acquisition must meet all of these criteria to be classified as a categorical exclusion. See also 622.205(c).

—Minor road improvements, curbing, land widening, and intersection improvements of access to transit facilities or improvement of services.

—Planning and technical studies which do not involve a commitment to a particular course of action.

—Grants for training and research programs that do not involve construction.

—Regulations that implement programs of financial assistance.

Class 3

Actions in which the significance of impact on the environment is not clearly

established. All actions that are not in Class 1 or Class 2 are in Class 3. An environmental assessment is prepared to determine the probable impact of the proposed action. If there is significant impact, an environmental impact statement is required. Procedures to follow for these projects are in §§ 622.211 and 622.213. Otherwise a finding of no significant impact supported by an environmental assessment is required. Procedures to follow for these projects are in § 622.207.

(b) *Early Notification.* UMTA in cooperation with the Applicant "shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values to avoid delays later in the process and to head off potential conflicts." (40 CFR 1501.2) UMTA assures early coordination through the following procedures:

(1)(i) All Federally funded planning studies for proposed transit construction projects are included in the Unified Planning Work Program (UPWP). The planning studies must include a proper level of consideration of environmental factors in the evaluation of transit alternatives to ensure a reasonable balancing of transportation needs and social, economic and environmental concerns.

(ii) Since UMTA has a responsibility for the review of these studies as a part of the annual UPWP approval process, UMTA may, if sufficient information is available and if appropriate, use this opportunity to identify for the Applicant the probable cause of action.

(iii) The identification of the class of action does not require an Applicant to commence formal environmental documentation; it should, however, assist the Applicant in determining the extent of documentation required and provide for early notice to assure the proper level of environmental consideration and involvement with other agencies at the earliest practicable time.

(2) It is recognized that an Applicant may conduct planning studies for proposed transit construction projects without Federal funding assistance. Since UMTA makes a full evaluation of environmental considerations in its decisionmaking process and since previous commitments made by the Applicant will not bias UMTA's environmental evaluation, the Applicant is strongly encouraged to begin coordination with UMTA early in the planning study to avoid unnecessary delays, repetitive analyses and commitments that may not be supportable by UMTA.

(3) All transit projects are required to be included in the Transportation Improvement Plan (TIP) before they can be funded by UMTA. These projects are reviewed as part of the annual TIP review and approval process. To provide for early environmental consideration, UMTA will, if sufficient information is available, identify the probable class of action for all projects included in the annual element of the TIP that are Class 1 or Class 2 actions and will identify all other projects as Class 3 actions.

(4) At the request of the Applicant, UMTA provides, at any time, an identification of the probable class of action of a particular proposal. UMTA will advise the Applicant, insofar as possible, of related environmental laws and regulations which would apply to the proposal and of the need for particular studies and findings which would normally be developed concurrently with the environmental document.

(5) UMTA requires the Applicant to provide information on the proposed action, setting and any other information necessary to verify the class of action. Verification of the class of action is of special concern when UMTA considers proposals that are normally classed as categorical exclusions. UMTA may change its identification of the probable class of action at any time.

(6) It is recognized that an Applicant may not include a transit project in the TIP before a substantial local commitment (e.g., funding, local consensus) has been made to a particular alternative. Since UMTA makes a full evaluation of environmental considerations in its decisionmaking process and since previous commitments made by the Applicant will not bias UMTA's environmental evaluation, the Applicant is strongly encouraged to begin coordination with UMTA early in the project development phase to avoid unnecessary delays, repetitive analyses, and commitments that may not be supportable by UMTA.

(7) UMTA may recommend at any time that an Applicant begin the environmental process to insure that the objectives and procedures of NEPA are achieved.

(c) *Additional Citizen Participation.* Interested persons can get information on the UMTA environmental process and on the status of environmental impact statements issued by UMTA from: Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D.C. 20590; Telephone (202) 472–2435. Questions on the status of environmental impact statements combined with alternatives analyses as required by the policy on major urban mass transportation investments (see § 622.229(b)) should be directed to: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590; Telephone (202) 426–2360.

§ 622.205 Categorical exclusions.

(a) Categorical exclusions, with the specific criteria or conditions which must be met, are listed in § 622.203(a) under Class 2.

(b) Any proposal for UMTA funding that is considered by the Applicant to meet the criteria for a categorical exclusion must be identified as such in the grant application. This classification is reviewed by UMTA. UMTA may require additional information to determine if the proposal meets the criteria for a categorical exclusion.

(c) There may be actions normally classified as categorical exclusions which UMTA determines are likely to involve significant impacts on the environment, substantial controversy, impacts which are more than minimal on properties protected by Section 4(f) of the DOT Act or Section 106 of the Historic Preservation Act, or are inconsistent with any Federal, State, or local law or administrative determination relating to environmental protection. For such actions, UMTA requires the preparation of an environmental assessment or an environmental impact statement.

(d) If a proposed action meets the criteria for a categorical exclusion, this classification is noted in the grant approval memorandum. Proposals meeting the criteria for categorical exclusions do not require a finding of no significant impact.

§ 622.207 Environmental assessments.

(a)(1) *Scoping.* The Applicant in cooperation with UMTA will use a scoping process for projects which require an environmental assessment to achieve the following objectives:

(i) Review segmentation issues in accordance with § 622.201.

(ii) Determine which aspects of the proposed project have the potential for environmental impact.

(iii) Identify measures to mitigate adverse environmental impacts.

(iv) Identify alternatives including those which are environmentally preferable.

(v) Identifies other environmental review and consultation requirements of § 622.103 that should be prepared concurrently with the environmental assessment.

(2) In carrying out scoping for an environmental assessment, the Applicant should consult with agencies and individuals affected by the proposed project or likely to have an interest in it. This early contact may aid the Applicant and UMTA in assessing the significance of impacts and in developing mitigation measures or identifying environmentally preferable alternatives. A summary of the contacts made and issues resolved will be included in the environmental assessment.

(b) *Environmental Assessment.* The Applicant shall prepare the environmental assessment in cooperation with UMTA. Guidance on the form and content of the environmental assessment is available from UMTA. The environmental assessment shall be a concise document which 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 [UMTA's] compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an [environmental impact] statement when one is necessary.

(4) [Give] brief discussions of the need for the proposal, of alternatives * * *, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." (40 CFR 1508.9)

(c) *UMTA Review.* The Applicant shall submit an environmental assessment to UMTA.

(1) UMTA will make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment. (40 CFR 1506.5(b))

(2) If necessary, the Applicant may be directed to revise the environmental assessment.

(3) UMTA will notify the Applicant when the environmental assessment is considered acceptable.

(d) *Public Comment.* (1) The environmental assessment shall be submitted by the Applicant to State and areawide clearinghouses for circulation to interested State and local government agencies under the A–95 review process as part of the grant application process.

(2) UMTA may, as a result of the scoping process, direct the Applicant to hold a public hearing on the environmental effects of the proposed action. If a public hearing is required, the environmental assessment will be available to the public at least 30 days in advance of the public hearing. The notice of the hearing will announce the availability of the environmental assessment and where it may be obtained or inspected. This public hearing may be combined with the project application public hearing.

(3) To promote informed public comment on the environmental effects of a proposed action, the Applicant is encouraged to make the environmental assessment available at any public hearing it holds on the project.

(e) *UMTA Responsibility.* (1) After review of any comments received at the public hearing or comments received through other forms of public participation and involvement, UMTA will make its own evaluation of the environmental issues. If UMTA finds that additional information is necessary, the Applicant will be directed to revise the document until it is satisfactory to UMTA, or UMTA will revise or modify the document itself.

(2) UMTA will review the environmental assessment and the results of the consultation process to determine if the proposed action significantly affects the environment. If it does, an EIS will be prepared in accordance with §§ 622.211 and 622.213. If it does not, a finding of no significant impact will be prepared in accordance with § 622.209.

(f) *Significant Impact.* If at any time in the development of an environmental assessment, UMTA determines that the proposed project will significantly affect the environment UMTA in cooperation with the Applicant, will develop an environmental impact statement in accordance with §§ 622.211 and 622.213 rather than completing the procedures of this Section. Procedures of the scoping process described in (a) that have been carried out for an environmental assessment need not be repeated if a decision is made to prepare an environmental impact statement. However, the additional scoping requirements for an environmental impact statement described in § 622.211(a) must be satisfied.

§ 622.209 Findings of no significant impact.

(a) A finding of no significant impact is prepared by UMTA for a proposed action for which UMTA has determined there are no significant impacts on the environment.

(b) UMTA will record its decision with a cover sheet and supporting attachments, where appropriate, to the environmental assessment approving it as a finding of no significant impact, giving the name of the proposed action, the location, the grant applicant, the date and signature of the approving official.

(c) The finding of no significant impact specifies any mitigation measures that are conditions of approval and contains either in the assessment or as attachments, any other environmental or related findings and documents, such as determinations under Section 106 of the National Historic Preservation Act, findings under Executive Order 11988 and Executive Order 11990, Section 4(f) statements, and other applicable requirements listed under § 622.103.

(d) After a finding of no significant impact has been made by the approving official, the document is made available to the public and to participants in the environmental assessment process. The document is sent to anyone requesting it and is available for public review, at a minimum, at the main office of the Applicant and the UMTA Regional and Headquarters Offices.

(e) If the proposed action is similar to one that normally requires an EIS or the nature of the action is without precedent, UMTA makes a proposed finding of no significant impact available for public review for 30 days before making the final decision to approve the finding of no significant impact. This will include at a minimum, a review by the Office of the Secretary and circulation by the Applicant to interested persons and agencies, including State and areawide clearinghouses. Comments on the proposed finding of no significant impact should be sent to the approving official (see § 622.107).

§ 622.211 Draft environmental impact statements.

(a) *Scoping Process.* "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping." (40 CFR 1501.7) A scoping meeting will be held for each proposed action that is the subject of an environment impact statement.

UMTA, in cooperation with the Applicant—

(1) "Invites the participation of affected Federal, State and local agencies, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds);

(2) Determines the scope (40 CFR 1508.25) and the significant issues to be analyzed in depth in the environmental impact statements;

(3) Identifies and eliminates from detailed study the issues which are not

significant or which have been covered by prior environmental review and narrows the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or provides a reference to their coverage elsewhere;

(4) Allocates asignments for preparation of the environmental impact statement among the lead and cooperating agencies with the lead agency retaining responsibility for the statement;

(5) Indicates any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration;

(6) Identifies other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with and integrated with the environmental impact statement as provided in 40 CFR 1502.25;

(7) Indicates the relationship between the timing of the preparation of environmental analyses and UMTA's tentative planning and decision making schedule." (40 CFR 1501.7(a)); and

(8) Resolves issues during the scoping process including identification of important impacts of the proposal and appropriate assessment techniques; identification of alternatives within and outside UMTA's jurisdiction; redefinition of the class of the proposed action; setting of page or time limits; and the potential for tiering.

(b) *Notice of Intent.* (1) "As soon as practicable after its decision to prepare an EIS and before the scoping process (UMTA) shall publish a notice of intent in the **Federal Register** * * *." (40 CFR 1501.7)

(2) "The notice briefly—

(i) Describes the proposed action and possible alternatives;

(ii) Describes (UMTA's) proposed scoping for the proposed action including * * * when and where (the) scope meeting will be held; and

(iii) States the name and address of a person within (UMTA) who can answer questions about the proposed action and the environmental impact statement." (40 CFR 1508.22)

(3) UMTA in cooperation with the Application is responsible for insuring further public awareness of the action by making the notice of intent available through—

(i) "Notice of State and areawide clearinghouses pursuant to OMB Circular A–95 (Revised)." (40 CFR 1506.6(b)(3)(i));

(ii) "Publication in local newspapers (in papers of general circulation rather than legal papers)." (40 CFR 1506.6(b)(3)(iv);

(4) The Applicant is encouraged to use other means of public notification (as described in 40 CFR 1506.6(b)(3)) to further insure responsible local involvement in the project development process.

(5) The notice of intent is published at least 15 days in advance of the scoping meeting. In extenuating circumstances, UMTA may permit a shorter notice period.

(c) *Roles and Relationships of Agencies.* (1) "Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement." (40 CFR 1501.5(b))

(2) Joint lead agencies are appropriate if more than one Federal agency either:

(i) "Proposes or is involved in the same action; or

(ii) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity." (40 CFR 1501.5)

(3) The Applicant serving as a joint lead agency is appropriate if the Applicant is subject to state or local requirements comparable to NEPA.

(4) If UMTA is a joint lead agency, UMTA establishes with other lead agencies mutually acceptable procedures for the preparation and processing of the environmental impact statement. The agreed upon procedures in no way lessen UMTA's responsibilities under the purpose and policy sections of this regulation.

(5) If there is a question of lead agency responsibility, the procedures in 40 CFR 1501.5(c) and 1501.5(e) of the CEQ regulations apply.

(6) "Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency." (40 CFR 1501.6)

(d) *Interdisciplinary Approach.* After identifying the significant issues related to a proposed action, UMTA in cooperation with the Applicant involves the necessary staff or, if appropriate, professional services available in other Federal, State, or local agencies, universities, or consulting firms so that "environmental impact statements (are) prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (Section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process." (40 CFR 1502.6)

(e) *Environmental Studies.* UMTA may request the Applicant to conduct environmental studies needed for the preparation of the draft environmental impact statement. UMTA independently evaluates the information submitted.

(f) *Preparation of Draft EIS.* UMTA in cooperation with the Applicant (see § 622.107(b)) prepares the environmental impact statement in the following manner:

(1) UMTA furnishes guidance and participates in the preparation and "independently evaluates the statement prior to its approval and takes responsibility for its scope and content." (40 CFR 1506.5(c))

(2) If UMTA in cooperation with the Applicant determines that a contractor will assist in the preparation of the draft environmental impact statement, the contractor is chosen by UMTA in cooperation with the Applicant. The contractor is recommended by the Applicant and approved by UMTA. To avoid any conflict of interest, "Contractors shall execute a disclosure statement prepared by (UMTA) and the Applicant and any other lead agency specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract (UMTA) furnishes guidance and participates in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents." (40 CFR 1506.5(c))

(3) The format of the draft environmental impact statement is as follows, unless UMTA finds a compelling reason to deviate from this format:

—Cover sheet.
—Summary.
—Table of Contents.
—Purpose of and Need for Action.
—Alternatives Including Proposed Action (Sections 102(2)(C)(iii) and 102(2)(E) of NEPA). (UMTA may choose to identify a preferred alternative at its option.)
—Affected Environment.
—Environmental Consequences (especially Sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA).
—List of Preparers.
—List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
—Index.
—Appendices (if any).

Additional guidance is contained in 40 CFR 1502.11 through 40 CFR 1502.18 of

the CEQ regulations. Guidance on the content of the draft EIS is available from UMTA.

(g) *Approval of Draft EIS.* The signature of the Approving Official on the title page of the draft environmental impact statement constitutes UMTA authorization to circulate the document to the public.

(h) *Printing.* A lead, joint lead, or cooperating agency may be responsible for printing the EIS. When UMTA has this responsibility, the document is printed by the Government Printing Office and four to six weeks should be allowed for printing. The number of copies to be printed is decided by UMTA in cooperation with the Applicant.

(i) *Circulation of the Draft EIS.* (1) UMTA in cooperation with the Applicant prepares a distribution list for the draft environmental impact statement.

(2) UMTA provides the necessary copies to the Environmental Protection Agency which will in turn publish a notice of availability in the **Federal Register.**

(3) The Applicant is responsible for furnishing the document to—

(i) Any "Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards." (40 CFR 1503.1(a)(1));

(ii) "Appropriate State and local agencies which are authorized to develop and enforce environmental standards." (40 CFR 1503.2(a)(2)(i));

(iii) Any agency that has requested that it receive statements on actions of the kind proposed;

(iv) The public, affirmatively soliciting comments from those persons or organizations who may be interested or affected; and

(v) State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(4) The draft EIS is available for public review through the Applicant and at the UMTA Headquarters office and appropriate UMTA regional office(s). The applicant should make copies available in local government offices, public libraries, schools, and other places accessible for public review as appropriate. The applicant shall publicize the availability of the document in newspapers of general circulation. This notice of availability should be combined with the notice of public hearing (see paragraph (k) of this section).

(j) *Comments.* (1) UMTA establishes a 45-day period (commencing with the notice of availability in the **Federal Register**) to solicit comments on the draft EIS. A limited extension to the circulation period may be granted upon written request if UMTA determines that there is reasonable cause for the extension.

(2) Persons commenting on the draft EIS should be as specific as possible in their comments, particularly with reference to the scope of the EIS, the adequacy of the analysis, or need for additional information. Further guidance on the specificity of comments is given in 40 CFR 1503.3 of the CEQ regulations.

(3) All written comments should be sent directly to UMTA.

(k) *Public Hearing.* (1) A public hearing is required to promote public comment on a draft environmental impact statement. The public hearing is held at least 30 days and usully no more than 45 days after the start of the draft EIS circulation period, defined as the date on which the notice of availability appears in the **Federal Register.**

(2) The public hearing is conducted by the Applicant in cooperation with UMTA. Decisions involving the time, place, and conduct of the hearing will be arrived at jointly.

(3) Notice of the public hearing will be made in newspapers of general circulation at least 30 days prior to the hearing date. Announcement of the public hearing should be combined with the local notice of availability of the draft EIS in newspapers.

(4) Substantive comments made at the public hearing will be addressed in the development of the final EIS. A complete record of the public hearing will be made available at the offices of the Applicant and UMTA.

§ 622.213 Final environmental impact statements.

(a) *Selection of Preferred Alternative.* After the completion of the circulation preriod, UMTA in cooperation with the Applicant will identify a preferred alternative based on an evaluation of the transportation benefits and the social, economic and environmental consequences of the alternatives studied. This evaluation will take into account the information contained in the environmental impact statement along with appropriate consideration of comments received from the public and governmental agencies.

(b) *Preferred Alternative.* (1) An identification by UMTA of the preferred alternative does not commit UMTA to approval of the final environmental impact statement;

(2) The identification of a preferred alternative does not commit UMTA to the approval of a grant request for any future funding of the preferred alternative.

(c) *Preparation of Final EIS.* (1) UMTA in cooperation with the Applicant prepares the final environmental impact statement.

(2) The primary purpose of the draft environmental impact statement is to obtain public response and comments on the adequacy of the statement or the merits of the alternatives. All substantive comments on the draft EIS received during the circulation period wil be addressed in the final environmental impact statement. The final EIS will reflect significant issues raised during the circulation of the draft EIS, consultation with citizens' groups and interested agencies to resolve these issues, and an explanation of any remaining issues that have not been resolved. The final environmental impact statement will also include the rationale for the selection of the preferred alternative and discuss commitments made to mitigate adverse environmental impacts.

(3) Guidance on the contents of a final environmental impact statement, including the methods and requirements for responding to comments are discussed in § 1503.4 of the CEQ regulations. Additional guidance is available from UMTA.

(d) *Clearance of Final EIS.* (1) Before filing the final environmental impact statement with the Environmental Portection Agency, concurrence is obtained from the UMTA Chief Counsel and the Office of the Secretary as described in paragraph 11(d)(4) of DOT Order* 5610.1C.

(2) The signature of the Approving Official on the title page constitutes UMTA authorization to circulate the final environmental impact statement; compliance with Section 14 of the Urban Mass Transportation Act, as amended; and fulfillment of grant application requirements of Section 3(d)(1) and (2) and Section 5(h) and 5(i) of the UMT Act, as amended.

(e) *Printing.* Options for printing the final EIS are the same as those for printing the draft EIS (see § 622.211(h) of these regulations).

(f) *Circulation of Final EIS.* (1) UMTA and the Applicant are responsible for circulating the final environmental impact statement as follows:

(i) UMTA provides copies to the Environmental Protection Agency, which will in turn publish a notice of availability in the **Federal Register.**

(ii) The Applicant is responsible for simultaneously making the final environmental impact statement available through—

(A) State and areawide clearinghouses pursuant to OMB Circular A–95 (Revised); and

(B) Publication of a notice of availability in local newspapers (in papers of general circulation rather than legal papers) (40 CFR 1506.6(3)(iv)).

(iii) The Applicant is responsible for furnishing the final environmental impact statement to any person, organization, or agency that submitted substantive comments on the draft (40 CFR 1502.19) or requested a copy.

(iv) The final EIS is available for public review through the Applicant and the UMTA Headquarters office and appropriate regional office(s). The Applicant must make copies available in local government offices, public libraries, schools, and other places accessible for public review.

(g) *Circulation Period for Final EIS.* (1) UMTA cannot make any project approval, any funding commitments, any grant action, or other action until the later of the following dates:

(i) Ninety (90) days after publication of the notice of availability for a draft environmental impact statement.

(ii) Thirty (30) days after publication of the notice of availability for a final environmental impact statement.

(2) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement notice is published by the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently.

(h) *Project Approval.* A record of decision (see § 622.219) is incorporated into the grant approval package for the proposed project. Commitments to mitigation measures that are conditions of the grant approval shall be specified in the record of decision.

§ 622.215 Predecision referrals to CEQ.

When UMTA receives a notice of intended referral to CEQ from another Federal agency, the procedures of paragraph 10 of DOT Order*5610.1C will be followed.

§ 622.217 Reevaluation.

(a) The approval of an environmental document does not end the need for consideration of environmental factors throughout the remaining project development stages. There is a continuing effort by UMTA in cooperation with the Applicant to evaluate the probable environmental consequences of a proposed action. If new or additional information becomes available, or if changes are made in the proposed action that result in significant impacts not previously addressed in the environmental document, a reevaluation is made. This environmental reevaluation may be either a supplemental environmental impact statement, a tiered environmental impact statement, or an environmental assessment.

(b) *Supplemental EIS.* A supplemental EIS is prepared when there are substantial changes in the proposed action or where significant new information is discovered that could affect a major decision made in an earlier EIS. Thus, the supplemental EIS is prepared to allow for *reconsideration of an earlier major decision.* The supplemental EIS is processed in the same manner as the earlier draft and final EIS.

(c) *Tiered EIS.* (1) Every effort is made to complete the NEPA process in the early planning stages to insure that environmental factors are considered early in the decisionmaking process. Depending on the stage of project development, information on site-specific impacts may not be available. The enviornmental document should therefore focus on those impacts that will have the greatest bearing on the early decisions to be made. As more detailed information becomes available during further project development and refinement, site-specific impacts may be more accurately defined. If it is determined that these impacts are significant but would not alter the earlier major decision, a tiered EIS is prepared. The tiered EIS briefly summarized the earlier EIS and the issues already decided and concentrates on new and significant specific impacts.

(2) A tiered EIS is prepared with the focus on the impacts having the greatest bearing on the decision to be made while excluding from consideration issues decided on in an earlier EIS. Thus a tiered EIS assumes that *earlier major decisions are valid* but that additional evaluation is necessary.

(3) The tiered EIS is processed in the same manner as the earlier draft and final EIS .

(d) *Environmental Assessments.* (1) When it is uncertain whether a supplemental or tiered EIS is required, an environmental assessment is prepared. If it is determined that there are no new signficant impacts from the proposed action, a finding of no significant impact is made. If it is determined that there are significant impacts, then an EIS will be prepared in accordance with §§ 622.211 and 622.213.

(2) The environmental assessment is processed in accordance with § 622.207.

§ 622.219 Record of decision.

After the circulation period closes for the final EIS, UMTA may decide to proceed with the preferred alternative. This decision must be supported by a concise public record of decision that:

(a) "States what the decision is." (40 CFR 1502.2(a))

(b) Identifies all alternatives considered by UMTA in reaching its decision and specifies the alternative or alternatives that are considered to be environmentally preferable. UMTA may discuss preference among alternatives based on relevant factors such as economic and technical considerations and agency statutory missions. UMTA identifies and discusses all such factors including any essential considerations of national policy that were balanced by UMTA in making its decision and states how those considerations entered into its decision. (40 CFR 1505.2(b))

(c) "States whether all practicable means to avoid or minimze environmental harm from the alternative selected have been adopted, and if not why they were not. A monitoring and enforcement program [is] adopted and summarized where applicable for any mitigation." (40 CFR 1505.2(c))

§ 622.221 Emergency action procedures.

Deviations from Subpart B in emergency situations may be approved by the UMTA Administrator.

§ 622.223 Application of 49 U.S.C. 1653(f) (4(f) determinations).

(a)(1) Section 4(f) of the DOT Act recognizes the importance of publicly owned parks, recreation areas and wildwife refuges and any historic properties by prohibiting the use of such lands for a project or program except under the following conditions:

(i) There are no feasible and prudent alternatives to the use of such land, and

(ii) The proposed action includes all possible planning to minimize harm to such land.

(2) Any UMTA-assisted project will avoid the use of land from a significant publicly owned park, recreation area, or wildlife refuge or any significant historic site unless UMTA determines that the above conditions are met. Accurate and detailed information is needed to support these determinations. Supporting information must demonstrate that there are unique problems or unusal factors present and that the cost, environmental impacts, or community disruption resulting from alternative routes reaches extraordinary magnitudes.

(b) Consideration under Section 4(f) is not required when the Federal, State, or local government official having

jurisdiction over a park, recreation area, or wildlife refuge determines that it is not significant. UMTA reviews the official's nonsignificance determination to ensure the reasonableness of such determination. In the absence of such a determination, the park, recreation area or wildlife refuge is considered to be significant.

(c) The National Register of Historic Places lists historic properties of national, state and local significance. Therefore, for purpose of Section 4(f), a historic site is significant only if it is included in or is eligible for inclusion in the National Register of Historic Places.

(d) The provisions of Section 4(f) apply to publicly owned lands that are administered for multiple uses only if the portion of land to be used is in fact being used for park, recreation, or wildlife purposes, or there is a definite formulated plan for such use as determined by the official having jurisdiction over such lands. UMTA reviews the agency's land use determination to ensure its reasonableness. (For multiple use lands, the significance determination required by paragraph (b) of this section applies only to the lands actually being used for Section 4(f) purposes.)

(e) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and significant determinations changed late in the development of a transit project. In such cases, a project may proceed without consideration under Section 4(f) if the property interest in the Section 4(f)-type lands was acquired prior to the designation or change in significance.

(f) An evaluation of any involvement with a Section 4(f) property is made early in the planning phase of project development when alternatives for the proposed action are under study. These draft evaluations are presented in the environmental assessment or the draft EIS or, for those projects classified as categorical exclusions, in a separate draft Section 4(f) evaluation.

(g) The environmental assessment, draft EIS, or draft Section 4(f) evaluation is provided for coordination and comment to the public official having jurisdiction over the Section 4(f) property, and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. UMTA will allow at least 30 days for comment.

(h) After receipt and consideration of comments resulting from the coordination required in paragraph (g) of this section, UMTA decides if the use of 4(f) land is required. If the preferred alternative requires the use of 4(f) land, UMTA will ensure that the final EIS, finding of no significant impact, or final Section 4(f) evaluation includes information sufficient to document a Section 4(f) determination. The discussion in the final EIS, finding of no significant impact, or Section 4(f) evaluation specifically addresses:

(1) The reasons why alternatives to avoid Section 4(f) land are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) land.

(i) For those Section 4(f) involvements in projects classified as categorical exclusions, UMTA will not approve projects until the necessary Section 4(f) determinations have been made.

(j)(1) UMTA circulates a separate Section 4(f) evaluation when—

(i) A modification in the alignment or design causes the use of Section 4(f) property after the categorical exclusion, finding of no significant impact, or final EIS is processed;

(ii) A modification of the alignment or design that significantly increases the use of Section 4(f) land is made after the Section 4(f) determination has been made; or

(iii) Another agency is the lead agency for the environmental process, unless another DOT element is preparing a 4(f) statement.

(iv) When the procedures under paragraph (k) of this Section do not require an additional document.

(2) In such cases the Section 4(f) evaluation is not accompanied by further NEPA documentation unless a decision is made to provide supplemental NEPA documentation.

(k) The analysis required by Section 4(f) will involve different levels of detail when 4(f) involvement is addressed in tiered EIS's.

(1) When a broad environmental impact statement is prepared, the detailed information necessary to complete the Section 4(f) evaluation may not be available to make the required determinations. Detailed design for the assessment of impacts and the measures to minimize harm may not be available at the time that a decision is made on an alternative mode or general alignment. In these cases, an evaluation is made on the potential impact that a proposed action might have on Section 4(f) lands and whether those impacts could have a bearing on the decision to be made. A preliminary determination is made whether there are feasible and prudent locations or alternatives for the project to avoid the use of the 4(f) land. This preliminary determination is then incorporated in the final EIS.

(2) A Section 4(f) determination is made when additional design details are available to assess whether there are—

(i) Feasible and prudent design alternatives to the use of such land; and whether

(ii) The proposed action includes all possible planning to minimize harm.

(3) The Section 4(f) evaluation should confirm that the earlier decision to select the location is still valid. It will be presumed to be valid unless there are new or changed 4(f) impacts that could have been avoided if another location had been selected.

§ 622.225 Executive Order 11988, Flood Plain Management.

(a) DOT Order 5650.2, Flood plain Management and Protection, implementing this Executive Order, established a Departmental policy to avoid, where practicable, encroachments on flood plains by Departmental action, and to minimize the adverse impacts which such actions may have on flood plains.

(b) Whenever possible, considerations for flood plain protection will be developed concurrently with and included in the environmental documents required by these procedures.

(c) Where a significant encroachment on a flood plain is proposed, a written finding must be made that this is the only practicable alternative.

(d) This finding will be incorporated into, or attached to, the final environmental document. If no environmental document has been prepared, a separate written finding will be made.

(e) The Flood Disaster Protection Act requires that a community participate in the National Flood Insurance Program before Federal assistance is provided for construction or repair of buildings located in areas having special flood hazards as identified by the Federal Insurance Administration. Applicants for UMTA capital grant assistance must fully comply with this requirement.

§ 622.227 Executive Order 11990, Protection of Wetlands.

(a) DOT Order* 5660.1A, Preservation of the Nation's Wetlands, implementing this Executive Order, establishes a Departmental policy that new construction in wetlands be avoided unless there is no practicable alternative to the construction, and that where there is the potential for a proposed action to adversely affect wetlands, the action

*These documents are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix G.

must include all practicable measures to minimize harm to wetlands.

(b) All environmental assessments and draft EIS's for projects involving construction in wetlands shall include sufficient information to describe impacts to the wetlands, and to allow evaluation of alternatives which would avoid and/or mitigate these impacts.

(c) For projects classified as categorical exclusions, documentation on the evaluation of alternatives and the measures fo minimize harm will be contained in a written finding.

(d) For any major action which entails new construction in wetlands, a finding must be made that (1) there is no practicable alternative, and (2) that all practicable measures to minimize harm have been included.

§ 622.229 Application of other Federal laws, policies, and requirements.

(a) *Historic Preservation.* UMTA carries out its responsibilities under Section 106 of the National Historic Preservation Act and Executive Order 11593 concurrently with NEPA compliance, where possible. The surveys, reports, and findings required in regulations of the Advisory Council on Historic Preservation are, to the fullest extent possible, prepared concurrently with and integrated in the environmental documents required by NEPA. Consultation with the Advisory Council on Historic Preservation on the protection of historic and cultural properties can begin only after properties are identified and a determination of their eligibility for the National Register of Historic Places has been made by the Department of the Interior. Because of the time required to complete any necessary surveys and determinations, the initial consultations and actions in this process should be undertaken at the earliest practicable time.

(b) *Policy on Major Urban Mass Transportation Investments.* (1) The policy, published in the **Federal Register** on September 22, 1976, requires an alternatives analysis for any major investment that involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit, or busway).

(2) An environmental impact statement is required as a part of all alternatives analyses. The EIS serves as a mechanism for documenting the results of the alternatives analysis.

(3) Authorization to circulate a final EIS for a fixed guideway project constitutes UMTA's approval of the alternatives analysis for that project. This approval does not constitute project approval.

(c) *Environmental Requirements of the Urban Mass Transportation Act, as amended.* (1) Sections 3(d) and 5(i) of the UMT Act require applicants for Section 3 and 5 grants to make several certifications regarding the local decisionmaking process. Applicants will still be required to submit the statutory certification. The procedures of this regulation are designed to aid the Applicant in the environmental process by tailoring the level of detail of environment analysis to the significance of the environmental impact. The report requirement of Section 5(i)1 will be satisfied by an environmental assessment, final EIS, or an identification of the project as meeting the criteria for a categorical exclusion, where appropriate under the provisions of Subpart B.

(2) Section 5(h)2 of the UMT Act requires the Secretary of DOT to consider the environmental effects of any proposed Section 5 project and make decisions based on the public interest. The provisions of Subpart B of this regulation describe the procedures that the Secretary will follow to comply with the statutory provisions of this Section.

(3) Section 14 of the UMT Act restates the applicability of NEPA and Section 4(f) the capital grants funded under Section 3 of the UMT Act. The provisions of Subpart B of this regulation describe the procedures that the Secretary will follow to comply with the statutory requirements of this Section.

(d) *Other Requirements.* There may be other requirements for environmental protection stemming from the related statutes in § 622.103. If possible, these requirements will be identified through early consultation during the NEPA process. The final environmental document should reflect consultation with appropriate agencies and should demonstrate compliance with the requirements or provide reasonable assurance that the requirements can be met.

§ 622.231 Other agency statements.

(a) UMTA review of statements prepared by other agencies considers the environmental impact of the proposal on areas within UMTA's functional area of responsibility or special expertise.

(b) Any requests by the public for copies of UMTA comments on other agency statements will be referred to the agency originating the environmental impact statement.

[FR Doc. 79-31764 Filed 10-12-79; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 79-26]

Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Proposed Supplementary Guidance and Procedures for Environmental Impact Statement Processing.

SUMMARY: This notice is being published to provide the public with information and an opportunity to comment on explanatory guidance which the Federal Highway Administration (FHWA) proposes to issue as a supplement to its procedures for processing environmental impact statements and related documents. These procedures are being revised to implement new requirements contained in regulations issued by the Council on Environmental Quality (CEQ).

DATES: Comments must be received on or before November 14, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 79-26, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Dale Wilken, Office of Environmental Policy, 202-426-0106, or Irwin Schroeder, Office of the Chief Counsel, 202-426-0791. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: In this same special part of today's **Federal Register**, the FHWA and the Urban Mass Transportation Administration (UMTA) have published a notice of proposed rulemaking (NPRM) which sets forth their coordinated response to the regulations issued by CEQ (40 CFR Part 1500 *et seq.*) to implement the procedural provisions of the National Environmental Policy Act (NEPA), and to the implementing procedures issued by the Department of Transportation (DOT) as DOT Order 5610.1C (44 FR 56420; Oct. 1, 1979). Both the CEQ regulations and the DOT Order encourage operating administrations such as FHWA and UMTA to develop individualized procedures. Both FHWA and UMTA have decided to exercise that option to ensure smoother administration and better compliance within their respective grant programs.

The FHWA's current environmental impact statement (EIS) procedures are codified at 23 CFR Part 771 and have been incorporated into Volume 7, Chapter 7, Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2). The Manual contains the policies, requirements, procedures, and guidelines which apply to the Federal-aid highway program. It is provided directly to all State highway agencies and is available for inspection and copying under 49 CFR Part 7, Appendix D. Both Part 771 and FHPM 7-7-2 will be revised to incorporate the final regulation which results from the NPRM referred to above.

Based on experience under its current regulation, and in view of the direct applicability of the new CEQ regulations to its activities, FHWA has determined that certain requirements can be dropped from its current regulation and issued as explanatory guidance. Specifically, FHWA intends to eliminate the detailed requirements concerning the format and content of environmental impact statements and related documents from its regulation, and instead provide similar discussions of appropriate format and content as explanatory guidance. This guidance is to be issued in appendices to FHPM 7-7-2, and is published in this notice in proposed form for public information and comment. Certain administrative housekeeping procedures, such as detailed distribution instructions for copies of environmental documents, are also included in the proposed FHPM appendices.

Due to the close relationship of the materials in this notice and the NPRM published herewith, a common docket will be maintained. Persons wishing to comment on both need thus only prepare one set of comments. The same 30-day comment period will be provided for this notice as for the NPRM.

All responses to this publication will be available for examination by any interested person at the above address both before and after the closing date for comments. The final version of these appendices will be published after review of comments received. This publication should be concurrent with FHWA's promulgation of final regulations on environmental impact statements.

Environmental Assessment Format and Content

[Proposed Appendix B of FHPM 7-7-2]

If appropriate environmental studies and early coordination indicate that the impacts of proposed FHWA action will not be significant, and the action is not classified as a categorical exclusion, then an environmental assessment (EA) will be prepared. After the EA has been revised to reflect any comments received (from the availability notice or the public hearing), it will be reviewed and, if acceptable, adopted by the FHWA Division Administrator as a finding of no significant impact.

The CEQ regulations (40 CFR Parts 1500 *et seq.*) require that an EA include the information listed in § 1508.9. The following format is recommended for presentation of an EA.

1. *Description of the Proposed Action. Describe the length, termini, proposed improvements, etc.*

2. *Need.* Identify and describe the problem which the proposed action is designed to address. Any of the items discussed under the "Need" section in Apendix D may be appropriate in specific cases.

3. *Alternatives Considered.* Discuss any alternatives to the proposed action which were considered and why they are not proposed for adoption.

4. *Impacts.* Describe the social, economic, and environmental impacts and analyze and discuss their significance.

5. *Comments and Coordination.* Describe all early coordination efforts and all comments received from government agencies and the public.

If a proposed action requires a Section 4(f) evaluation, wetlands finding, or a flood plain finding, the information outlined in Appendix D for EIS's should be included in the EA. The EA containing the draft Section 4(f) evaluation would be circulated to the appropriate agencies for section 4(f) coordination.

Notice of Intent

[Proposed Appendix C of FHPM 7-7-2]

The FHWA Washington Headquarters will publish in the **Federal Register** a Notice of Intent for any FHWA action which will be the subject of an EIS. The suggested format for submitting information to the FHWA Washington Headquarters about a particular action is as follows:

Notice of Intent

1. *Description of the proposed action and possible alternatives.* This section should contain a brief narrative

description of the proposed action, e.g., location of the action, type of construction, length of the project, needs which will be fulfilled by the action. In addition, this section should contain a brief description of possible alternatives to accomplish goals of the action, e.g., upgrade existing facility, construction on new alignment, mass transit, do nothing, multi-modal design.

2. *Proposed Scoping Process.* This section should briefly describe the proposed scoping process for the particular action and should include whether, when and where any scoping meeting will be held.

3. *FHWA Contact Person.* This section should state the name and address of a person within the FHWA division office who can answer questions about the proposed action and the EIS as it is being developed.

EIS Format and Content

[Proposed Appendix D of FHPM 7-7-2]

EIS's should be printed on paper 8½ x 11 inches with all graphics folded for insertion to the same size. The wider sheets should open to the right with the title or identification on the right. The use of a standard size will facilitate administrative recordkeeping. Each EIS should have a title page headed as follows:

(EIS NUMBER [1])

(Route, Termini, City or County, and State)

Draft (Final)

Environmental Impact Statement

U.S. Department of Transportation

Federal Highway Administration

and

(State or local highway agency and any other cooperating agencies)

(This action complies with Executive Order 11988, Flood Plain Management and/or Executive Order 11990, Protection of Wetlands) [2]

Date _____

For FHWA _____

[1] The number at the top left-hand corner of the title page on all draft and final EIS's is as follows:

FHWA-AZ-EIS-74-01-D(F)(S)

FHWA—name of Federal Agency

AZ—name of State (cannot exceed four characters)

EIS—environmental impact statement

74—year draft statement was prepared

01—sequential number of draft statement for each calendar year

D—designates the statement as the draft statement

F—designates the statement as the final statement

S—designates supplemental statement

DS02—designates second draft supplemental statement

[2] To be used on the final EIS when applicable

The following persons may be contacted for additional information concerning this document:

(Name, address, and phone number of FHWA division office contact)

(Name, address and phone number of HA contact)

(One paragraph abstract of the statement.)

(Comments on this draft EIS are due by (*Date*) and should be sent to (*name and address*))

Summary Sheet

1. Brief Description of the proposed FHWA action indicating route, termini, type of highway, number of lanes, length, county, city, State, etc., as appropriate. Also list other Federal actions required because of this action, such as permit approvals, etc. Also describe any actions proposed by other government agencies in the same geographic area as the proposed FHWA action.

2. Summary of major alternatives considered.[3]

3. Summary of significant environmental impacts, both beneficial and adverse.

4. Areas of controversy (including issues raised by agencies and the public).

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Purpose and Need

Identify and describe the problem which the proposed action is designed to address. This section must clearly demonstrate that a need exists and must define the need in terms understandable to the layperson. This discussion will form the basis for the "no action" discussion in the "Alternatives" section.

The following is a list of items which will assist in development of and explanation of the need for the proposed action. It is by no means all-inclusive or applicable in every situation, and is intended only as a guide.

Transportation Demand—Including Urban Transportation Plan.

Federal, State, or local governmental authority (legislation) directing the action.

[3] The final EIS should identify the preferred alternative.

Social Demands or Economic Development—New employment, schools, land use plans, recreation, etc.

Modal Interrelationships—Information regarding how the proposed facility may interface with airports, rail port facilities, etc., should be included.

System Linkage—Is the proposed project the "connecting link"? Does it connect other highway facilities? How does it fit in the system?

Safety—Is the existing accident rate excessively high? Why? Will the proposed facility improve this? How? How Much?

Capacity—This can add to the transportation demand, social service demand or economic development. What capacity will be needed? Level of service?

Structural Condition of Existing Facility—Are maintenance costs excessive?

Alternatives

The "Alternatives" section of the draft EIS should begin with a concise discussion or summary of how the "resonable alternatives" were selected and why other alternatives were eliminated from detailed study.

The remaining part of this section should then describe accurately and clearly the "reasonable alternatives" including the "no action" alternative.

Generally, this can be best accomplished by a brief written description of each alternative, supplemented with maps and other appropriate visual aids. The material should provide a clear understanding of each alternative's termini, location, and major design features (number of lanes, right-of-way requirements, median width, etc.), which will contribute to a reader's better understanding of each alternative's effects upon its surroundings or the community.

Generally, each alternative should be developed to comparable levels of detail in the draft EIS.

It is preferable that the draft EIS be circulated sufficiently early in the project development process that a preferred alternative has not yet been identified. The draft EIS should state that all alternatives are under consideration and that a decision will be made only after the public hearing transcript and comments on the draft EIS have been evaluated.

When the final EIS is prepared, this section will generally require changes from the draft EIS. The final EIS must identify which alternative for the proposed action is preferred and why. The "why" should be explained in a concise and clear manner.

Affected Environment

This section describes the existing environmental (social-economic-environmental) setting for the area affected by all of the alternative proposals. The description should be a single general description for the area rather than a separate one for each alternative. All environmentally sensitive locations or features should be identified.

This discussion should focus on significant issues and values in order to reduce paperwork and eliminate the presentation of extraneous background material.

Prudent use of photographs, illustrations and other graphics within the text can be effective in giving the reviewer an understanding of the area.

Data and analyses in the statement should be in proportion to the significance of the impacts which will be discussed later in the document. Less important material should be summarized, consolidated, or simply referenced.

This section should also describe the scope and status of the planning process for the area. A copy of the proposed land use plan for the area should be included if available.

Environmental Consequences

This section will discuss the probable environmental effects of the alternatives and the means to mitigate adverse environmental impacts.

There are several ways of preparing this section. It is generally preferable to discuss the impacts and any mitigation measures separately for each of the alternatives. However, it may be advantageous in certain cases (where there are few alternatives) to present this section with the impacts as the headings.

Under the preferred method, consideration should be given to including a subsection which would discuss general impacts and mitigation measures which are the same regardless of the alternative selected. This would reduce or eliminate repetition under each of the alternative discussions.

It would also be helpful to have an impact/alternative comparison summary table at the end of this section.

When the final EIS is prepared, the impacts and mitigation measures associated with the selected alternative may need to be discussed in more detail than is contained in the draft EIS. This will generally depend upon the comments received on the draft EIS.

In discussing the impacts, both beneficial and adverse, the following should be included:

A summary of studies undertaken, with enough data or cross referencing to determine the validity of the methodology.

Enough information to establish the reasonableness of the conclusions concerning impacts.

A discussion of mitigation measures. In the final EIS these measures must be investigated in detail so that a commitment can be made.

In addition to normal FHWA program monitoring of design and construction activities, special instances may arise when a formal program for monitoring impacts or mitigation measures will be appropriate. In these instances, the final EIS should describe the monitoring program and reporting which will be performed.

Listed below are some of the impacts which are commonly significant on highway projects. This list is not exhaustive—on individual projects there may be a number of other impacts which may be significant.

Visual Impacts

This discussion should include an assessment of the temporary and permanent visual impacts of the proposed action. Where relevant, the EIS should document the consideration given to design quality, art and architecture in the project planning. These values may be important for facilities located in sensitive urban settings.

Social and Economic Impacts

The impact statement should contain the following:

1. Changes in life style for the neighborhoods or various groups, identified in the affected environment section, as a result of the proposed action. These changes may be beneficial or adverse. These impacts may include splitting neighborhoods, isolating a portion of a *distinct ethnic group*, new development, changed property values, etc.

2. If the proposed action will change travel patterns (e.g., vehicular, commuter, or pedestrian), identify the impact.

3. How will the proposed action affect school districts? Recreation areas? Churches? Business? etc.?

4. Are there any impacts on minority groups?

5. If the proposed action is located in or will affect an urban area, the EIS should discuss the overall impact on the physical, social, and economic urban environment.

6. What secondary impacts will affect areas of social concern mentioned above? Economic impacts can be closely related to the relocation and social impacts. In many cases, beneficial and adverse economic impacts will be integrated with the discussion of relocation and social impacts.

Relocations Impacts

A discussion of relocation impacts should contain the following information:

1. An estimate of the number of households to be displaced and a demographic profile.

2. A description of neighborhoods with available housing for relocation. (What effect would this have on services? Secondary impact?)

3. A description of the available relocation housing and the ability to provide relocation housing for the families displaced. If there is not sufficient housing available, describe action to remedy the situation including, if necessary, housing of last resort.

4. An estimate of the number of businesses to be displaced or impacted and a discussion of any relocation problems. (What would be the effect on the local economy? Secondary impact?)

5. The results of consultation with officials and community groups.

6. If unusual conditions are identified, a description of the necessary special relocation advisory services (elderly and minority groups).

Air Quality Impacts

The EIS should contain the following:

1. An identification of the relevant microscale air quality impacts of the highway section. This should include:

Predicted estimates of total concentrations at receptor sites for various alternatives.

Comparison of the estimated total concentrations for all alternatives with applicable State and national standards.

2. A discussion of the relationship between the transportation plan and program and areawide pollutants (for nonattainment areas or areas where there is an air quality maintenance plan).

3. An identification of the analysis methodology and brief summary of assumptions utilized.

4. A brief summary and documentation of early consultation with and comments from the State/local air pollution control agency or, as applicable, the indirect source review agency.

5. A statement on the relationship between each alternative under consideration and the transportation control measures in the applicable State air quality implementation plan.

Noise Impacts

If highway-generated noise is a significant factor, this discussion will include the possible noise problems and a summary of the noise analysis information. The summary should include:

1. Information on the numbers and types of activities which may be affected.

2. Extent of the impact (in decibels). This should include a comparison of the predicted noise levels with the FHWA design noise levels and the existing noise levels.

3. Noise abatement measures which would likely be incorporated into the various alternatives.

4. Noise problems for which no apparent solution is reasonably available, and the reasons why.

Water Quality Impacts

This discussion should include summaries of analyses and consultations with the agency responsible for the State Water Quality Standards. Possible impacts include: erosion and subsequent sedimentation, use of deicing and weed control products, spillage of chemicals by trucks, and contamination of ground water supplies. Coordination with the Corps of Engineers under the Federal Clean Water Pollution Control Act will assist in this area.

Stream Modification or Impoundment Impacts

This section will include a summary of information which is necessary to comply with the Fish and Wildlife Coordination Act. This legislation requires consultation with the Fish and Wildlife Service and the appropriate State agency when a Federal action involves impoundment (surface area of ten acres or more), diversion, channel deepening or other modification of a stream or body of water.

Wetlands and Coastal Zone Impacts

Discuss significant impacts on wetlands and coastal zones, including analyses, consultations, and efforts to reduce the impact. Where applicable, the discussion should set forth any inconsistencies with wetlands management programs.

The draft EIS should contain sufficient information to allow evaluation of alternatives to construction in the wetlands and practicable measures to minimize harm to the wetlands.

When there is no practicable alternative to an action which involves new construction located in wetlands, the final EIS should contain the finding required by EO 11990 and by paragraph 7h of DOT Order 5660.1A in a separate subsection titled "Wetlands Finding." The finding should contain, in summary form and with reference to the detailed discussions contained elsewhere in the EIS:

1. Reference to EO 11990.

2. Discussion of the basis for the determination that there are no practicable alternatives to the proposed action.

3. Discussion of the basis for the determination that the proposed action includes all practicable measures to minimize harm to wetlands.

4. Concluding statement as follows: "Based upon the above considerations, it is determined that there is no practicable alternative to the proposed new construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use."

Flood Hazard Evaluation

The draft EIS should contain discussion of the following items for all proposed significant encroachments in a flood plain and for those alternatives which would significantly support flood plain development:

1. The impacts on natural and beneficial flood plain values.

2. The direct and indirect support of incompatible flood-plain development.

3. The measures proposed to minimize flood risks and adverse environmental impacts.

4. Sufficient information to permit evaluation of alternatives to the significant encroachments in the flood plain.

When there is no practicable alternative to an action which includes a significant encroachment, the final EIS should contain the finding required by EO 11988 in a separate subsection titled "Flood Plain Finding" (See 23 CFR Part 650, Subpart A).

Natural Resources Impacts

This section will include a summary of significant impacts on natural, ecological, and scenic resources which have not been previously discussed. Included in this discussion will be impacts on prime and unique farmlands, threatened and endangered species, natural land forms, groundwater resources, etc.

Energy requirements, direct and indirect costs and benefits, and the conservation potential of each of the alternatives should be discussed if significant impacts are involved.

Land Use Planning Impacts

This discussion should include an assessment of the growth-inducing potential of the proposed action. If increased pressure for development is anticipated, the discussion should include an assessment of the kind of development that is expected to occur, and where and when it is expected to occur. Any factors which might be used by local governments to influence development rates (such as zoning, restricting utility service, etc.) should also be discussed.

An important part of this discussion is the relationship between any growth-inducing characteristics of the proposed action and the State and/or local government plans and policies with regard to growth in the area. These plans and policies will be reflected in the metropolitan area land use plan or in other plans for coastal zones, wilderness areas, etc. The distinction between planned growth and unplanned growth is an important one which should be emphasized.

Lastly, a description of the social, economic, and environmental impacts which can be anticipated to result from development induced by the proposed action should be included.

Historic/Cultural Site Impacts

The draft EIS should contain a discussion of the impacts that each of the alternatives will have on those sites or properties of national, State, or local historical, architectural, archaeological, or cultural significance that were identified in the "Affected Environment" section. This section should contain a record of the coordination with the State Historic Preservation Officer concerning the significance of the resource and an evaluation of the effects on the resources.

If the selected alternative has an effect on a property included in or eligible for inclusion in the National Register, the final EIS should contain (a) documentation supporting a finding of no adverse effect and a record of coordination with the Executive Director, Advisory Council on Historic Preservation (ACHP), or (b) an executed Memorandum of Agreement (MOA) (or a description of the provisions of the proposed MOA and assurances that all necessary parties are in agreement with these provisions).

Construction Impacts

The EIS should discuss significant impacts (particularly air, noise, water, detours, safety, etc.) associated with construction of each of the alternatives. Also, where applicable, the impact on

disposal and borrow areas should be discussed along with any practicable measures to minimize these impacts.

Impacts on Section 4(f) Properties

See Appendix G.

List of Agencies, Organizations and Officials To Whom Copies of EIS's Are Sent

List of all commenting entities from which comments are being requested (draft EIS), and identification of those that submitted comments (final EIS).

Comments and Coordination

1. The draft EIS should summarize the early coordination process and any pertinent information received from the public and government agencies.

2. The draft EIS should be revised, as appropriate, to reflect the consideration given to substantive comments received. The final EIS should include a copy of all substantive comments received (or summaries thereof where response has been exceptionally voluminous), along with a response to each substantive comment. When the draft EIS is revised as a result of comments received, the copy of the comments should contain marginal references indicating the page and paragraph where revisions were made, or the discussion of the comments should contain such references.

3. The final EIS should contain a summary and disposition of substantive comments made at the public hearing.

List of Preparers

This section will include lists of:

1. State (or local agency) personnel, including consultants, who were primarily responsible for preparing the EIS or performing environmental studies, and their qualifications, and

2. FHWA personnel primarily responsible for preparation or review of the EIS, and their qualifications.

Appendices

Material prepared as appendices to the EIS should:

1. Consist of material prepared in connection with the EIS (as distinct from material which is not so prepared and which is incorporated by reference),

2. Normally consist of material which substantiates an analysis which is fundamental to the impact statement,

3. Normally be analytic and relevant to the decision to be made, and

4. Be circulated with the EIS or be readily available on request.

Other reports and studies referred to in the EIS should be readily available for review or for copying at a convenient location.

Index

The index should include major subjects and significant impacts so that a reviewer need not read the entire EIS to obtain information on a specific subject or impact.

Alternate Process for Final EIS's

Paragraph 1503.4 of the CEQ regulations (40 CFR Parts 1500 *et seq.*) provides the opportunity for expediting final EIS preparation in those instances when, after receipt of comments resulting from circulation of the draft EIS, it is apparent that:

1. All reasonable alternatives were studied and discussed in the draft EIS, and

2. The analyses in the draft EIS adequately identify and quantify the environmental impacts of all reasonable alternatives.

When these two points can be established, then the final EIS can consist of the draft EIS and an attachment containing the following:

1. Errata sheets making factual corrections to the draft EIS, if applicable.

2. A section identifying the preferred alternative and discussing the reasons why it was selected and why the remaining alternatives were not selected and, if applicable:

a. Final Section 4(f) evaluations containing the information described in Appendix G,

b. Wetlands finding(s),

c. Flood plains finding(s), and

d. A list of commitments for mitigation measures for the preferred alternative.

3. Copies (or summaries) of comments received from circulation of the draft EIS and public hearing and response thereto.

Distribution of EIS'S and Section 4(f) Evaluations

[Proposed Appendix E of FHPM 7–7–2]

Environmental Impact Statements

Copies of all draft EIS's should be circulated for comment to all agencies expected to have responsibility, interest or expertise in the proposed action or its impacts.

Copies of all adopted final EIS's should be distributed to all cooperating agencies and to all Federal, State and local agencies and private organizations who commented substantively on the draft EIS.

Copies of all draft and final EIS's in the categories listed in 23 CFR 771.213(e) should be provided to the Regional Representative of the Secretary of Transportation at the same time as they are forwarded to the FHWA Washington Headquarters.

Multiple copies of all EIS's should be distributed as follows:

1. U.S. Environmental Protection Agency (EPA) Headquarters: Five copies of the draft EIS and five copies of the final EIS (this is the "filing requirement" covered in Section 1506.9 of the CEQ regulations; the correct address is listed therein).

2. U.S. EPA Headquarters or Regional Office responsible for EPA's review pursuant to Section 309 of the Clean Air Act: Five copies of the draft EIS and five copies of the final EIS.

3. U.S. Department of the Interior (DOI) Headquarters:

a. All States in FHWA Regions 1, 3, 4, and 5 plus Hawaii, Guam, Samoa, Arkansas, Iowa, Louisiana, Missouri, and Puerto Rico: 12 copies of the draft EIS and seven copies of the final EIS.

b. Kansas, Nebraska, North Dakota, Oklahoma, South Dakota and Texas: 13 copies of the draft EIS and eight copies of the final EIS.

c. New Mexico and all States in FHWA Regions 8, 9, and 10 *except* Hawaii, North Dakota, and South Dakota—14 copies of the draft EIS and nine copies of the final EIS.

Section 4(f) Evaluations

If the Section 4(f) evaluation is included in an EIS, DOI Headquarters should receive the number of copies listed above for EIS's. If the Section 4(f) evaluation is processed as a separate document or as part of an EA, the DOI should receive seven copies of the draft evaluation for coordination and seven copies of the final evaluation for information.

In addition, draft Section 4(f) evaluations, whether in a draft EIS, an EA or a separate document, are required to be coordinated where appropriate with the appropriate offices of the Department of Housing and Urban Development and the Department of Agriculture.

If the Section 4(f) evaluation is processed with a categorial exclusion or an EA, copies do not have to be forwarded to the FHWA Washington Headquarters.

Record of Decision Format and Content

[Proposed Appendix F of FHPM 7–7–2]

The record of decision must include the information required by § 1505.2 of the CEQ regulations. The following format and discussions are recommended for presentation of that information:

1. *Decision.* Identify the selected alternative. Reference to the final EIs may be used to reduce detail and repetition.

2. *Alternatives Considered.* This information can be most clearly organized by briefly describing each alternative (with reference to the final EIS, as above), then explaining and discussing the balancing of values underlying the decision. In addition, this discussion must include identification of the alternative or alternatives which were considered preferable from a strictly environmental point of view and, if use of Section 4(f) land is involved, the required Section 4(f) determination (see Appendix H).

For each individual decision (final EIS), the values (economic, environmental, safety, traffic service, community planning, etc.) which are significantly implicated will be different and will be given different levels of relative importance. Accordingly, it is essential that this discussion clearly identify each significant value and the reasons why some values were considered more important than others. While any decision represents a judgement on the part of the decisionmaker, that judgment should reflect a balancing of values in the best overall public interest.

It is also essential that legislative and policy requirements in Title 23, U.S.C., be given appropriate weight in this decision making process. The mission of FHWA is implementation of the Federal-aid highway program to provide safe and efficient transportation. While this mission must be accomplished within the context of all other Federal requirements, the beneficial impacts of transportation improvements must be given proper consideration and documentation in this record of decision.

3. *Measures to Minimize Harm.* Describe all measures to minimize environmental harm which have been adopted for the proposed action. Also include a specific statement that all practicable measures to minimize environmental harm have been incorporated into the decision.

4. *Monitoring or Enforcement Program.* Include a description of any monitoring or enforcement program which had been adopted for specific mitgation measures, as outlined in the final EIS.

Section 4(f) Evaluations Format and Content

[Proposed Appendix G of FHPM 7–7–2]

Draft Evaluation

A draft Section 4(f) evaluation must be included in a separate section of the draft EIS, EA, or for projects processed as categorical exclusions, in a separate document. When more than one alternative is under consideration, a draft Section 4(f) evaluation must be prepared and circulated which discusses each alternative requiring the use of Section 4(f) land.

The following information should be included in the draft Section 4(f) evaluation:

1. A brief description of the project and the need for the project (when the draft Section 4(f) evaluation is circulated separately for categorical exclusions and those special cases listed in 23 CFR 771.223(k)).

2. A detailed map or drawing of sufficient scale to discern the essential elements of the highway/Section 4(f) land involvement.

3. Size (acres or square feet) and location (maps or other exhibits such as photographs, slides, sketches, etc.).

4. Type (recreation, historic, etc.).

5. Available recreational activities (fishing, swimming, golf, etc.).

6. Facilities existing and planned (description and location of ball diamonds, tennis courts, etc.).

7. Usage (approximate number of users for each activity).

8. Relationship to other similarly used lands in the vicinity.

9. Access (both pedestrian and vehicular).

10. Ownership (city, county, State, etc.).

11. Applicable clauses affecting title, such as covenants, restrictions, or conditions, including forfeiture.

12. Unusual characteristics of the Section 4(f) land (flooding problems, terrain conditions, or other features that either reduce or enhance the value of portions of the area).

13. The location and amount of land (acres or square feet) to be used by the highway, including permanent and temporary easements.

14. The facilities and access affected.

15. The probable increase or decrease in physical effects on the Section 4(f) land users (noise, air pollution, etc.).

16. A description of all reasonable and practicable measures which are available to minimize the impacts of the proposed action on the Section 4(f) property.

17. Sufficient information to evaluate all alternatives which would avoid the Section 4(f) property. Discussions of alternatives in the draft EIS or EA may be referenced rather than repeated. However, this section should include discussions of design alternatives (to avoid Section 4(f) use) in the immediate area of the Section 4(f) property or discussions of why there are no such (local) alternatives which are considered reasonable. The determination that there are no feasible and prudent alternatives should not be addressed at the draft evaluation stage because the results of the formal coordination are not yet available.

18. The results of preliminary coordination with the public official having jurisdiction over the Section 4(f) property and with regional (or local) offices of DOI and the appropriate offices of DOA and HUD.

Final Evaluation

When the selected alternative involves the use of Section 4(f) land a final Section 4(f) evaluation must be included in the final EIS, EA, or for projects processed as categorical exclusions, in a separate final Section 4(f) evaluation. The final evaluation must contain:

1. All information required above for a draft evaluation.

2. A discussion of the basis for the determination that there are no feasible and prudent alternatives to the use of the Section 4(f) land.

3. A discussion of the basis for the determination that the proposed action includes all possible planning to minimize harm.

4. A summary of the appropriate formal coordination with the headquarters offices of DOI, DOA, and HUD.

Section 4(f) Determination Format and Content

[Proposed Appendix H of FHPM 7–721]

A Section 4(f) determination is the written administrative record which documents the determination required by 23 U.S.C. 138 and 23 CFR 771.223(a). The Section 4(f) determination will be incorporated into the record of decision for those actions which are processed with EIS's. For all other actions, any required Section 4(f) determination will be prepared as a separate document. The determination will be made in accordance with the delegation of authority in the FHWA Organizational Manual, FHWA Order 1–1.[1] A Section 4(f) determination should include the following:

1. Summarized discussions of the following with reference to detailed discussions in the final EIS or FONSI, if appropriate:

a. Project description and need,

b. Description of the Section 4(f) property, and

c. Alternatives to the proposed action which are considered.

2. Specific reasons why each alternative was determined not to be feasible and/or prudent.

[1] FHWA Orders are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

3. A list of measures which are proposed to minimize and/or mitigate impacts of the proposed action on the Section 4(f) property.

4. A summary of the results of the Section 4(f) coordination with the responsible official, DOI, DOA, and HUD.

5. Specific summary statements, based upon the above considerations that:

a. there is no feasible and prudent alternative to the use of the Section 4(f) property, and

b. all possible planning to minimize harm has been accomplished.

Issued on: October 10, 1979.

Karl S. Bowers,

Federal Highway Administrator.

[FR Doc. 79-31765 Filed 10-12-79; 8:45 am]

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federal register

Monday
October 15, 1979

Part VI

Federal Reserve System

Electronic Fund Transfers

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0221]

Electronic Fund Transfers; Definitions, Exemptions, Special Requirements, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, Initial Disclosure of Terms and Conditions, Change in Terms; Error Resolution Notice, Preauthorized Transfers, Relation to State Law, Administrative Enforcement, Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form (1) additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980, and (2) amendments to existing sections of Regulation E. The regulatory proposal was published for comment at 44 FR 25850 (May 3, 1979). The Board is separately republishing today, for further comment, additional sections of the regulation to implement other provisions of the Act effective May 1980. Finally, the Board is issuing an analysis of the economic impact of the portions of the regulation adopted in final form.

EFFECTIVE DATES: Sections 205.3 and 205.6 (originally 205.5): November 15, 1979; §§ 205.2, 205.4 (a), (c), and (d), 205.5 (originally 205.4), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12, 205.13, and Appendix A: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202–452–2761), or Lynne B. Barr, Senior Attorney (202–452–2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist (202–452–2584), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The Board is adopting in final form additional sections of Regulation E to implement provisions of the Electronic Fund Transfer Act that become effective May 10, 1980. The sections adopted today are §§ 205.4 (a), (c), and (d), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12 and 205.13. The Board is also issuing additional model disclosure clauses (Appendix A to the regulation). These additional sections and model clauses were published on May 3, 1979, in the **Federal Register** for public comment (44 FR 25850). Note that the section numbers as adopted differ from those in the proposal.

The Board is also adopting amendments to §§ 205.2 and 205.3. Sections 205.4 and 205.5 in the existing regulation are being redesignated as §§ 205.5 and 205.6, respectively, and technical amendments to these sections are being adopted.

Other sections of the regulation proposed in May are being republished separately today for further public comment. See the proposed rules document affecting Regulation E in this issue.

The Board proposed in May not to implement in the regulation §§ 910 and 912–914 of the Act. Although some commenters suggested that the Board issue regulations on these sections, the Board has decided not to do so. With respect to §§ 912 through 914, the Board continues to feel that they are straightforward and regulatory implementation is not needed. Implementation of § 910 presents a different problem. That section imposes upon a financial institution liability for failure to make or stop electronic fund transfers in accordance with the terms and conditions of an account, except in certain enumerated instances. The Board is authorized to add to the list of instances in which an institution is absolved from liability. The Board is concerned that adding to this "laundry list" might reduce consumer protections and unduly complicate the regulation. Since § 910 explicitly states that a financial institution is liable only when it fails to act in accordance with the terms and conditions of its agreement with its customer, institutions may wish to review their customer agreements.

The Board solicited comment on whether the requirements of the Act and regulation should be modified, as permitted by § 904(c) of the Act, for small financial institutions, as necessary to alleviate undue compliance burdens for such institutions. The Board has determined that such modifications are not necessary at this time.

The Board received 202 written comments on the proposed amendments. Public hearings were also held on the proposal on June 18 and 19, 1979.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff met with staff members from the enforcement agencies both before and after the proposal was issued.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4–2). The Board of Governors has been advised by the Bank Board that § 545.4–2 will be amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the economic impact of the provisions adopted today is published in section (3) below. The final regulatory amendments and the economic impact statement have been transmitted to Congress.

Section 917 of the Act and § 205.13 of the regulation, which assign administrative enforcement to various federal agencies, do not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to state member banks under the general enforcement authority contained in § 1818(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b) (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) *Regulatory Provisions. Section 205.2—Definitions.* The definition of "error" has been deleted from § 205.2 and placed in § 205.11 (Procedures for Resolving Errors), thus bringing together in one section the provisions relating to error resolution.

The Board has decided to amend the definition of "unauthorized electronic fund transfer" so that the third exclusion reads: "or (3) that is initiated by the financial institution or its employee." This language is closer than that of the proposal to the statutory language in that it refers specifically to acts of the financial institution. The intent of the proposed amendment was to eliminate

the apparent inconsistency created by the fact that the existing definition of "unauthorized electronic fund transfer" excluded errors, yet "error" includes unauthorized transfers. The amendment as adopted also resolves this problem, by dropping the reference to errors.

The definition of "preauthorized electronic fund transfer" and the amendment to the existing definition of "financial institution" are adopted as proposed.

Section 205.3—Exemptions. The Board proposed to amend §§ 205.3 (c) and (d) which were adopted on March 21, 1979. Section 205.3(c) exempts transfers made primarily for the purchase or sale of securities or commodities. The Board proposed to eliminate the words "through a broker/dealer registered with" in order to broaden the scope of the exemption to include securities transactions made by mutual funds. A significant percentage of mutual fund transactions are accomplished through sources other than registered broker/dealers. The Board has adopted the exemption as proposed because it believes that existing federal laws and the regulations of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provide protection to consumers regarding payment transfers consistent with the requirements of the Act and Regulation E. Under the provision as amended, if payment is the primary purpose of the transfer and a securities purchase or sale only an incidental purpose, the regulation would apply.

The Board also solicited comment on whether pension and profit-sharing plans should be covered by this exemption. No comments were received on this issue. Since pension and profit-sharing plans are not regulated by the SEC or the CFTC, the Board does not believe an exemption is appropriate.

The Board proposed to revise § 205.3(d) in order to exempt:

1. Transfers between a consumer's accounts at a single financial institution, such as transfers from a demand deposit account to a savings account.

2. Transfers from the financial institution to the consumer's account, such as crediting of interest on savings accounts.

3. Transfers from the consumer's account to the financial institution, such as debiting of automatic mortgage payments, other loan payments, and checking account charges.

Comment was solicited as to whether transfers from the consumer's account to the financial institution should receive total or partial exemption.

The Board has decided to adopt § 205.3(d) as proposed with the change discussed below. Public comment supports the Board's belief that intra-institutional transfer services have been provided by financial institutions for many years. The focus of the Act is on new and developing electronic payment systems, not on traditional intra-institutional transfers that have become "electronic fund transfers" by computerization. In addition, these services are beneficial for consumers and institutions. The costs of providing them would increase if they were subject to the Act's requirements, particularly the monthly periodic statement requirement.

The Board has decided against making transfers from the consumer's account to the financial institution subject to the requirement of periodic statements. It believes that the periodic statements which financial institutions provide supply sufficient and timely information to consumers, and that the possibility of unauthorized use is not great for intra-institutional transfers. Comments did not demonstrate that the Act's protections were needed and the Board believes that the cost of these protections would outweigh the potential benefits.

Commenters pointed out, however, that complete exemption of the transfers described in paragraphs (2) and (3) of § 205.3(d) would conflict with § 913 of the Act. That section prohibits conditioning the granting of credit or the receipt of employment or government benefits on participating in a preauthorized electronic fund transfer arrangement. Accordingly, subsection (d)(2), exempting transfers into a consumer's account(s) by a financial institution, has been modified to require compliance with § 913(2) of the Act, and subsection (d)(3), exempting transfers from a consumer's account(s) to the financial institution, has been changed to require compliance with § 913(1) of the Act. Violations of § 913 will be enforced under §§ 915 and 916.

The Board also solicited comment as to whether any other automatic transfers should be exempted from the regulation. Several commenters suggested that additional exemptions should be made but did not provide a rationale for their recommendations. The Board does not believe that additional exemptions are warranted.

Section 205.4—Special Requirements. Section 205.4 corresponds to § 205.13 in the first proposal. The first sentence of § 205.4(a) permits two or more financial institutions that jointly provide electronic fund transfer services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. The second sentence is new. It states that when making disclosures under §§ 205.7 and 205.8, a financial institution providing electronic fund transfer services under an agreement with other financial institutions need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account. This provision responds to a problem raised by commenters, namely, that a financial institution that is part of a shared system is unable to disclose the terms and conditions imposed by other participants in the system.

Section 205.4(b) is being proposed for comment. Sections 205.4 (c) and (d) correspond to §§ 205.13 (b) and (c) in the first proposal. Only technical changes have been made in these sections. Commenters asked whether financial institutions may choose to which joint account holder they will send disclosures or statements; § 205.4(c)(2) does not restrict the institution's choice.

Section 205.4(d) permits financial institutions to provide additional information or disclosures required by other laws (Truth in Lending disclosures or state law disclosures) with the disclosures required by Regulation E. Commenters asked that a specific provision permitting inconsistent state laws to be combined with the Regulation E disclosures (similar to § 226.6(b) of Regulation Z) be added to the regulation. The Board does not believe that such a provision is necessary at this time, given the stringent placement requirements in Regulation Z. Other commenters asked that the Board add a provision similar to one contained in Regulation Z requiring that additional information or other disclosures combined with the required disclosures not mislead or confuse the consumer or detract attention from the disclosures required by Regulation E. The Board is reluctant to add such a provision because of difficulty in enforcing it. It could also conflict with the similar provision in Regulation Z, particularly because Truth in Lending disclosures and EFT disclosures will often be combined by the financial institution into a single disclosure statement.

Section 205.5—Issuance of Access Devices. Section 205.4 has been redesignated § 205.5. The existing regulation provides that an access device that is sent unsolicited to the

consumer must be accompanied by a disclosure that complies with § 205.4(d). However, § 205.4(d) is a transitional provision and is effective only until May 10, 1980. For this reason, the Board is amending, effective May 10, 1980, § 205.4(b)(2) to read, ". . . in accordance with § 205.7(a). . . . ," and deleting § 205.4(d).

Section 205.6—Liability of Consumer for Unauthorized Transfers. Section 205.5 has been redesignated § 205.6. The Board is adopting a technical amendment to paragraph (a)(3)(i), to make clear that the information required to be disclosed is identical to that required by § 205.7(a)(1).

The Board has decided to adopt the proposed amendment to paragraph (b); the phrase "series of transfers arising from a single loss or theft of the access device" is changed to "series of related unauthorized transfers." This revision recognizes that unauthorized transfers may occur in circumstances other than those involving loss or theft of an access device.

A few commenters found the term "related transfers" to be ambiguous. Whether several unauthorized transfers are related is a question of fact; typically transfers arising from a single loss or theft of the access device will be related.

In addition, the phrases "electronic fund" and "whichever is less," which were inadvertently omitted, have been inserted.

Section 205.7—Initial Disclosure of Terms and Conditions. Section 205.7 corresponds to § 205.6 in the proposal. Comment was solicited on whether disclosure should be permitted "before the first electronic fund transfer is made involving a consumer's account." A large number of responses were received, the majority supporting the proposal. The proposed language was considered particularly important where the consumer contracts with an employer (in the case of direct payroll deposit) or with a utility (in the case of preauthorized debits) for an EFT service rather than directly with the account-holding financial institution. The financial institution would be unable to provide disclosures at the time the consumer contracts for the service. For that reason, and because of the difficulty of determining when a consumer has contracted for an EFT service, the Board is adopting this provision as proposed.

Several commenters were concerned about the difficulty of providing disclosures before the first electronic fund transfer. It was pointed out that, through an oversight or other error, an institution may not receive prenotification of an electronic fund transfer, such as a payroll deposit, or may not receive prenotification far enough in advance to enable it to give the required disclosures before the transfer is made. The Board believes, however, that applicable Treasury Department regulations governing the federal recurring payments program and industry practices, such as the automated clearing house rules, will minimize the likelihood of such occurrences, and that no further extension of the deadline for making disclosures is necessary.

Section 205.7(a)(1) has been amended to make it clear that a complete description of the consumer's potential statutory liability for unauthorized transfers need not be recited on the initial disclosure statement. The Board believes that a summary description, in plain English, will be easier for consumers to understand, and also less cumbersome for financial institutions. Examples showing the amount of information the Board considers appropriate for compliance with §§ 205.7 (a)(6), (a)(7), and (a)(8), as well as this paragraph, are contained in the model disclosure clauses.

No changes have been made in §§ 205.7 (a)(2) and (a)(3).

The requirement of § 205.7(a)(4) that usage limitations on EFT devices be disclosed generated a great many comments. Three points were raised. A number of commenters were concerned that an account-holding institution would be unable to determine, and therefore disclose, limitations imposed by other financial institutions—especially in the context of an interchange network or an automated clearing house system. As provided in § 205.4(a), a financial institution need make only those disclosures that are within its knowledge and the purview of its relationship with the consumer.

The second issue raised in connection with this paragraph is the question of what types of limitations are exempt from the disclosure requirement as "necessary to maintain the security" of an EFT system. The Board believes that such a determination can only be made by financial institutions on a case-by-case basis. Section 205.7(a)(4), however, does not permit institutions to withhold the details of frequency and amount limitations merely because they are related to the security aspects of the system. Unless disclosure of such details would compromise the integrity of the system, consumers must be informed of them. In order to emphasize the narrow scope of this exemption, the Board has amended the second sentence of the paragraph, changing the word "necessary" to "essential." It should be noted, however, that even when disclosure of such limitations would jeopardize a system's security, the financial institution is only relieved of the duty to disclose the details of the limitations; the fact that certain limitations exist must still be disclosed to the consumer.

The third issue raised by the commenters was whether the deletion of the words "and nature" in the regulation from the statutory phrase "type and nature of electronic fund transfers" was intended as a substantive departure from the requirements of the Act. The reason for the deletion is simply that the Board considers the additional words unnecessary.

No change has been made in section 205.7(a)(5). A number of commenters requested clarification as to what types of charges must be disclosed under this paragraph. It is the Board's opinion that only those charges that relate specifically to electronic fund transfers, such as transaction charges, or to the right to make such transfers, such as monthly EFT service charges, should be disclosed. In cases where an institution imposes only a general, undifferentiated account maintenance charge that covers EFT as well as other services, or requires that a minimum balance be maintained, no disclosure need be made under this paragraph.

Sections 205.7(a)(6), (a)(7), and (a)(8) have been amended to require only a summary statement of the consumer's statutory rights, as in the case of section 205.7(a)(1), discussed above. The model clauses that relate to these paragraphs indicate how much information an adequate summary would contain. In connection with section 205.7(a)(8), it should also be noted that the Board has decided not to implement section 910 of the Act in the regulation.

Section 205.7(a)(9) is substantially similar to the proposal. Several commenters expressed concern that the Board's original proposal was drafted too broadly, and would require financial institutions to disclose their reporting practices with respect to every consumer's account, including accounts not accessible to electronic fund transfers. However, this paragraph, and indeed all of section 205.7(a), relate only to accounts that are accessible by electronic fund transfers. Therefore, the institution's practices concerning other accounts need not be disclosed. It should be noted that this paragraph requires the institution to describe the conditions under which *any* information relating to an account will be made available to third parties in the ordinary course of business.

The Board received a large number of comments regarding section 205.7(a)(10), most of which proposed amendments or additions to the error resolution procedure notice. In response to these comments, the notice has been redrafted in the interest of making the error resolution procedure more readily understandable to consumers. No change in substance or basic format was made, however, and the notice remains a summary of the statutory error resolution procedures, in compliance with section 905(a)(7) of the Act.

Section 205.7(b) has been substantially amended, in light of the comments received. The proposal could have been interpreted to require a large number of account holders to be given the disclosures required by paragraph (a) even where no electronic fund transfers were made or contemplated prior to May 10, 1980, and even if the account was closed on that date. The Board does not believe that such a result would be beneficial to consumers, or that it is required by section 905(c) of the Act. Under section 205.7(b), as adopted, institutions must make the disclosures required by section 205.7(a) for all accounts still open on May 10, 1980, from or to which electronic fund transfers were actually made or contracted for prior to that date, or for which an access devise was issued to a consumer (whether or not the device was an "accepted access device," as defined in section 205.2(a)(2)).

A number of commenters were also concerned that financial institutions which do not normally issue monthly statements will be forced to make a special mailing in order to comply with the timing requirement of this paragraph. Accordingly, the regulation now provides that the disclosures may be made at any time "on or before" June 9, 1980. Thus, an institution could choose to make the necessary disclosures in a periodic statement scheduled for a date earlier than May 10, 1980, and still be in compliance.

Section 205.8—Change in Terms; Error Resolution Notice. Section 205.8 corresponds to section 205.7 in the proposed draft, and, with the exception of the deletion of paragraph (b)(2)(ii), it remains substantially the same. Paragraphs (a) (1) and (2) have been merged; similarly, paragraphs (b) (1) and (2) have been combined. Comment was solicited on whether additional types of unfavorable changes in terms or conditions of an account should be added to the list set forth in paragraph (a). Commenters did not generally favor additions to this provision and no change has been made.

Several commenters requested clarification of the relationship of paragraph (a)(2) of section 205.8 (limitations on the obligation to give prior notice of an adverse change in terms) to section 205.7(a)(4) (disclosure of frequency and amount limitations on the use of an access device). Concern was expressed that if a dollar or use limitation that was not previously disclosed for security reasons was made stricter, the institution would have to either explain the change, and thereby jeopardize the security of the system, or merely indicate that some unexplained change had been made to a previously undisclosed limitation. Neither choice would be in the best interest of the consumer or the institution, however, and neither result is contemplated. Section 205.8 does not require subsequent disclosures to be given in any case where a term not required to be disclosed under section 205.7(a) is changed. Where the details of a dollar or frequency limitation are withheld on security grounds under section 205.7(a)(4), a change in that limitation is not required to be disclosed later under section 205.8(a). If no such limitation existed when the section 205.7(a) disclosures were given, but one was subsequently added to a system or an account, the institution could withhold those details "essential to maintain the security of the system," but it would be required to indicate that some limitation had been imposed.

A number of comments were also received regarding the requirement that notice be given within 30 days after a change believed necessary to maintain or restore the security of a system or account. The Board recognizes the fact that the 30-day requirement would force institutions using a quarterly periodic statement schedule, as well as any institution forced to institute such a change immediately before its scheduled statements are to be sent out, to make a special mailing to comply with this paragraph. In order to avoid this result, the Board has amended this provision to permit disclosure of such changes either within 30 days or on the next regularly scheduled periodic statement.

No substantive changes were made in paragraph (b)(1). Paragraph (b)(2) has been amended by eliminating proposed paragraph (b)(2)(ii), which would have required institutions using the "short-form" error resolution notice to send the longer notice to consumers who assert errors. Commenters pointed out that in most cases the investigation and correction of the alleged error will have already been completed by the time the long notice arrives, or will be completed shortly thereafter, and that the notice would then come too late to be of any practical use to the consumer. Such a notice might also be confusing, since a consumer receiving it might feel obliged to notify the institution again.

Section 205.10—Preauthorized Transfers. Section 205.10(a) appears in the proposed rules document on Regulation E in this issue.

Sections 205.10 (b), (c), and (d) were previously designated sections 205.9 (a), (b), and (c) respectively. Under the proposal, the responsibility for providing a copy of an authorization for preauthorized transfers from an account lay with either the financial institution or the designated payee. Many financial institutions explained that frequently they do not participate in, or have knowledge of, the consumer's authorization of preauthorized transfers. Section 205.10(b) has been modified, as suggested by commenters, to specify that the obligation to provide the consumer with a copy of the authorization form rests with the party that actually obtains the authorization.

The Board has added a sentence to section 205.10(c) to explain the consequences of a consumer's failure to provide timely written confirmation of an oral stop-payment order. Such failure results in a lifting of the order and a release of the financial institution from any obligation to continue to refuse to pay an item. The rest of the section is substantially unchanged.

The Board has also changed the first sentence of section 205.10(d) to insure that notice will be provided when a preauthorized transfer varies from the previous transfer under the same authorization. The proposal would have required notice only when a transfer differed from a "preauthorized amount." Commenters pointed out that in many cases a consumer will not specify an amount when authorizing varying transfers.

Financial institutions argued that they are not in the best position to provide notice of varying transfers and asked that the regulation place this responsibility on the designated payee. The Board does not believe it appropriate to vary by regulation express language on this point in section 907(b). The Act does not prohibit financial institutions from contracting with the designated payee for compliance with the notice requirement and obtaining indemnity for non-compliance.

Section 205.12—Relation to State Law. The provisions relating to preemption of State law have been rearranged and rewritten. Proposed sections 205.11 (a) and (b) would have constituted a

regulatory determination of inconsistency since the provisions of State law described in proposed sections 205.11(b)(1)(i)–(iv) would have been automatically preempted. Comments on the proposal and further analysis of section 919 and its legislative history have led the Board to conclude that the question of preemption should be decided upon application. Consequently, paragraphs (1) through (4) of section 205.12(b) now set forth the standards that the Board will apply in determining inconsistency, rather than final determinations of inconsistency. The regulation provides that any State, financial institution, or other interested party may apply to the Board for a determination whether a State law is preempted.

The provisions relating to exemption of State-regulated transactions have not been changed.

Section 205.13—Administrative Enforcement. The proposal would have required financial institutions to retain records of compliance for two years. Many industry commenters urged the Board to shorten the record retention period to conform to the Act's one-year statute of limitations. Enforcement agencies, however, stressed the importance of records in carrying out their responsibilities under section 917 of the Act. For this reason, and to conform with record retention requirements under the Truth in Lending and Equal Credit Opportunity regulations, the Board has adopted a two-year record retention requirement.

Language has been added to section 205.13(c)(1) specifying acceptable methods for retaining records of compliance, and section 205.13(c)(2) has been changed to indicate that only the records actually involved in an ongoing lawsuit or administrative proceeding must be retained beyond the two-year period. Financial institutions should note that they need not retain multiple copies of identical disclosures.

(3) *Economic Impact Analysis. Introduction.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies sections of the regulation that are being issued in final form.[1]

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund transfer (EFT) services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. *It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or state law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.*

Analysis of Regulatory and Statutory Provisions. Section 205.3 is amended by the expansion of two exemptions. First, electronic fund transfers primarily for the purchase or sale of regulated securities are to be exempted from coverage by the regulation even if such transfers are not made through a registered broker/dealer, as is the case in many mutual fund transfers. This provision eliminates the costs of duplicating consumer protections already guaranteed by other federal laws.

Second, the regulation exempts preauthorized automatic transfers between a consumer's accounts at a financial institution and between the institution and a consumer's account. Subjecting such intra-institutional transfers to the Act's requirements would disrupt efficiently functioning internal transfer systems and increase their costs. The exemption assures that financial institutions may continue to offer to consumers such cost-saving, convenient services as automatic crediting of interest, automatic debiting of loan payments, and transfer of funds from checking to savings accounts.

Section 205.4 permits financial institutions to contract among themselves to avoid duplicate compliance efforts for jointly-offered services.[2] It also provides that an institution need issue only one set of disclosures per consumer and per joint account, and that disclosures required by other laws may be combined with disclosures required by this regulation.

These measures reduce the amount of disclosures and mailings needed to comply with the Act, while obviating the duplication of some services. Some compliance costs can therefore be avoided through this provision of the regulation. A financial institution is specifically exempted from having to make disclosures that go beyond its knowledge and the purview of its relationship with consumer account holders. This regulatory provision relieves institutions of the need to list such details as business days and telephone numbers for all institutions in a shared EFT system.

Section 205.7 modifies the Act's requirement that initial disclosures must be made at the time a consumer contracts with a financial institution for EFT services. The regulation provides that institutions can comply by giving the initial disclosures before the first electronic transfer occurs. This provision assures that consumers receive timely disclosures while, at the same time, it obviates the need to determine under state law when a contract for such services is created.

The initial disclosures will benefit consumers by providing them with more information than otherwise may have been readily available. With the disclosures consumers will be better able to assess the risks and benefits associated with EFT, to plan their financial transactions, and to compare EFT services offered by different institutions. By fostering greater awareness of the risks of liability associated with EFT use, the disclosures may encourage consumers to exercise greater care in the use of access devices. The required listing of offered services may have some marketing effect, leading to greater use of EFT services and, to the extent that scale economies are possible, may lower average cost of fund transfers. Finally, the disclosures benefit consumers by describing the steps they must take to guarantee the investigation and resolution of errors; proper use of the error resolution procedure will lead to greater recovery of consumer losses from errors.

Financial institutions will benefit from their mandatory disclosures to the extent that consumer understanding of the terms and conditions leads to more widespread and careful use of EFT services. Consumers will know the correct channels through which to notify an institution of loss, theft, or suspected error. The Act and regulation do not preclude financial institutions from

[1] The analysis presented here is to be read in conjunction with the economic impact analysis that accompanies the Board's final rules at 44 FR 18474, (March 28, 1979). The sections of the regulation have been redesignated.

[2] Section 205.4(b) has been issued in proposed form for comment and is not considered here.

realizing cost savings by routinizing notification procedures and by establishing shared or centralized reporting channels.

Several costs will be imposed on financial institutions by the initial disclosure requirement. Institutions will incur drafting, legal, printing, distribution, and administrative costs in complying with disclosure requirements of the Act. Although the regulation sets forth a mandatory notice of error resolution procedures and provides model disclosure clauses for several subsections, disclosure documents must be drafted by the institution to reflect its unique terms and conditions. Four institutional commenters estimated initial disclosure costs; their estimates averaged $0.34 per disclosure. Actual aggregate costs will depend on the use of special provisions of section 205.4 and on the degree to which institutions avoid postage costs by sending disclosures in already-scheduled mailings.

It is expected that adoption at this time of the disclosure requirements in final form will allow an adequate period for most institutions to draft and print disclosure statements for distribution by the June 9, 1980, absolute deadline.[3] The many institutions with a quarterly statement period ending June 30, 1980, will be unable to use July 1980 statement mailings for initial disclosures. The Act's deadline will therefore force those institutions to include disclosures in April statement mailings. The additional costs of meeting this operational compliance deadline are not likely to be great, however.

The initial disclosure requirements may place small financial institutions at a competitive disadvantage relative to larger institutions because the latter are able to spread fixed legal, administrative, and other costs over larger account bases. However, third-party vendors of EFT service packages to financial institutions may incur lower average costs by pooling orders, so that small institutions might enjoy some scale economies. The net effect of the initial disclosure requirements by size of institution cannot be assessed in advance.

Initial disclosure requirements are unlikely to have significant effects on the availability of EFT services to low-income consumers. Availability by income class is mainly dependent on the Act's issuance and liability provisions, which are implemented by sections 205.5 and 205.6 of the regulation.

Section 205.8 of the regulation repeats the Act's requirements that financial institutions make (1) subsequent disclosures of the error resolution procedures at least once each year and (2) prompt disclosure of any change in terms or conditions that restricts services or increases costs for consumers. Like the initial disclosures, the subsequent disclosures will benefit both consumers and financial institutions by making relevant payment system information more readily available to consumers. Institutions will incur the costs of disclosure statement drafting, printing, and distribution. Distribution costs can be reduced by sending disclosures with periodic statements.

The Act requires that financial institutions disclose certain changes in the terms or conditions of an EFT account; this requirement is reflected in section 205.8(a) of the regulation. Such changes might be motivated by marketing or security considerations or changes in the costs of maintaining accounts. In particular, an institution must disclose any increase in a fee or charge for electronic transfers. Because cost inflation can be expected to drive up nominal account maintenance charges and trigger additional disclosures, this provision of the Act will place on institutions and consumers a regulatory cost burden associated with increases in the general price level. This disclosure rule thus places a regulatory "tax" on certain market price adjustments.

Regarding the error resolution procedure notice of section 205.8(b), the regulation permits institutions to choose either to send the full error resolution procedure disclosure once every year or to send an abridged disclosure with every periodic statement. Disclosure cost could be minimized by printing the abridged notice on the periodic statement forms. The alternatives allow institutions some flexibility to choose the most economically efficient compliance method for each account. Consumers benefit from adequate disclosure in either case.

Sections 205.10 (b), (c), and (d) establish rules regarding preauthorized transfers from a consumer's account. The regulation, like the Act, requires that preauthorized debits may be made only if the consumer has authorized them in writing and received a copy of the agreement. As a result of this provision, consumers are likely to be better informed about their payment schedules. Institutions face a compliance cost only if they obtain the authorization, and such costs may be passed on to the payee. The regulation reiterates the Act's provision that consumers may stop payment of a preauthorized debit up to 3 business days before it is scheduled to occur. This measure provides benefits by ensuring a degree of protection and flexibility for the consumer, while allowing institutions sufficient time to accomplish stop-payment orders. Finally, the regulation restates the Act's requirement that advance notice must be given to a consumer whenever a preauthorized payment differs in amount from the previous transfer to the same payee. The regulation allows, however, that an institution may, if it informs a consumer of this right to notice, offer the consumer a plan whereby notice is sent only if the transfer goes beyond amount limits that the consumer may set. In this way the regulation allows for the reduction of notice volume and related costs.

Sections 205.12 and 205.13 reflect statutory provisions for administrative enforcement and for the relationship to state laws affecting EFT. The regulation requires that records containing evidence of compliance must be kept by financial institutions for at least two years. One commenter estimated that yearly record retention costs would average $0.89 per file in 1980, implying a nationwide annual cost of $19 million in 1980.[4] Record retention activity is, however, partially motivated by other regulations and business considerations, so that costs due solely to the Act and regulation cannot be determined.

Uncertainty about whether state laws are consistent with provisions of the Act and regulation will lead financial institutions to seek determinations from the Board under section 205.12. Preparation of the required applications will impose costs on applicants and may deter some institutions from applying. Uncertainties about the relationship between state and federal law may result in a temporary restriction of the availability of EFT services to some classes of consumers.

(4) Pursuant to the authority granted in Pub. L. 95–630 (to be codified in 15 U.S.C. 1693b), the Board hereby amends Regulation E, 12 CFR Part 205, as follows:

1. Section 205.2 is amended, effective May 10, 1980, by deleting the last sentence of paragraph (i), by redesignating paragraph (j) as (k), by adding new paragraph (j), by redesignating paragraph (k) as (l), and

[3] For accounts in existence on May 10, 1980. The regulation is expected to reduce compliance costs substantially by exempting closed accounts that otherwise would be subject to the Act's disclosure requirements.

[4] This assumes that files are kept for each of 22 million consumer EFT accounts.

by revising new § 205.2(l)(3) to read as follows:

§ 205.2 Definitions.

* * * * *

(j) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(k) "State" * * *

(l) "Unauthorized electronic fund transfer" * * * (3) that is initiated by the financial institution or its employee.

2. Section 205.3 is amended, effective November 15, 1979, by revising the introductory statement and paragraphs (c) and (d), to read as follows:

§ 205.3 Exemptions.

The Act and this regulation do not apply to the following:

* * * * *

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Certain automatic transfers.* Any transfer under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer.

(1) Between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account;

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account (except that the financial institution is subject to §§ 913(2), 915, and 916 of the Act); or

(3) From a consumer's account to an account of the financial institution, such as a loan payment (except that the financial institution is subject to §§ 913(1), 915, and 916 of the Act).

* * * * *

3. Section 205.4 is redesignated as § 205.5, and a new § 205.4 is added, effective May 10, 1980, to read as follows:

§ 205.4 Special Requirements.

(a) *Services offered by two or more financial institutions.* Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. When making disclosures under §§ 205.7 and 205.8, a financial institution that provides electronic fund transfer services under an agreement with other financial institutions need make only those disclosures which are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

(b) [Reserved] [5]

(c) *Multiple accounts and account holders.* (1) If a consumer holds two or more accounts at a financial institution, the institution may combine the disclosures required by the regulation into one statement (for example, the financial institution may mail or deliver a single periodic statement or annual error resolution notice to a consumer for multiple accounts held by that consumer at that institution).

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

(d) *Additional information; disclosures required by other laws.* At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be combined with the disclosures required by this regulation.

4. New § 205.5 is amended, effective May 10, 1980, by revising paragraph (b)(2) and by deleting paragraph (d), to read as follows:

§ 205.5 Issuance of Access Devices.

* * * * *

(b) *Exception.* * * *

(1) * * *

(2) The distribution is accompanied by a complete disclosure, in accordance with § 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

* * * * *

5. Former § 205.5 is redesignated as § 205.6 and is amended, effective November 15, 1979, by revising paragraphs (a)(3)(i) and (b), to read as follows:

§ 205.6 Liability of Consumer for Unauthorized transfers.

(a) *General rule.* * * *

(3) * * *

(i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

* * * * *

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall not exceed $50 or the amount of unauthorized transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

* * * * *

6. Sections 205.7, 205.8, 205.10 (b), (c), and (d), 205.12, and 205.13 are added, effective May 10, 1980, to read as follows:

§ 205.7 Initial Disclosure of Terms and Conditions.

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the

[5] See FR Doc. 79-31770 published elsewhere in this Part for the text of proposed § 205.4(b).

procedure for initiating a stop-payment order, as provided in § 205.10(c).

(8) A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under § 910 of the Act.

(9) The circumstances under which the financial institution in the ordinary course of business will disclose information to third parties concerning the consumer's account.

(10) A notice that is substantially similar to the following notice concerning error resolution procedures and the consumer's rights under them:

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert phone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will recredit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not recredit your account.

If we decide that there was no error, we will send you a written explanation within 3 business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) *Timing of disclosures for accounts in existence on May 10, 1980.* A financial institution shall mail or deliver to the consumer the information required by paragraph (a) of this section on or before June 9, 1980, or with the first periodic statement required by § 205.9(b) after May 10, 1980, whichever is earlier, for any account that is open on May 10, and

(1) From or to which electronic fund transfers were made prior to May 10, 1980;

(2) With respect to which a contract for such transfers was entered into between a consumer and a financial institution; or

(3) For which an access device was issued to a consumer.

§ 205.8 Change in terms; error resolution notice.

(a) *Change in terms.* A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(a) if the change would result in increased fees or charges, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amounts of transfers. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or account. However, if a change required to be disclosed under this paragraph is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

(b) *Error resolution notice.* For each account from or to which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the notice set forth in § 205.7(a)(10). Alternatively, a financial institution may mail or deliver a notice that is substantially similar to the following notice on or with each periodic statement required by § 205.9(b):

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

§ 205.9 [Reserved] [6]

§ 205.10 Preauthorized transfers.

(a) [Reserved] [7]

(b) *Preauthorized transfers from a consumer's account; written authorization.* Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

(c) *Consumer's right to stop payment.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) *Notice of transfers varying in amount.* Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. If the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers, the consumer may elect to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

§ 205.11 [Reserved] [8]

§ 205.12 Relation to state law.

(a) *Premption of inconsistent state laws.* The Board shall determine, upon the request of any state, financial institution, or other interested party,

[6] [7] [8] See FR Doc. 79-31770 published elsewhere in this Part for the text of proposed §§ 205.9, 205.10 (a) and 205.11.

whether the Act and this regulation preempt state laws relating to electronic fund transfers. Only those state laws that are inconsistent with the Act and this regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the Act and this regulation if it is more protective of a consumer.

(b) *Standards for preemption.* The following are examples of the standards the Board will apply in determining whether a state law, or a provision of that law, is inconsistent with the Act and this regulation. Inconsistency may exist when state law:

(1) Requires or permits a practice or act prohibited by the Act or this regulation;

(2) Provides for consumer liability for unauthorized electronic fund transfers which exceeds that imposed by the Act and this regulation;

(3) Provides for longer time periods than the Act and this regulation for investigation and correction of errors alleged by a consumer, or fails to provide for the recrediting of the consumer's account during the institution's investigation of errors as set forth in § 205.11(c); or

(4) Provides for initial disclosures, periodic statements, or receipts that are different in content from that required by the Act and this regulation except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the Act or this regulation.

(c) *Procedures for preemption.* Any request for a determination shall include the following:

(1) A copy of the full text of the state law in question, including any regulatory implementation or judicial interpretation of that law;

(2) A comparison of the provisions of state law with the corresponding provisions in the Act and this regulation, together with a discussion of reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the Act and this regulation; and

(3) A comparison of the civil and criminal liability for violation of state law with the provisions of sections 915 and 916(a) of the Act.

(d) *Exemption for state-regulated transfers.* (1) Any state may apply to the Board for an exemption from the requirements of the Act and the corresponding provisions of this regulation for any class of electronic fund transfers within the state. The Board will grant such an exemption if the Board determines that:

(i) Under the law of the state that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Act and the corresponding provisions of this regulation, and

(ii) There is adequate provision for state enforcement.

(2) To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the Act; and

(ii) After an exemption has been granted, for the purposes of section 915 of the Act, the requirements of the applicable state law shall constitute the requirements of the Act and this regulation, except to the extent the state law imposes requirements not imposed by the Act or this regulation.

§ 205.13 Administrative enforcement.

(a) *Enforcement by federal agencies.* (1) Administrative enforcement of the Act and this regulation for certain financial institutions is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration Board, Civil Aeronautics Board, and Securities and Exchange Commission.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Issuance of staff interpretations.* (1) Unofficial staff interpretations are issued at the staff's discretion where the protection of section 915(d) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations are issued at the discretion of designated officials. No interpretations will be issued approving financial institutions' forms or statements. Any request for an official staff interpretation of this regulation shall be made in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the transfer or service, and shall include copies of all pertinent documents.

(ii) Within 5 business days of receipt of a request, an acknowledgment will be sent to the person making the request. If the designated officials deem issuance of an official staff interpretation to be appropriate, the interpretation will be published in the **Federal Register** to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the **Federal Register** and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the **Federal Register.**

(3) Any request for public comment on an official staff interpretation of this regulation shall be made in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. It must be postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the **Federal Register.** The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 915(d) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation.

(c) *Record retention.* (1) Evidence of compliance with the requirements imposed by the Act and this regulation shall be preserved by any person subject to the Act and this regulation for a period of not less than 2 years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) Any person subject to the Act and this regulation that has actual notice that it is being investigated or is subject to an enforcement proceeding by an agency charged with monitoring that person's compliance with the Act and this regulation, or that has been served with notice of an action filed under sections 915 or 916(a) of the Act, shall retain the information required in paragraph (c)(1) of this section that pertains to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

7. Appendix A is amended, effective May 10, 1980, by revising the introductory statement and by adding sections A(8)(a), (c), and (d), (9), and (10), to read as follows:

Appendix A—Model Disclosure Clauses

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(a)(3), (b)(2), and (b)(3), 205.6(a)(3), and 205.7. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under sections 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and should not be used as such. Financial institutions may make alterations, substitutions, or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits in section A(2)). Sections A(3) and A(9) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address need not be repeated if referenced.

* * * * *

Section A(8)—Disclosure of Right to Receive Documentation of Transfers (Sections 205.5(b)(2), 205.7(a)(6))

(a) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our (automated teller machines) (or) (point-of-sale terminals).

(b) [Reserved][9]

(c) *Periodic statements.* You will get a (monthly) (quarterly) account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(d) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

Section A(9)—Disclosure of Right To Stop Payment of Preauthorized Transfers, Procedure for Doing So, Right To Receive Notice of Varying Amounts, and Financial Institution's Liability for Failure To Stop Payment (Sections 205.5(b)(2), 205.7(a)(6), (7), and (8))

(a) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at (insert telephone number), or write us at (insert address), in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you (insert amount) for each stop-payment order you give.)

(b) *Notice of varying amounts.* If these regular payments may vary in amount, (we) (the person you are going to pay) will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Section A(10)—Disclosure of Financial Institution's Liability for Failure To Make Transfers (Sections 205.5(b)(2), 205.7(a)(8))

(a) *Liability for failure to make transfers.* If we do not properly complete a transfer to or from your account according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, your account does not contain enough money to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the (terminal) (system) was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer.
- There may be other exceptions.

By order of the Board of Governors, October 5, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-31769 Filed 10-12-79; 8:45 am]

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[9] See FR Doc. 79-31770, published elsewhere in this Part, for the text of proposed section A(8)(b) of the Appendix A.