

Chapter Trans 400

APPENDIX

FEDERAL REGULATIONS AND PROCEDURES ADOPTED BY THE WISCONSIN DEPARTMENT OF TRANSPORTATION

<u>United States Council on Environmental Quality 7-1-98</u>		23 CFR 771.123	Draft environmental impact statements
40 CFR 1500.4	Reducing paperwork		Federal Aviation Administration 10-8-85
40 CFR 1500.5	Reducing delay		Order 5050.4A, Chapter 3
40 CFR 1506.8	Proposals for legislation	Paragraph 20	General
40 CFR 1508.4	Categorical exclusion	Paragraph 21	Actions normally requiring an EIS
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<u>United States Department of Transportation</u>		Paragraph 23	Categorical exclusions
Federal Highway Administration and Urban Mass Transit Administration 4-1-98		<u>Assistance to States for Local Rail Service Under Section 5 of the Department of Transportation Act</u>	
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23 CFR 771.119	Environmental assessments		

UNITED STATES COUNCIL ON ENVIRONMENTAL QUALITY

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate

ate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the “detailed statement” required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1508.4 Categorical exclusion.

“Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.17 Legislation.

“Legislation” includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION AND URBAN MASS TRANSIT ADMINISTRATION

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs)*. Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally require an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) *Class II (CEs)*. Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d).

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

§ 771.117 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for train-

ing and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR Part 630; approval of project concepts under 23 CFR Part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR Part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

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

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement

projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.³ Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in

the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

³ Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

§ 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the Federal Register. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

FEDERAL AVIATION ADMINISTRATION

20. General.

a. In the Airports Program, Federal actions which require environmental processing generally involve the approval of specific projects at specific airports. A series of projects may be grouped into an overall plan for development, with successive phases being contingent upon other events such as a projected increase in traffic or a change in the aircraft using the airport. Such programs for development will usually be the subject of tiered environmental actions (see paragraph 101 and CEQ 1508.28).

b. All Federal actions fall in one of three categories:

(1) Those normally requiring an environmental impact statement (CEQ 1508.11).

(2) Those requiring an environmental assessment (CEQ 1508.9).

(3) Those which are normally categorically excluded (CEQ 1508.4).

21. Actions normally requiring an environmental impact statement.

a. The following Federal actions will normally require an environmental impact statement:

(1) First time airport layout plan approval or airport location approval (see paragraphs 30 and 32) for a commercial service airport located in a standard metropolitan statistical area.

(2) Federal financial participation in, or airport layout plan approval of, a new runway capable of handling air carrier aircraft at a commercial service airport in a standard metropolitan statistical area.

b. Even though these actions normally require an environmental impact statement, the preparation of the environmental impact statement will usually be preceded by an environmental assessment. If the environmental assessment demonstrates that there are no significant impacts, the action shall be processed as a finding of no significant impact instead of an environmental impact statement.

22. Actions normally requiring an environmental assessment.

a. Federal financial participation in, or airport layout plan approval of, the following categories of actions shall be subject to

the analysis of an environmental assessment and subsequent decision as to whether to prepare an environmental impact statement or a finding of no significant impact.

- (1) Airport location.
- (2) New runway.
- (3) Major runway extension.
- (4) Runway strengthening which would result in a 1.5 Ldn or greater increase in noise over any noise sensitive area located within the 65 Ldn contour.

(5) Construction or relocation of entrance or service road connections to public roads which adversely affect the capacity of such public roads.

(6) Land acquisition associated with any of the above items plus land acquisition which results in relocation of residential units when there is evidence of insufficient comparable replacement dwellings, major disruption of business activities, or acquisition which involves land covered under section 4(f) of the DOT Act (recodified 49 USC Subtitle I, section 303, January 12, 1981).

(7) Establishment or relocation of an instrument landing system, or an approach lighting system.

(8) An airport development action that falls within the scope of paragraph 24 or which involves any of the following:

- (a) Use of section 4(f) land.
- (b) Effect on property included in or eligible for inclusion in the National Register of Historic Places or other Property of state or local historical, architectural, archeological, or cultural significance.

(c) Land acquisition for conversion of farmland, scoring over 160 on Form AD-1006, protected under the Farmland Protection Policy Act (FPPA) to nonagricultural use through Federal financial assistance or through conveyance of government land.

(d) Wetlands, coastal zones, or floodplains.

(e) Endangered or threatened species.

b. FAA requests for conveyance of government land for airport purposes under section 516 of the 1982 Airport Act unless the proposed use of the land falls within the scope of paragraph 23 (see paragraph 34 for more detailed instructions).

c. The actions identified in this paragraph shall be supported through one of the following action choices based upon an environmental assessment:

- (1) Environmental impact statements.
- (2) Findings of no significant impact (see paragraph 27).

d. Actions identified in this paragraph may be the subject of written reevaluations of previously approved environmental impact statements or findings of no significant impact. (See paragraph 103).

23. Categorical exclusions.

a. Unless specifically covered by paragraphs 21, 22, 24, or 26, the items below are categorically excluded from the requirement for formal environmental assessment. Paragraphs 21 and 22 identify specific airport actions such as major runway extensions which require, as a minimum, an environmental assessment. Paragraph 24 identifies extraordinary circumstances which create a requirement for environmental assessment of actions otherwise excluded. Paragraph 26 deals with cumulative

impact. For any of the following specific items, paragraphs 21, 22, 24, and 26 shall be reviewed.

(1) Runway, taxiway, apron, or loading ramp construction or repair work including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, and new helicopters on existing airports, except where such action will create environmental impacts off airport property.

(2) Installation or upgrading of airfield lighting systems, including runway end identification lights, visual approach aids, beacons and electrical distribution systems.

(3) Installation of miscellaneous items including segmented circles, wind or landing direction indicators or measuring devices, or fencing.

(4) Construction or expansion of passenger handling facilities.

(5) Construction, relocation or repair of entrance and service roadway.

(6) Grading or removal of obstructions on airport property and erosion control actions with no off-airport impacts.

(7) Landscaping generally, and landscaping of construction of physical barriers to diminish impact of airport blast and noise.

(8) Projects to carry out noise compatibility programs.

(9) Land acquisition and relocation associated with any of the above items.

(10) Federal release of airport land (see paragraph 35).

(11) Removal of a displaced threshold.

b. The following items are not subject to the paragraphs listed in a. above and are categorically excluded:

(1) Acquisition of an existing privately owned airport, as long as acquisition only involves change of ownership.

(2) Acquisition of: security equipment required by rule or regulation for the safety or security of personnel and property on the airport (14 CFR part 107), safety equipment required by rule or regulation for certification of an airport (14 CFR Part 139) or snow removal equipment.

(3) Issuance of airport planning grants.

(4) Airport Improvement Program actions which are tentative and conditional and clearly taken as a preliminary action to establish a sponsor's eligibility under the Program.

(5) Retirement of the principal of bond or other indebtedness for the terminal development.

(6) Issuance of airport policy and planning documents including the National Plan of Integrated Airport Systems (NPIAS), Airport Improvement Programs (AIP) priority system, advisory circulars on planning, design, and development programs which are not intended for direct implementation or which are issued by FAA as administrative and technical guidance to the public.

(7) Issuance of certificates and related actions under the Airport Certification Program (14 CFR Part 139).

(8) Issuance of grants for preparation of noise exposure maps and noise compatibility programs per section 103(a) and 104(a) of the Aviation Safety and Noise Abatement Act of 1979 and 14 CFR Part 150 determination on noise exposure maps and approval of noise compatibility programs.

(9) Airspace determination (see paragraph 25, Advisory Actions).

**ASSISTANCE TO STATES FOR LOCAL RAIL SERVICE UNDER SECTION 5
OF THE DEPARTMENT OF TRANSPORTATION ACT**

§ 266.19 Environmental impact.

(a) General. The Administrator has determined that providing assistance to cover the following costs is not a major action significantly affecting the quality of the human environment: Rehabilitation or improvement consisting of work normally performed on a periodic basis which does not change the existing character of the facility (including work to overcome normal periodic maintenance that had been deferred) rail service continuation, acquisition, and planning.

(b) Substitute service assistance, rail facility construction assistance, and non-exempt rehabilitation or improvement assistance

(1) Environmental assessment.

(i) When an applicant requests substitute service assistance, rail facility construction assistance, or rehabilitation or improvement assistance (except for rehabilitation or improvement assistance which is exempt under paragraph (a) of this section), the applicant shall:

(A) Prepare an environmental assessment to determine whether the future use of the property will significantly affect the quality of the human environment; or

(B) Provide sufficient documentation to enable the Administrator to determine that the project satisfies the following criteria:

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

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

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

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

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

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

(7) Environmental assessment or documentation is not required by any Federal law, regulation, guideline, order, or judicial or administrative determination other than this part.

(ii) Prior to submitting an application, FRA recommends that the applicant seek the Administrator's advice as to form and

substance of the assessment for the project under consideration. The environmental assessment shall utilize an interdisciplinary approach in identifying the type, degree of effect, and probability of occurrence of primary, secondary and cumulative potential environmental impacts (positive and negative) of the proposed action and of alternative courses of action. The depth of coverage shall be consistent with the magnitude of the project and its expected environmental effects. The environmental assessment and all documents used as a basis for the assessment shall be submitted together with the application for assistance.

(2) Environmental impact statement. A draft environmental impact statement (EIS) shall be submitted with each application when the environmental assessment concludes that the future use significantly affects the quality of human environment. FRA recommends that prior to submitting the application, the applicant seek the Administrator's advice as to form and substance of the EIS for the project under consideration.

(3) Finding of no significant impact. A draft finding of no significant impact declaration shall be submitted with each application when the applicant's environmental assessment concludes that the future use does not significantly affect the quality of the human environment. The finding of no significant impact shall include a description of the project, and sufficient data and environmental findings to support the conclusions as to the impact upon the quality of the human environment. FRA recommends that prior to submitting the application, the applicant seek the Administrator's advice as to the form and substance of this finding for the project under consideration.

(4) Section 4(f) determination. For projects involving the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site of national, State or local significance as determined by the Federal, State, or local officials having jurisdiction thereon, information to support a determination pursuant to section 4(f) of the Act shall be submitted together with the application. The section 4(f) determination shall document that:

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

(ii) The project includes all planning to minimize harm resulting from such use.

(5) Historic preservation. For projects involving the use of historic, cultural or archeological resources listed or eligible for listing in the National Register of Historic Places, information which documents that the Advisory Council on Historic Preservation has been afforded an opportunity for review and comment on the proposed project in accordance with 16 U.S.C. 470 and 36 CFR part 800 shall be submitted with the application.

(c) Highway or highway-related facilities. Substitute service projects involving highway or highway-related facilities are subject to the applicable substantive Federal Highway Administration regulations on environmental considerations (23 CFR part 771).