

DOT Issues Guidance to Speed NEPA Reviews

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Earlier this month, the Federal Highway and Transit Administrations published guidance outlining two steps it will take to accelerate the environmental review process for certain projects. The guidance was the direct result of two provisions in the 2012 Transportation bill (MAP-21) mandating streamlined action under the National Environmental Policy Act for certain Environmental Impact Statements and Records of Decision.

MAP-21's first mandate was for FHWA and FTA to eliminate the need to publish a lengthy Final EIS in situations where the only changes from the Draft EIS are minor, factual ones. In those situations, modifications are to be made on an errata sheet attached to the DEIS. Given the clarity provided by Congress, the DOT's guidance on this mandate is quite straightforward, adding only a few requirements necessary in order to comply with non-NEPA legal requirements. Thus, the guidance outlines the minimum information required for the errata sheet:

1. A list of the factual corrections and relevant DEIS page numbers
2. A list and explanation of why any comments on the DEIS do not warrant further response
3. The specific circumstances that would trigger DOT's reappraisal or further response, if any

The guidance also identifies several additional components that may be needed for the errata sheets in order to comply with other legal requirements:

1. Identification of the preferred alternative and a discussion of the reasons why it was selected
2. Presentation of the final Section 4(f) evaluation, if needed
3. Findings on wetlands, floodplains, and section 106 effects, if needed
4. Any mitigation commitments
5. A copy or summary of the comments received on the DEIS
6. Any other findings where full compliance will occur after issuance of the FEIS

MAP-21's second mandate was a bit more expansive. It directs the agencies "to the maximum extent practicable" to develop a single document that in most circumstances can act as both a

Final EIS and a Record of Decision. DOT's guidance is the first step in complying with Congress's intent, prior to adopting an actual rule. This portion of the guidance focuses on identifying when the use of a combined document is "practical." To help determine practicality, the guidance states that FTA and FHWA will look at, among other things:

1. Whether there are any third-party coordination activities that are more effectively completed after the FEIS is available
2. Whether there are any unresolved interagency disagreements
3. Whether there is a substantial degree of controversy
4. Whether the DEIS identifies the preferred alternative from among the comparatively evaluated reasonable alternatives
5. Whether there are issues complying with substantive requirements that must or should be resolved before issuance of the ROD

These five factors are rather expansive, establishing a wide range of circumstances in which the agencies will decline to utilize a combined FEIS and ROD. In addition, even when a combined document is utilized, the time saved by a project proponent could be as little as 30 days (the statutory minimum time that must pass between issuance of the FEIS and a ROD in the absence of the application of a MAP-21 exception). Thus, it appears that Congress's latest attempt at NEPA streamlining will provide a little, but only a little, relief from the extensive time required to complete the environmental review process.