

BLOG POST

FHWA and FTA to Propose NEPA Streamlining Rules

September 19, 2013

Earlier today, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) published a notice of proposed rulemaking outlining new National Environmental Policy Act (NEPA) categorical exclusions (CE) and other streamlining procedures. The broad outlines of the rule were mandated by Congress in its most recent transportation bill (MAP-21), but the specifics were uncertain until today. Congress required the agencies to determine if they could adopt more CEs and decide if certain CEs could be implemented more regularly. It also authorized FHWA to enter into certain programmatic streamlining agreements with state Departments of Transportation, including agreements which would enhance the agencies' ability to delegate to state DOTs the authority to implement federal CEs.

In response to Congress's mandate to determine if more CEs could be adopted, the agencies sought ideas from state DOTs, transit authorities, and metropolitan planning organizations. FHWA received 117 responses that proposed 269 actions as new CEs. FTA received 269 proposed CEs. These were whittled down by eliminating suggestions already covered by existing CEs and suggestions that were too broad and therefore wouldn't qualify as CEs. The remaining suggestions were placed in groups. FHWA ended up with five groups, four of which will be proposed as new CEs; FTA ended up with five and will propose all five.

With regard to deciding if certain CEs could be implemented more regularly (which would have been accomplished by moving the CEs from one list of CEs to another), FHWA determined that it would not unconditionally move the CEs. It reasoned that "[m]any actions that qualify for these (d)-list CEs require consideration of the surrounding environment in which the action will occur (such as their setting, site location, and surrounding land use) and their particular context (e.g., no effect, or minor to moderate environmental effects)." However, it did decide to move some of them subject to a list of constraints. As to FTA, in February, it issued a rule addressing this mandate, so the current notice does not contain any additional analysis from that agency.

Finally, as authorized by Congress, FHWA will be adopting rules associated with entering into the programmatic streamlining agreements. These will indeed include rules authorizing State DOTs in some situations to approve certain CEs without independent FHWA oversight.

All of these developments were generally expected given Congress's mandate, but it is interesting to see where the agencies are headed with the specifics. Once finalized and fleshed out, these new rules should provide an incremental increase in the streamlining of the environmental review process for highway and transit projects.