

Successes **in** Stewardship

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May 2009

FHWA/FTA Final Rule Update to Environmental Impact and Related Procedures

On March 24, 2009, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) published in the *Federal Register* the Environmental Impact and Related Procedures: Final Rule. These regulations, codified in 23 CFR Part 771 (with the counterpart FTA cross-reference contained in 49 CFR Part 622), took effect on April 23, 2009, and modify the existing FHWA/FTA regulations.

The recent changes to the rule were prompted by provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which included two new activities to be designated as Categorical Exclusions (CEs) under the National Environmental Policy Act (NEPA). Additionally, changes include modifications to the FHWA and FTA environmental review process and are especially relevant for projects for which an environmental impact statement (EIS) must be performed. The Final Rule adds, modifies, and eliminates inconsistencies within SAFETEA-LU. The Final Rule also adds minor changes to the joint FHWA/FTA procedures in order to improve the description of the procedures or provide clarification to the interpretation of certain provisions.

On August 7, 2007, FHWA and FTA issued a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* (72 FR 44038), requesting information and comments on the proposed changes and also soliciting input with written evidence about particular congestion management activities that could qualify as CEs. The 15 comments submitted to the docket generally expressed support for the proposed revisions. After much consideration, FHWA decided to further consider a congestion CE in a future rulemaking while continuing to apply the CE criteria in 23 CFR 771.117(c) and (d) to congestion management projects when appropriate.

Key New Provisions

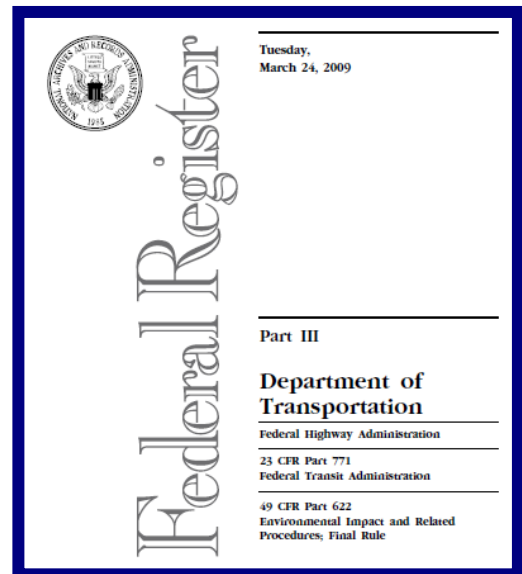
The Final Rule changes the environmental impact and related procedures to address six sections of SAFETEA-LU. The changes also apply to Federal Lands and FTA programs. Each key change is summarized below.

Section 6001

- Enables agencies to incorporate the information and results of the transportation planning process into environmental review documents according to current planning regulations (23 CFR 450).

Section 6002

- Includes the requirement that any governmental agency that receives Federal funds be recognized as a NEPA co-lead agency with FHWA or FTA.
- Provides an opportunity for interested agencies and the public to contribute to lead agencies' determination of project purpose and need and the range of alternatives to be considered.
- Incorporates the statutory provision on deadlines for submission of comments on a draft EIS (60 days, unless otherwise established in accordance with 23 U.S.C. §139(g)(2)(A)).



Cover of the Federal Register containing the Final Rule Update

- Implements the 180-day statute of limitations in accordance with 23 U.S.C. §139(l) on claims against transportation projects.

Sections 6004 and 6005

- Recognizes that a state may have assumed NEPA or other environmental responsibilities from FHWA and/or FTA, and is responsible for compliance with this rule.

Section 6010

- Establishes a “c” list CE for activities that support the deployment of intelligent transportation infrastructure and systems (23 CFR 771.117(c)(21)).

Section 3024

- Establishes an additional “d” list CE that allows FTA to participate in the acquisition of a preexisting railroad right-of-way prior to completion of the NEPA process for any project that would eventually use that right-of-way (23 CFR 771.117(d)(13)).

Federal Lands

- Clarifies that the transfer of Federal lands pursuant to 23 U.S.C. 107(d) is included in the existing CE at 771.117(c)(5).

FTA Program

- Revises several provisions that relate to the New Starts evaluation process in 49 U.S.C. §5309, which has evolved considerably over time. The revisions leave New Starts matters to the New Starts regulation at 49 CFR Part 611.
- Requires FTA approval of an environmental assessment before it is made public. Formerly, an FTA applicant was allowed to make such an assessment public without FTA concurrence.

Categorical Exclusions for ITS

An important highlight of the Final Rule revised regulations is the establishment of an explicit CE for certain intelligent transportation systems (ITS) under 23 CFR 771.117(c)(21). The new CE applies to ITS projects that improve the efficiency or safety of a surface transportation system or that enhance security or passenger convenience. This change underscores the importance of improving surface transportation systems through innovative methods and enables transportation agencies to achieve measurable improvements in efficiency, safety, and security with easier environmental approval.

No Categorical Exclusions for Congestion Reduction Projects

In the NPRM, FHWA and FTA announced that it might consider designating in the future one or more new CEs for projects that reduce transportation system congestion. FHWA and FTA received eight comments expressing both support and concern for this proposed designation.

Some congestion management activities currently meet CE criteria, though there is no explicit CE for them. In this Final Rule, FHWA and FTA deferred action on establishing a CE for congestion management activities, and they plan to reexamine the issue in the future. The agencies also plan to publish a Supplemental NPRM that would allow public comment on the actual proposed language for such a CE before determining whether to formalize it in regulation.

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Look What's New!

- FHWA posted the [Best Practices Manual: Wildlife Vehicle Collision Reduction Study](#). The manual focuses on strategies for reducing such collisions, and provides a checklist for implementing a collision reduction program and identifies potential funding sources. The manual expands on a study of wildlife-vehicle collisions submitted to Congress in November 2007.
- Registration is now open for the [2009 International Conference on Ecology and Transportation \(ICOET\)](#) to be held September 13-17, 2009 in Duluth, Minnesota. The ICOET 2009 Conference theme is "Adapting to Change."

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