

## **Overview of the FHWA/FTA Final Rule update to Environmental Impact and Related Procedures**

**Background:** Amendments to the rule were prompted by SAFETEA-LU provisions that expressly included two new activities be categorically excluded from NEPA and modified the environmental review process, primarily for projects that require the preparation of an environmental impact statement. The final rule adds, modifies, and eliminates inconsistencies with the SAFETEA-LU changes, and incorporates other minor changes to the joint procedures in order to improve the description of the procedures or to provide clarification with respect to the interpretation of certain provisions.

### **Notice of Proposed Rulemaking (NPRM)**

The FHWA/FTA issued the NPRM in the Federal Register on August 7, 2007 (72 FR 44038). Seventeen comments were submitted to the docket. In general, comments expressed overall support of the revisions and a number of comments expressed the opinion that more substantial changes to the regulations be pursued. The NPRM requested information and comments to support categorical exclusions for congestion pricing projects on highways and other highway congestion management projects. FHWA and FTA staffs reviewed and responded to the docket comments, and developed the Final Rule. After much consideration, the FHWA decided to further consider a congestion categorical exclusion in a future rulemaking, while continuing to apply the categorical exclusion provisions in 23 CFR 771.117(c) and (d) to congestion management projects when appropriate .

### **General Information on the Final Rule:**

- This Final Rule was published in the March 24, 2009 Federal Register, and takes effect on April 23, 2009.
- As they are now, the new rules are codified in 23 CFR Part 771 (with the counterpart FTA cross-reference contained in 49 CFR Part 622).

### **Key New Provisions:**

#### Section 6002 (23 U.S.C. §139)

- Recognizes the role of the governmental agency that receives Federal funds as a NEPA co-lead agency with the FHWA or FTA;
- Provides an opportunity for interested agencies and the public to contribute to the 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 draft environmental impact statements (60 days unless otherwise established in accordance with 23 U.S.C. §139(g)(2)(A)).
- Implements the 180-day statute of limitations 23 U.S.C. §139(l) on claims against transportation projects.

#### Section 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 categorical exclusion from NEPA for activities that support the deployment of intelligent transportation infrastructure and systems.

#### Section 3024

- Establishes an additional “d” list, or documented, categorical exclusion from NEPA example that allows FTA to participate in the acquisition of a pre-existing railroad right-of-way prior to the completion of the NEPA process for any project that would eventually use that railroad right-of-way.

#### Federal Lands

- Clarifies that the transfer of Federal lands pursuant to 23 U.S.C. 107(d) are included in the existing categorical exclusion 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 EA before it is made public. Formerly, an FTA applicant was allowed to make an EA public without FTA concurrence.