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REGION 10 BULLETIN NO: 2013-07

Subject: Final Rule: Revised FTA Regulations Addressing Environmental Impact
and Related Procedures (23 CFR 771)

Program Area: Environmental

Date: February 11, 2013

This final rule revises the joint Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regulations that implement the National Environmental Policy Act (NEPA). The revisions are aimed at streamlining FTA's environmental review of transit projects, as directed in the August 31, 2011, Presidential Memorandum titled "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review." The revisions also respond to Executive Order 13563's directive to periodically review existing regulations to determine if they can be made more effective and/or less burdensome, and to the Council on Environmental Quality (CEQ) guidance, "Establishing, Applying, and Revising CEs under NEPA" (75 FR 75628).

The final rule includes both clarified and new categorical exclusions (CEs) that are intended to improve the efficiency of the environmental review process by making available the least intense form of review for those actions that typically do not have the potential for significant environmental effects, and therefore do not require the detailed analysis and documentation associated with an environmental assessment or an environmental impact statement.

The new rule originated in a joint FTA/FHWA Notice of Proposed Rulemaking (NPRM) published on March 15, 2012 (<http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6327.pdf>). In the NPRM, FTA proposed: (1) Creating ten new categorical exclusions (CEs) to be located in a newly proposed section of the regulation at 23 CFR 771.118; (2) expanding public involvement methods to include electronic means; (3) adding language on early scoping into the regulations; (4) modifying the list of project types that normally result in the preparation of an Environmental Impact Statement (EIS); and (5) including an FTA review role in contracting for Environmental Assessment (EA) and EIS projects. The comment period closed on May 14, 2012.

The new regulations generally carry out what was proposed in the NPRM. The Federal Register Notice of the Final Rule at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-07/pdf/2013-02345.pdf> explains FTA's responses to comments made on the NPRM.

The new rule became effective on February 7, 2013.

The new CEs in section 771.118(c) are organized into ten defined categories of actions that are intended to cover the actions that previously applied to FTA in section 771.117(c) but with language expanded to be more efficient. Each category is accompanied by examples representing types of FTA activities that fall within it. As explained in the NPRM, this approach complies with CEQ regulations (40 CFR 1508.4), which describe CEs as “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 * * * and for which, therefore, neither an EA nor an EIS is required.” CEQ’s November 2010 guidance reiterates that Federal agencies should characterize CE actions through broadly defined criteria, when appropriate, including clearly defined eligible categories and constraints, followed by examples. The examples FTA listed within each of the new CEs are intended to represent the types of activities that fit within the defined criteria of the CE; they are not intended to limit the CE or to broaden it beyond those activities that do not typically, either individually or cumulatively, cause significant environmental effects.

FTA will soon issue detailed guidance on implementing and interpreting the final rule. In the meantime, we have posted a shortened version of an internal PowerPoint presentation at this website accessible by the public: <http://www.fta.dot.gov/12347.html>. We will post accompanying audio as soon as we can resolve some technical difficulties with it.

For information on the Final Rule, contact Environmental Protection Specialist Megan Blum (202-366-0463; megan.blum@dot.gov), Office of Planning and Environment (TPE); or, in Region 10, Environmental Protection Specialist Dan Drais at 206-220-4465 or email daniel.drais@dot.gov.

Sincerely,



for
R.F. Krochalis
Regional Administrator

