



FRA's Environmental Rulemaking Joining 23 CFR 771 & 774

November 28, 2018

AGENDA

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- ▶ What the Final Rule means for FRA
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Introduction

Introduction

- ▶ The 2015 Fixing America's Surface Transportation Act (FAST Act) included FRA in the multi-modal surface transportation authorization bill
- ▶ The FAST Act directed the Secretary of Transportation to apply the project development procedures in 23 United States Code (USC) 139 to railroad projects to the greatest extent feasible
- ▶ FRA, in consultation with US DOT, decided joining the Federal Highway and Federal Transit Administration (FHWA and FTA)'s environmental NEPA regulations in 23 Code of Federal Regulations (CFR) 771, would best serve that direction
- ▶ FRA also decided to join the Section 4(f) Regulations in 23 CFR 774 at the same time

Background

- ▶ Since 1987, FHWA and FTA have relied on 23 CFR part 771 as their regulations implementing the National Environmental Policy Act (NEPA)
- ▶ In Sept. 2017 FHWA, FRA, and FTA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to address certain statutory changes resulting from the FAST Act
- ▶ Following a public comment period, on Oct. 29, 2018, the FHWA, FRA, and FTA issued a Final Rule, which included responses to substantive comments and a restatement of part 771
- ▶ As part of this rulemaking, FHWA, FRA, and FTA also modified part 774 to reflect recent statutory Section 4(f) exemptions

Background

- ▶ In the past, FRA has conducted required environmental reviews according to NEPA and FRA's 1999 Procedures for Considering Environmental Impacts, published in the Federal Register on May 26, 1999
- ▶ Similarly, FRA has relied on the FHWA and FTA Section 4(f) implementing regulations and policy paper as guidance
- ▶ Final Rule is effective **TODAY** (Nov. 28, 2018)

Benefits of Joining 23 CFR 771 and 774

- ▶ Harmonizes the NEPA implementing procedures of the three operating administrations with jurisdiction over surface transportation
- ▶ Creates consistency among the FRA, FHWA and FTA environmental procedures
- ▶ Reduces the compliance burden for Project sponsors who will be able to rely on one consistent environmental review process
- ▶ Simplifies the NEPA review for multimodal projects

What the Final Rule Means for FRA

To What Does the Final Rule Apply?

- ▶ The Final Rule applies to FRA Projects initiated on November, 28, 2018. As of **TODAY**, FRA will follow 23 CFR 771 and 774 for all new environmental reviews
- ▶ FRA's 1999 Environmental Procedures will continue to apply to those project for which NEPA review has already started/ is underway

Will FRA Rescind its 1999 Environmental Procedures?

- ▶ FRA is not rescinding its 1999 Environmental Procedures, at this time
- ▶ Part 771 focuses primarily on procedural elements of the environmental review process, whereas, FRA's 1999 Environmental Procedures contains important content-based direction
- ▶ Until FRA provides additional direction, FRA will continue to rely on sections of its 1999 Environmental Procedures for content-based direction

Walk Through of Part 771

Outline of Key Sections of Part 771

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- ▶ Policy (771.105)
- ▶ Definitions (771.107)
- ▶ Applicability and responsibilities (771.109)
- ▶ Early coordination, public involvement, and project development (771.111)
- ▶ FRA categorical exclusions (CE) (771.116)
- ▶ Environmental assessment (EA)/finding of no significant impact (FONSI) (771.119)
- ▶ Environmental impact statement (EIS)/record of decision (ROD)(771.123)

Policy (771.105)

- ▶ To the maximum extent possible, all reviews and consultations be coordinated as a single process
- ▶ Programmatic approaches developed for coordination among agencies and/or the public
- ▶ Mitigation measures should be incorporated into the action

Definitions (771.107)

- ▶ Updated to include FRA and railroad projects
- ▶ Defines the Project applicant and Project sponsor and their responsibilities

Applicability and Responsibilities (771.109)

- ▶ Consistent with CEQ implementing regulations, public agencies can prepare environmental review documents with FRA guidance
- ▶ Describes FRA's approach to third-party contracting (for both EISs and EAs) where the Project sponsor is a private entity
- ▶ Private entity-project sponsors may comment on environmental documents and provide technical studies
- ▶ Project sponsor is responsible for implementing mitigation described in environmental documents
- ▶ Describes role of participating agencies and responsibilities to review environment documents

Early Coordination, Public Involvement, & Project Development (771.111)

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- ▶ Reinforces the potential use of tiered environmental reviews for major projects
- ▶ Discusses incorporating transportation planning products into environmental documents, where applicable
- ▶ EIS
 - FRA must respond in writing to the Project sponsor within 45-days of receiving their formal project notification, that the proposed project will be an EIS
 - EIS public participation must include opportunities for defining purpose and need and range of alternatives
 - Public hearing must occur during the draft EIS circulation period
 - Early scoping is permitted as long as enough is known for effective participation
- ▶ FONSI/EIS/ROD
 - Completed FRA FONSI, EISs, and RODs will be posted online by FRA or Project sponsor, until project is constructed and operational

Categorical Exclusions (771.116)

- ▶ New list of unusual circumstances, consistent with FHWA and FTA
- ▶ Removed certain CEs to eliminate duplication and CEs covering programs no longer used by FRA
- ▶ Added the following new categorical exclusions:
 - CE for small ground disturbance including testing, geotechnical studies and or archaeological investigations, etc.
 - Financial Assistance for work already complete
 - FRA may use FHWA or FTA CEs when appropriate

Categorical Exclusions (771.116)

- ▶ Modified CEs to expand or clarify their applicability:
 - Broadened the CE for administrative actions
 - Expanded the “research, development and demonstration activities...” CE beyond PTC (Positive Train Control)
 - Incorporated acquisition or transfer of real property
 - Added bridge removal
 - Clarified that repair activities are eligible for categorical exclusion
 - Removed unnecessary limitations of environmental restoration, remediation, or pollution activities CE

Environmental Assessments (771.119)

- ▶ Contractors working on the EA must provide a conflict of interest disclosure statement
- ▶ Early coordination must occur with interested agencies on impacts, alternatives, and reviews of the EA and associated documentation
- ▶ EA document includes a public involvement and agency coordination summary
- ▶ A 30-day public review period of the EA is required
 - If FRA determines a public hearing is needed, the EA must be publicly available 15-days prior to the hearing

Environmental Impact Statements (771.123)

- ▶ Lead agencies must establish a coordination plan, including a schedule, within 90-days of NOI
- ▶ Preferred Alternative may be developed to a higher level of detail to facilitate mitigation measures

Environmental Impact Statements (771.123)

- ▶ Draft EIS should identify preferred alternative to extent practicable
 - If the preferred alternative is not in the Draft EIS, agencies and public should have chance to review after the Draft EIS
- ▶ Draft EIS must be available publicly at least 15-days in advance of a public hearing
- ▶ There will be no less than 45-days and no more than 60-days for comments on the Draft EIS
- ▶ Final EIS and ROD must be combined to maximum extent practicable

Walk Through of Updates to Part 774

Outline of Key Sections of Part 774

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- ▶ Exceptions (774.13)

- ▶ Other:
 - ▶ Constructive Use Determinations (774.15)
 - ▶ Definitions (774.17)

Exceptions (774.13)

- ▶ New exceptions to the requirements for Section 4(f) Approval
 - Common post-1945 concrete or steel bridges and culverts
 - Improvement of railroad lines historically used for transportation
 - Maintenance, preservation, rehabilitation, operation, modernization, reconstruction, or replacement of historic transportation facility

Key Take Aways

Final Rule Summary

- ▶ Amends 23 CFR 771 and 23 CFR 774
- ▶ Allows FRA to follow the same flexible environmental procedures as FHWA and FTA
- ▶ Adds references to FRA and railroad projects, where appropriate
- ▶ Includes 22 updated and more expansive categorical exclusions. Affords the use of FHWA and FTA categorical exclusions
- ▶ Requires 30-day public comment period for EAs

Final Rule Summary

- ▶ Adds a new section addressing combined Final EIS and RODs, thus eliminating the 30-day public review period between the FEIS and ROD
- ▶ Adds programmatic approaches to streamline, including coordination with agencies and the public to accelerate project development
- ▶ All environmental reviews and requirements to be addressed as single process consistent with the FAST Act and One Federal Decision
- ▶ Incorporates new 4(f) exemptions consistent with the FAST Act

FTA

FTA (Federal Transit Administration)

- ▶ Now share NEPA regulations
- ▶ Projects may overlap, for example, grant awards or environmental documentation (PTC)
- ▶ FRA use of FTA guidance (station area planning, transit oriented development, environmental justice EO)
- ▶ FRA use of FTA CEs (771.118 c and d list) where appropriate, as determined by FRA

FTA Contact Information

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Q&A

Thank you!



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