



Rail Law Alert – FRA Proposes Adoption of FTA/FHWA NEPA Regulations

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FRA Seeks Comment on Adopting FHWA and FTA NEPA Regulations

The Federal Railroad Administration (FRA) is seeking public comment on whether the Federal Transit Administration's (FTA) and the Federal Highway Administration's (FHWA) joint policies and procedures implementing the National Environmental Policy Act of 1969 (NEPA) should be made directly applicable to railroad projects.

Section 11503 of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No 114-94 (Dec. 4, 2015), required the FRA to apply the project delivery and environmental review procedures associated with the highway and transit modes to rail projects to the greatest extent feasible. Rather than incorporate aspects of those procedures into its own, separately-maintained regulations, the FRA proposes to engage in joint rulemaking with the FHWA and FTA to amend 23 C.F.R. part 771 so as to include railroad projects in addition to highway and transit projects.

Adopting its sister administrations' NEPA processes would signal a significant change in approach for FRA, which established its current NEPA program in 1999. FHWA and FTA have previously cooperated in revising their joint NEPA rules and establishing agency-specific program elements where necessary. Adding FRA to the roster could potentially create a coherent approach to NEPA among DOT's surface transportation administrations with significant project funding authority.

The FRA requests comments on this initial proposal by July 11, 2016, after which it will determine whether to engage in further rulemaking with the FHWA and the FTA to implement the proposal. Please do not hesitate to contact us for further information, or for assistance in developing comments on the FRA's adoption of part 771.