

Categorical Exclusions Under NEPA Improved, But More Streamlining Needed, Officials Say

By Anthony Adragna | September 09, 2014 08:20PM ET

Efficiency of Federal Environmental Review and Permitting Process

Key Development: Expanding categorical exclusions under NEPA has reduced transportation project delays in states, but additional work to maximize efficiencies is needed, several state transportation officials say.

Potential Impact: Federal agencies should coordinate among themselves to reduce project delays and inefficiencies, according to the witnesses.

Sept. 9 (BNA) -- Expanding the number of categorical exclusions under the National Environmental Policy Act has reduced transportation project delays in states, but additional work could be done to make NEPA more efficient, several state transportation officials told a House subcommittee Sept. 9.

One of the key improvements would be enabling greater collaboration and information-sharing among federal agencies to reduce project delays and inefficiencies, several witnesses told the House Transportation and Infrastructure Committee's Highways and Transit Subcommittee.

Federal agencies should develop a single process that project sponsors must complete when fulfilling their NEPA obligations rather than forcing them to comply with frequently duplicative efforts from different agencies, Michael Kraman, acting chief executive officer with the Transportation Corridor Agencies, told the panel.

None of the four witnesses—from California, Texas, Utah and Washington—would say the NEPA process itself was entirely broken when pressed by Rep. Tom Rice (R-S.C.). They said there had been significant improvements with the process but welcomed additional reform efforts.

“I do not believe the process is broken,” Carlos Braceras, executive director of the Utah Department of Transportation, said. “I think there are improvements that can be made to the process. I believe the process works if it's administered appropriately.”

‘Good Changes’ in MAP-21

One of the key policy reforms in the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) was significantly expanding the type and number of projects processed as categorical exclusions.

Projects without significant individual or cumulative environmental effects may qualify as categorical exclusions under NEPA. Classification as a categorical exclusion allows project sponsors to avoid costly and lengthy environmental assessments or environmental impact statements.

The Federal Highway Administration and the Federal Transit Administration published a joint final rule in January implementing sections 1316 and 1317 of MAP-21 by establishing two new categorical exclusions.

One applies to projects that receive less than \$5 million in federal funds or with a total estimated cost of not more than \$30 million and federal funds comprising less than 15 percent of the total estimated project cost and the other applies to projects within an existing operational right-of-way (79 Fed. Reg. 2107; .

Lynn Peterson, Washington's secretary of transportation, described many of those provisions within MAP-21 as “good changes.”

Time Saver, Money Saver

The expansion of categorical exclusions under MAP-21 has allowed the state of Texas to save time and money, according to Carlos Swonke, director of the environmental affairs division of the Texas Department of Transportation.

Texas, which received authority to determine categorical exclusions in December 2013, has eliminated lengthy documents for a full analysis of categorical exclusions by adopting checklists. Those changes have reduced the review time of those documents from more than a year to less than 45 days, according to Swonke.

Swonke said the reduced documentation hasn't affected public participation in the process or whittled down other regulatory standards in response to questions from Del. Eleanor Holmes Norton (D-D.C.).

“These tools, combined with proper planning, good judgment and sufficient resources, will allow us to be more effective as we guide our projects through the environmental review process,” Swonke said.

Kraman urged other improvements to the process such as allowing states with stringent environmental review laws, such as his state of California, to also comply with federal laws through their adequate completion of state requirements. He urged the establishment of one single NEPA document for use among all federal agencies responsible for “funding, permitting or approving a project.”

Agencies also should be prohibited from changing their official positions on project unless new developments or critical new information emerges, Kraman said.

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