

RAIL

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The National Environmental Policy Act (NEPA) Process for Federal Grant Applicants Webinar

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Webinar Outline

- What is NEPA, and why is it required?
- Review types of NEPA documents used by the Federal Railroad Administration (FRA)
- Provide overview of FRA's categorical exclusions (CEs)
- Discuss environmental considerations when applying for a Federal grant
- Share available resources
- Q&A

Today's Goal

At the end of today's presentation, we hope you will have:

- A clear understanding of what NEPA is and why it is required
- Be better prepared to complete a competitive FRA grant application
- Be better prepared to navigate the NEPA process if your project is selected for a grant



What Is NEPA, and Why Is It Required?

National Environment Policy Act (NEPA)

- Signed into Federal law on January 1, 1970 ([42 USC 4321 et seq.](#))
- Establishes a national environmental policy and provides a framework for environmental planning and decision making by Federal agencies
- Procedural statute that directs Federal agencies to conduct environmental reviews to consider potential impacts on the environment by their proposed actions
- Established the Council on Environmental Quality (CEQ)
- Applies to all Federal agencies and their “actions”

Page 5211	TITLE 42—THE PUBLIC HEALTH AND WELFARE	§ 4321
Sec.	SUBCHAPTER I—POLICIES AND GOALS	Sec.
4331.	Congressional declaration of national environmental policy.	4370e. Working capital fund in Treasury.
4332.	Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.	4370f. Availability of funds after expiration of period for liquidating obligations.
4333.	Conformity of administrative procedures to national environmental policy.	4370g. Availability of funds for uniforms and certain services.
4334.	Other statutory obligations of agencies.	4370h. Availability of funds for facilities.
4335.	Efforts supplemental to existing authorizations.	
	SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY	§ 4321. Congressional declaration of purpose
4341.	Omitted.	The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.
4342.	Establishment; membership; Chairman; appointments.	(Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)
4343.	Employment of personnel, experts and consultants.	SHORT TITLE
4344.	Duties and functions.	Section 1 Pub. L. 91-190 provided: “That this Act [enacting this chapter] may be cited as the ‘National Environmental Policy Act of 1969’.”
4345.	Consultation with Citizens’ Advisory Committee on Environmental Quality and other representatives.	
4346.	Tenure and compensation of members.	
4346a.	Travel reimbursement by private organizations and Federal, State, and local govern-	

Agency Responsibilities

- NEPA requires decision-makers to be informed of the environmental consequences of their actions
- Through NEPA, agencies determine if their proposed actions will have significant environmental and related social and economic effects
- Agencies look to avoid, minimize, and mitigate those impacts



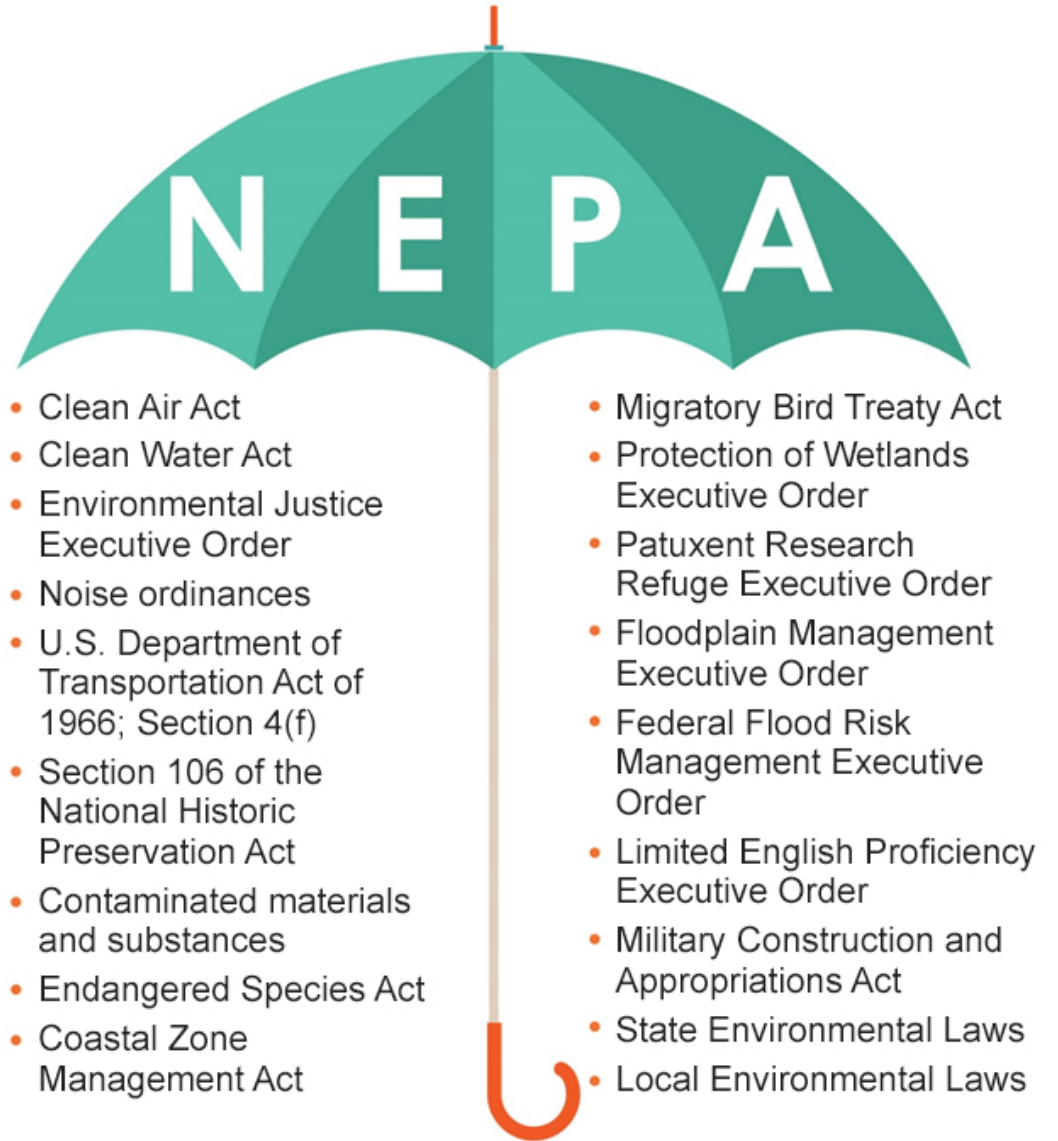
Federal Actions

- At FRA, our **actions** are broad, and include:
 - Funding (e.g., grants and loans)
 - Issuing regulations (e.g., horn noise, safety)
 - Approving the use of new technology
- Other Federal agency actions may also include:
 - Providing permits (e.g., use of waters of the U.S. Army Corps of Engineers Section 404 permit; U.S. Coast Guard bridge permit)



More than “Just NEPA”

The NEPA process or “umbrella” covers dozens of additional statutes, regulations, executive orders, and requirements.



NEPA Regulations

- CEQ established NEPA regulations that apply to all Federal agencies
 - Requires all Federal agencies to assess the environmental effects of a proposed action prior to making a decision or approving a project ([40 CFR 1500.1](#))
- Since 2018, FRA has shared environmental regulations with FHWA and FTA
- FRA/FTA/FHWA NEPA regulations can be found in [Title 23, Code of Federal Regulations \(CFR\) 771](#)



The screenshot displays the Code of Federal Regulations (eCFR) website. At the top, it features the National Archives logo and the text "Code of Federal Regulations" and "A point in time eCFR system". Below this, a navigation bar shows the current location: "Title 23 / Chapter I / Subchapter H / Part 771". A search bar is present with the text "Go to CFR Reference" and "ex: 1 CFR 1.1". A sidebar on the left contains navigation options: "Table of Contents", "Timeline", "Go to Date", "Compare Dates", "Search", and "Subscribe". The main content area is titled "ECFR CONTENT" and includes an "ENHANCED CONTENT" section with a link to "View table of contents for this page". Below this, the heading "PART 771 - ENVIRONMENTAL IMPACT AND RELATED PROCEDURES" is visible, followed by "Authority" and "Source" information.

Type of NEPA Documents Used by FRA

Class of Action

- Class of Action
 - Is determined by the significance of the impacts
 - Prescribes the level of documentation required in the NEPA process
- Three types of **NEPA documents** that project sponsors may prepare in coordination with FRA ([23 CFR 771.115](#)):
 - Categorical Exclusion (CE)
 - Environmental Assessment/
Finding of No Significant Impact (EA/FONSI)
 - Environmental Impact Statement/
Record of Decision (EIS/ROD)

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs)*. Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) *Class II (CEs)*. Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d).

(c) *Class III (EAs)*. Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

Type of NEPA Documents Used by FRA

- **EIS/ROD** ([23 CFR 771.123](#))
 - Significant environmental impacts
 - Most extensive and in-depth environmental review
 - Public involvement throughout the process
- **EA/FONSI** ([23 CFR 771.119](#))
 - Used to determine if an EIS is needed or to document that there are no significant impacts, leading to FRA issuing a FONSI
 - Public comment period
- **CE** ([23 CFR 771.116](#))
 - Types of actions based on FRA's past experience with similar actions, known to not have significant environmental impacts

Get to Know FRA's CEs

FRA Categorical Exclusions

- FRA has identified 22 categories of actions/activities (CEs) that have been determined to have no significant impacts and do not require an EA or EIS (listed at [23 CFR 771.116](#))
- FRA projects may also use CEs specific to FTA and FHWA (e.g., sidewalks or utility work)



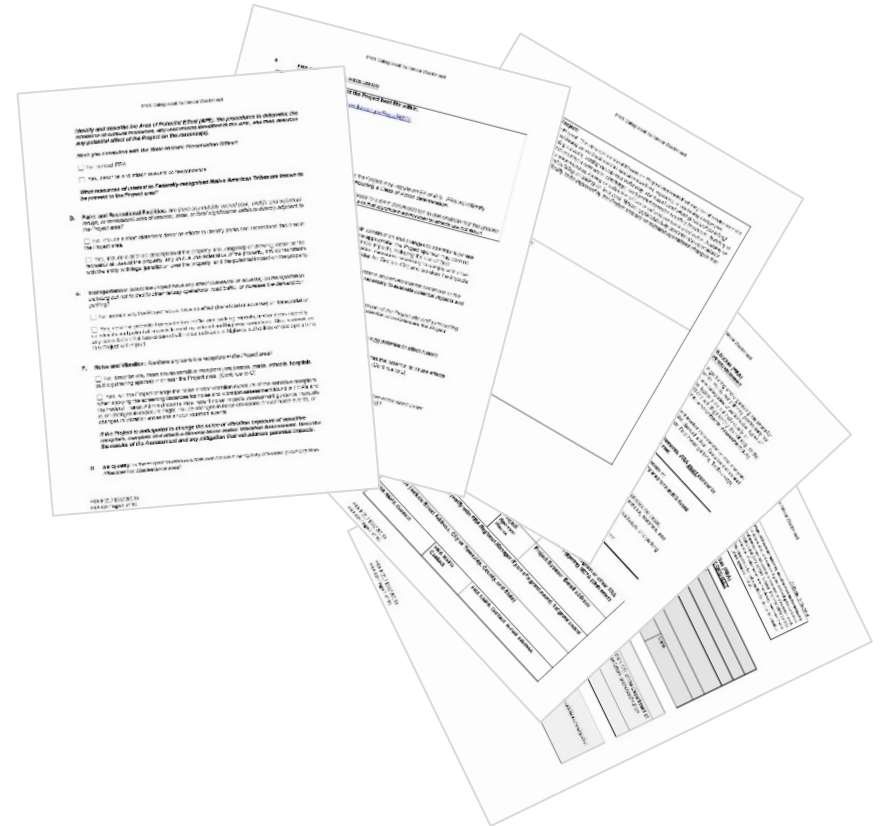
Get to Know FRA's CEs

- **CEs** are the most common NEPA documents at FRA, with certain requirements for completion
- FRA CE categories (listed at [23 CFR 771.116](#))
 - Planning and design activities
 - Positive Train Control; safety and security improvements
 - Track and track structure maintenance and improvement
 - Minor rail line additions, new track within the right-of-way (ROW)
 - Property acquisition, including safety equipment and rolling stock
 - Bridge rehabilitation or replacement
 - Emergency repairs
 - Construction of small structures

FRA's CE Worksheet

Get to know FRA's [CE Worksheet](#)

- Project purpose and need
- Brief project description
- NEPA study area map showing the project footprint
- Short summary of resources
- Potential project impacts specific to your project area
- Include commitments to project design and other measures to minimize or eliminate impacts, if known
- Include attachments (or incorporate by reference, where possible) of any technical memoranda or reports supporting the document



FRA's CE Worksheet

FRA Categorical Exclusion Worksheet

Identify and describe the Area of Potential Effect (APE), the procedures to determine the existence of cultural resources, any resource(s) identified in the APE, and then describe any potential effect of the Project on the resource(s).

Have you consulted with the State Historic Preservation Office?

- No, contact FRA
- Yes, describe and attach relevant correspondence

What resources of interest to Federally-recognized Native American Tribes are known to be present in the Project area?

D. Parks and Recreational Facilities: *Are there any publicly owned park, wildlife and waterfowl refuge, or recreational area of national, state, or local significance within or directly adjacent to the Project area?*

- No, include a short statement describe efforts to identify parks and recreational facilities in the Project area.
- Yes, include a detailed description of the property, including map or drawing, describe the recreational uses of the property, any unique characteristics of the property, any consultations with the entity with legal jurisdiction over the property, and the potential impact on the property.

Environmental Considerations When Applying for a Federal Grant

Environmental Considerations When Applying for a Federal Grant

- Read the Notice of Funding Opportunity (NOFO) carefully
- Provide as much known information about project description, project location, anticipated impacts, anticipated local/state/federal permits as possible
- FRA reviewers will be determining environmental readiness based only on the information provided with the application
- Provide *more* environmental information than *less*



Environmental Considerations When Applying for a Federal Grant

- Describe **project planning** done to date
- Document any **past or present environmental studies** associated to your proposed project in the grant application, including:
 - Any previously approved FRA, FTA, or FHWA project related to the grant proposal
 - Any relevant permitting information, such as an Army Corps or Coast Guard permit (does your project cross wetlands or open water?)
- Document any **past or anticipated public outreach** or agency meetings about the proposed project, if appropriate



Environmental Considerations When Applying for a Federal Grant

- Consider providing a draft CE with your grant application (Track 3*)
- If unable to complete a draft CE worksheet, FRA recommends, at a minimum, identifying the anticipated CE category that the project may fall under (CEs are found at [23 CFR 771.116](#))
- For certain proposals not requiring ground disturbance (such as training and research in Track 4*) simplified CE documentation may be considered

If your project does not fit clearly within a CE category, an EA or EIS might be needed depending on potential for significant environmental impacts

National Historic Preservation Act

- National Historic Preservation Act (NHPA)
 - Enacted in 1966
- Section 106 of NHPA requires Federal agencies to consider the impact of their actions on historic properties
- Follows a decision-making process established in the Advisory Council on Historic Preservation's (ACHP) regulations at [36 CFR 800](#)
- Affords the ACHP a reasonable opportunity to comment on projects before implementation

Section 106 of the NHPA

- Historic properties:
 - Districts, sites, buildings, structures, or objects
 - Generally, 50 years of age or older
 - Listed in or eligible for listing in the National Register of Historic Places (NRHP)
- Have historic significance at the local, state, and/or national level
- Are associated with events, people, and/or cultural trends (e.g., engineering, architecture, technological advancements)
- Section 106 must consider historic properties that are listed in OR eligible for listing in the NRHP



Section 106 of the NHPA

- Examples of historic railroad infrastructure may include:
 - Bridges
 - Passenger stations
 - Tunnels
 - Operations buildings
 - Culverts
- If known and within the project vicinity, these types of resources should be listed as part of the draft CE in the grant application
- If your project qualifies for a CE under NEPA, it may still require consultation with a State Historic Preservation Officer (SHPO)
- Assistance from a qualified consultant may be necessary to complete the process
- Must be complete prior to the obligation of FRA grant funding/FRA action and implementation of a project



- **Activities-Based Approach:**
 - Focuses on activities with effects to historic rail properties that are foreseeable and minimal or not adverse
 - Appendix A – Exempted Activities List
 - Effective as of August 17, 2018
- **Optional Property-Based Approach**

Appendix A – Exempted Activities List of Program Comment for Rail ROW

- 95 total exempted activities
- 13 category types
 - Track and Trackbed
 - Bridges and Tunnels
 - Railroad Buildings and Boarding Platforms
 - Signals, Communications, and Power Generation
 - Roadway At-Grade Crossing and Grade Separations
 - Safety and Security
 - Erosion Control, Rock Slopes, and Drainage
 - Environmental Abatement
 - Operations
 - Landscaping, Access Roads, and Laydown Areas
 - Utilities
 - Bicycle and Pedestrian Facilities, Shared Use Paths, and Other Trails
 - Construction/Installation of New Railroad Infrastructure

Section 106 Program Comment for Rail ROW Appendix A: Exempted Activities List	
A. Track and Trackbed	
1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (<i>i.e.</i> , existing subgrade, subballast, ballast, and rails and crossties (track)). These activities must not include alterations to the trackbed that would result in a substantial visual change (<i>i.e.</i> , elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.	
2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.	
B. Bridges and Tunnels	
1. In-kind maintenance and repair of bridges and tunnels.	
2. In-kind replacement of bridge hardware and mechanical and electrical components (<i>e.g.</i> brackets, rivets, bearings, motors).	
3. Maintenance or repair of tunnel ventilation structures and associated equipment (<i>e.g.</i> , fans, ducting).	
4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.	
5. Replacement of tunnel ventilation structures that are located and publicly visible within a previously identified historic district, provided the replaced structures are substantially the same size as or smaller than the existing structures and are visually compatible with the surrounding built environment.	
6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.	
7. Maintenance, installation, repair, or replacement of lighting, signal and communications systems, railings, and other safety- and security-related equipment or elements located within the interiors of tunnels.	
8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.	

Section 4(f) of the USDOT Act of 1966

- Applied to USDOT funded/permitted projects
- Protects publicly owned parks, recreational facilities, wildlife refuges, and certain historic properties
- Section 4(f) Regulations are in [23 CFR Part 774](#)



- If properties protected by Section 4(f) will/may be impacted by your proposed project, please include as part of the draft CE in the grant application
- Avoidance or minimization of impacts to these protected properties may be necessary

Toolbox for the NEPA Process at FRA

NEPA Resources/Links

- FRA NEPA Procedures
<https://railroads.dot.gov/rail-network-development/environment/fra-legislation-regulations>
- FRA's Categorical Exclusion Worksheet:
<https://railroads.dot.gov/elibrary/categorical-exclusion-worksheet-0>
- FRA CE Companion Guide:
<https://railroads.dot.gov/elibrary/fra-categorical-exclusion-companion-guide>
- U.S. DOT NEPA Resources
<https://www.transportation.gov/policy/transportation-policy/environment>



NEPA Resources/Links

- Council on Environmental Quality Website
<https://ceq.doe.gov>
- [A Citizen's Guide to the NEPA](#)
- AASHTO Center for Environmental Excellence
Practitioners' Handbooks
<https://environment.transportation.org/resources/practitioners-handbooks/>



Section 106 Resources/Links

- Section 106 Regulations (36 CFR Part 800):
<https://www.govinfo.gov/content/pkg/CFR-2012-title36-vol3/pdf/CFR-2012-title36-vol3-part800.pdf>
- Section 106 Review Process:
<https://www.achp.gov/sites/default/files/2018-05/Section%20106%20Review%20Process.Handout.2017.jpg>
- A Citizen's Guide to Section 106 Review:
<https://www.achp.gov/sites/default/files/documents/2019-04/CitizenGuide2015v4-spreads%20layout.pdf>
- Section 106 and Infrastructure Projects:
<https://www.achp.gov/section-106-and-Infrastructure-Projects>
- Program Comment
<https://railroads.dot.gov/rail-network-development/environment/final-section-106-program-comment-rail-rights-way>



Helpful Hints and Key Take-Aways

- ✓ **Read the NOFO Carefully**
- ✓ Provide *more* environmental information than *less* with your application
- ✓ Fully describe your project, its purpose and anticipated impacts
- ✓ Clearly describe how your project will address the climate change, environmental justice, and racial equity considerations in the NOFO
- ✓ If your application is selected for funding, compliance with NEPA and potentially several other environmental laws will be necessary
- ✓ Completing the NEPA process may require assistance of qualified consultant to evaluate impacts to certain resources like **Wetlands, Section 106, 4(f), or Endangered Species Act**

Helpful Hints and Key Take-Aways

- ☑ Use FRA's [Categorical Exclusion Companion Guide](#) and online resources contained there to help complete the [CE Worksheet](#) for the resources present within your project area
- ☑ Provide a draft CE with your application, if possible
- ☑ Talk to FRA, your Federal partner, at FRAenvironment@dot.gov
- ☑ Fully utilize the information on FRA's website and our tips to expedite your environmental review process!

FRA will verify and approve NEPA once all documentation requirements are met after grant is awarded

Contact Us

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Connect with us [USDOTFRA](#)

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