

2016 FRA
Rail Program Delivery



Update on FRA's National Environmental Policy Act (NEPA) Procedures

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Existing FRA NEPA Procedures

- **Procedures for considering environmental impacts, includes Section 4(f)**
- **Last revised in 1999**
- **Published in Federal Register**
- **Available on FRA Website**

Fixing America's Surface Transportation (FAST) Act

- **Signed December 4, 2015**
- **First long-term Federal transportation bill in more than 10 years**
- **Reforms certain elements of FRA's environmental and historic preservation review processes to help accelerate the delivery of rail projects**

FAST Act Env. Reforms

- **Application of project development procedures in 23 US.C. 139 to railroad projects (Sec. 11503)**
- **Requires survey of FRA's use of categorical exclusions and a rulemaking for new and existing categorical exclusions. (Sec. 11503)**
- **Historic rail and transit line exemption from the requirements of Section 4(f) (Sec. 11502)**
- **Establishment of a Section 106 exemption for railroads rights-of-way consistent with Interstate exemption (Sec. 11504)**

23 U.S.C. 139 Process

- **Existing FHWA and FTA process**
- **Mandatory for EISs, optional for EAs**
- **Focuses on full environmental review process**
 - Includes the process for and completion of any environmental permit, approval or study required for a project under any other Federal law than NEPA.

Applicability

- **Q&A issued on applicability in April 2016**
- **Section 139 procedures applies to railroad projects where:**
 - The Notice of Intent to prepare EIS was published after December 4, 2015 and,
 - The Secretary approved the funding arrangement under title 49 of the United States Code after December 4, 2015

Roles and Responsibilities

- **Lead Agency**
- **Participating Agencies**
 - Agencies with interest in project
 - Lower bar than cooperating agency
 - If invited, Federal agencies must accept, unless they respond in writing

Process Management

- **Project Initiation**
- **Coordination plan for coordinating with public and agencies**
 - Must include a schedule
 - Establish plan no later than 90 days after the NOI or initiation of an EA
- **Comment Deadlines**
 - No more than 60 days for DEIS, 30 days for other comment periods

Purpose and Need

- **Must provide “opportunity for involvement” by agencies and the public in defining P&N.**
- **Decision on P&N is made by lead agency.**

Alternatives

- **Range of Alternatives:**
 - Similar to P&N – after providing “opportunity for involvement,” lead agency makes the decision
- **Methodologies and Level of Detail:**
 - Lead agency decides, in collaboration with participating agencies
- **Preferred Alternative**
 - In certain circumstances, may be developed to higher level of detail than other alternatives

Other 139 Items

- **Combined Final EIS/Record of Decision**
- **Issue Resolution Process**
- **State of Limitations**
 - limitation on the claims period applicable to railroad projects is 2 years instead of 150 days for FHWA and FTA projects.

Categorical Exclusions

- **FAST Act also required FRA to survey its use of NEPA categorical exclusions (CE) in railroad projects since 2005.**
- **On June 2, 2016, FRA published a notice in the Federal Register providing the public with a review of FRA's survey,**
 - Requested comments on two new CEs, and suggestions for additional categories
 - Comment period ended on July 5, 2016.

FAST Act Implementation

- **FRA has evaluated whether to join FHWA and FTA NEPA regulations in 23 CFR 771 which implements the Section 139 Process**
- **On June 9, 2016 FRA published a notice in the Federal Register requesting public comment on the application of part 771 to railroad projects**
- **FRA is working with FHWA and FTA on a joint rulemaking to join the regulations**

Section 106

- **Section 11504 directs DOT to provide the ACHP with a proposed exemption of railroad rights-of-way consistent with the existing exemption for the Interstate System**
- **Exemption not available until the ACHP has taken action**
- **FRA is leading implementation in coordination with FTA and FHWA**
- **Still working to develop proposal for submittal to ACHP**

Section 4(f)

- **Q&A issued March 2016**
- **Section 11502 exempts from Section 4(f) review**
 - the use of railroad and rail transit lines, or elements thereof, that are in use or that were historically used for the transportation of goods or passengers
- **Exemption does not apply to rail or transit stations**
- **Exemption does not apply to bridges or tunnels located on a rail line that been abandoned**

Other FAST Act Items

- **Project Reporting**
 - Section 1304 requires Federal agencies participating in the environmental review or permitting process must provide information on status and progress of EISs and EAs on dashboard
- **Dedicated Staffing/Liaisons**
 - Section 1312 allows use of funds by eligible public entities to support Federal agencies, States agencies and Indian tribes participating in environmental processes

What's next?

- **Work continues to implement FAST Act**
- **Stay tuned for rulemaking and other implementation guidance in 2017**
- **Visit FRA and DOT's FAST Act websites:**
 - **FRA:** <https://www.fra.dot.gov/Page/P0919>
 - **OST:** <https://www.transportation.gov/fastact/>