

2017

FRA Rail Program Delivery

Meeting

New FRA NEPA Regulations

Michael Johnsen

Supervisory Environmental Protection Specialist, FRA

Acronyms:

- ▶ **CE:** Categorical Exclusion
- ▶ **FAST Act:** Fixing America's Surface Transportation (Pub. L. No. 114-94 - 2015)
- ▶ **MAP-21:** Moving Ahead for Progress in the 21st Century Act (P.L. 112-141 - 2012)
- ▶ **NEPA:** National Environmental Policy Act
 - ▶ Required when there is a major Federal Action
- ▶ **SNPRM:** Supplemental Notice of Proposed Rulemaking
 - ▶ Supplements a Notice of Proposed Rulemaking (NPRM)

FRA NEPA Procedures

- ▶ FRA NEPA Procedures
 - ▶ Published May 1999
 - ▶ Citation: 68 FR 28545
 - ▶ Provides procedures on Section 4(f)
- ▶ FRA CE List
 - ▶ Updated January 2014
 - ▶ Citation: 78 FR 2713
- ▶ Differs from FHWA and FTA NEPA Regulations though modes share many similar requirements
 - ▶ FHWA and FTA share NEPA Regulations
- ▶ Requires updates from FAST Act

About Section 4(f)...

- ▶ DOT Act of 1966 special provision in Section 4(f)
- ▶ Cannot approve the use of land for transportation projects from
 - ▶ Publicly owned parks
 - ▶ Recreational areas
 - ▶ Wildlife and Waterfowl refuges
 - ▶ Public or private historical sites
- ▶ UNLESS:
 - ▶ No feasible and prudent alternative and planning to reduce harm as occurred
 - ▶ The use is “de minimis”

SNPRM

- ▶ Original NPRM was for FHWA and FTA issued Nov 2015 for MAP-21
- ▶ FAST Act required additional updates for FHWA and FTA
- ▶ Modes agreed to add FRA to FHWA and FTA NEPA and 4(f) regulations
- ▶ SNPRM proposes updates to 49 CFR Parts 771 (NEPA) and 774 (4(f) Regulations)
- ▶ FRA FAST Act Requirements for CEs included
- ▶ Comment period closed 11/28/17

What's Changing?

- ▶ Adds FRA to FHWA and FTA NEPA and 4(f) regulations
 - ▶ NEPA Regulations: 23 CFR Section 771
 - ▶ More general than current FRA NPEA Procedures
 - ▶ FHWA, FTA and FRA will share the same NEPA and 4(f) Regulations, with minor differences
- ▶ 4(f) Regulations: 23 CFR Section 774
- ▶ Updates regulations to account for prior statutory requirements (mainly FHWA/FTA)
- ▶ Adds and modifies FRA's list of CEs
 - ▶ Changes based on prior FR notice and comments

FRA CE Proposed Changes

- ▶ CE definition and list of unusual circumstances
- ▶ Adds CE for Administrative procurements, etc.
- ▶ Adds "training" to CE for procurements
- ▶ Planning and design that does not commit FRA to a specific course of action affecting environment
- ▶ Adds CE for Geotech, small ground disturbance testing, archaeological investigations, etc.
- ▶ CE for internal policies not published in the FR

FRA CE Proposed Changes

- ▶ Clarifies CE for refinancing loans
- ▶ Clarifies 'maintenance or repair of existing railroad equipment...' CE and scope of repair activities
- ▶ New Disaster Response CE that replaces existing one
- ▶ Refocuses CE for 'operating assistance for continued existing service or an increase in service...' to focus on traffic density
- ▶ CE addressing acquisitions would include "real property" and transfers

FRA CE Proposed Changes

- ▶ CE for 'research, development and demonstration activities...' expanded beyond just PTC
- ▶ Adds the "...waiver of modification of existing regulatory requirements and discretionary approvals..." to CE on rulemakings, removes limitation to safety rules
- ▶ Adds "removal" to the 'bridge repair and replacement...' CE

FRA CE Proposed Changes

10

- ▶ Focuses 'vehicle or equipment acquisition, rehabilitation, transfer or maintenance..' CE on altering traffic rather than just use of the ROW
- ▶ CE for 'environmental restoration...' would be expanded by removing limitation for just rail track/infrastructure

Proposed 4(f) Exceptions

11

- ▶ “Use” of a historic transportation facility dedicated to a transportation purpose
- ▶ Concrete and steel bridges after 1945 (Highway System)
- ▶ Improvements to historic railroad and transit lines
- ▶ Adds to ‘restoration, rehabilitation or maintenance...’ exception

Next Steps

- ▶ Comments to SNPRM
 - ▶ Review and categorize
 - ▶ Develop responses, including changes to proposed regs text
- ▶ Draft Final Rule
- ▶ Publish Final Rule
- ▶ No timeline (pending evaluation of comments)
 - ▶ 2018 publication likely, though

2017

FRA Rail Program Delivery

Meeting

Thank you!

Michael Johnsen

Supervisory Environmental Protection Specialist

Michael.Johnsen@dot.gov

202-493-1310