

2017

FRA Rail Program Delivery

Meeting

Section 106 Program Comment for Railroad Rights-of-Way

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Section 106 of the National Historic Preservation Act

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Requires federal agencies to take into account the effects of undertakings they carry out, license, permit, or assist on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings.

Section 106 of the National Historic Preservation Act

Historic properties are those that are listed on the National Register of Historic Places (NRHP) or eligible for such listing. Examples include:

- ▶ Depots and stations
- ▶ Passenger boarding platforms and canopies
- ▶ Bridges
- ▶ Tunnels
- ▶ Culverts
- ▶ Communications, signal, and power supply buildings and infrastructure
- ▶ (Railroad corridor as a linear historic resource)

Section 11504 of the FAST Act

FAST Act – December 2015

Section 11504 of the Fixing America's Surface Transportation Act (FAST Act) mandated the development of a **Section 106 exemption for railroad rights-of-way** that is consistent with the exemption for interstate highways approved by the ACHP in March 2005.

Section 106 Program Alternatives: Program Comment

Section 106 Program Alternatives

- ▶ The ACHP's regulations for implementing Section 106 (36 CFR 800.14) provide for alternate means that agencies can use to comply with Section 106 and to tailor the Section 106 process to meet their needs.
- ▶ Section 106 Program Alternatives include:
 - ▶ Exemption (36 CFR 800.14(c))
 - ▶ Program comment (36 CFR 800.14 (e))

Program Comment: Two-Part Approach

- ▶ Activities-Based
- ▶ Property-Based

Part 1: Exempt Activities

- ▶ The proposed Program Comment includes a comprehensive list of activities that would be exempt from Section 106 review because, based on years of USDOT experience, the activities have typically not resulted in adverse effects to historic railroad properties.
- ▶ Focus is on maintenance, repair, and upgrades that are necessary to keep railroads operating safely and reliably.

Part 2: Property-Based

- ▶ Optional Project Sponsor-led approach to identify “important historic rail properties.”
 - ▶ Defined section of ROW
 - ▶ In consultation with FRA, State Historic Preservation Officers, local governments, railroad owners and operators, local historic preservation organizations, railroad enthusiast groups, and other relevant stakeholders.

Part 2: Property-based (con't)

- ▶ Activities of **any** nature that would affect any railroad infrastructure in existing ROW that is not included on the FRA-approved list of “important historic rail properties” would **not** be subject to future Section 106 review.
- ▶ Activities that go beyond the exempted activities (part 1) and would affect a rail property that is included on the FRA-approved list of “important historic rail properties” would remain subject to Section 106 review in order to appropriately consider ways to avoid, minimize, or mitigate adverse effects to such **important** historic rail properties.

What the Proposed Program Comment Covers

Transportation-related undertakings in existing ROW that are for the intended purpose of routine maintenance, improvements, and upgrades to railroad infrastructure.

What the Proposed Program Comment Does NOT Cover

- ▶ Archaeological sites of any nature, including archaeological remains of former railroad properties and railroad “worker camps”
- ▶ Non-railroad-related buildings and structures within or adjacent to the ROW
- ▶ Undertakings in ROW on Tribal lands
- ▶ Effects to properties of religious or cultural significance to Tribes
- ▶ Construction of a new railroad on new ROW (“greenfield construction”)

Current Status

Federal Register Notice

Draft Program Comment currently available for public review/comment

- ▶ **Friday November 17, 2017 – Friday December 8, 2017.**

<https://www.federalregister.gov/documents/2017/11/17/2017-25025/notice-of-proposed-draft-program-comment-to-exempt-effects-of-transportation-related-undertakings>

Next Steps

- ▶ USDOT and ACHP adjudicate public comments
- ▶ ACHP publishes final Program Comment in the Federal Register mid-January 2018
- ▶ USDOT and ACHP develop guidance, FAQs, training, etc.

Effective Date

- ▶ Exempted activities immediately applicable to transportation-related undertakings in railroad ROW.
- ▶ Project Sponsors have option to pursue property-based approach.
 - ▶ Timeline to complete will be case-by-case.

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Thank you!

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