



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

Adoption of the Federal Highway Administration's Nationwide Section 4(f) Net Benefit and Historic Bridges Programmatic Evaluations

AGENCY: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: FRA and FTA (together “the Agencies”) are jointly issuing this notice to adopt the Federal Highway Administration’s (FHWA) nationwide programmatic Section 4(f) evaluations for certain transportation projects having a net benefit to Section 4(f) properties (Nationwide Net Benefit Programmatic Evaluation) and for certain transportation projects that use historic bridges (Nationwide Historic Bridges Programmatic Evaluation). These nationwide Section 4(f) programmatic evaluations would provide the Agencies with an alternative to the individual Section 4(f) evaluation process for demonstrating compliance with Section 4(f) requirements, as applicable. For proposed projects that do not meet the criteria for Section 4(f) exceptions or the criteria contained in the *Applicability* sections of the programmatic evaluations, the Agencies will prepare an individual evaluation or make a *de minimis* impact determination.

DATES: The adoption of these evaluations is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

For FRA: Marlys Osterhues, Chief, Environment and Project Engineering Division, Office of Railroad Policy and Development, telephone: (202) 493-0413, email:

Marlys.Osterhues@dot.gov; or Faris Mohammed, Attorney-Advisor, Office of Chief Counsel, telephone: (202) 493-7064, email: Faris.Mohammed@dot.gov.

For FTA: Megan Blum, Director, Office of Environmental Programs, telephone: (202) 366-0463, email: Megan.Blum@dot.gov; or Mark Montgomery, Attorney-Advisor, Office of Chief Counsel, telephone: (202) 366-1017, email: Mark.Montgomery@dot.gov.

FRA and FTA are located at 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: The Agencies may not approve a proposed transportation project that would use property from significant publicly-owned parks, recreation areas, or wildlife and waterfowl refuges or from significant historic sites (collectively, “Section 4(f) properties”) that are subject to Section 4(f) requirements (49 U.S.C. 303 and 23 U.S.C. 138), unless certain conditions are met. An agency may approve a proposed transportation project requiring the use of a Section 4(f) property only if the agency determines that: (1) there is no feasible and prudent alternative to using that land, and the project includes all possible planning to minimize harm to the property resulting from such use; or (2) the use of the property, after consideration of avoidance, minimization, mitigation, or enhancement measures to be implemented as a condition of approval, will have a *de minimis* impact. These efforts generally are documented in an individual evaluation, unless the agency makes a *de minimis* impact determination, or the use meets the criteria for one of the Section 4(f) exceptions found at 23 CFR 774.13. As part of the individual evaluation, the agency must include a feasible and prudent avoidance alternative analysis and identify measures to minimize harm. The agency also must provide a public comment period and coordinate with official(s) with jurisdiction in the individual evaluation process.

However, FHWA has approved five nationwide programmatic evaluations applicable to specific uses of Section 4(f) properties. Programmatic evaluations streamline the Section 4(f) process by eliminating the need for an individual Section 4(f) evaluation for certain projects. Programmatic evaluations can be applied to any class of action under the National Environmental Policy Act. FHWA developed the framework and basic approach to the programmatic evaluations at a program level to cover a suite of potential Section 4(f) uses and coordinated with the U.S. Department of the Interior when developing the framework. The full texts of FHWA's programmatic evaluations are available at: <https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>.

On July 5, 1983, FHWA approved the use of a programmatic Section 4(f) evaluation and approval for FHWA projects that necessitate the use of historic bridges. The historic bridges programmatic evaluation sets forth the basis for a programmatic Section 4(f) approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds, and the projects include all possible planning to minimize harm resulting from such use. The historic bridges programmatic evaluation can be applied to a proposed project that meets the following criteria:

1. The bridge is to be replaced or rehabilitated with Federal funds.
2. The project will require the use of an historic bridge structure that is on or is eligible for listing on the National Register of Historic Places (NRHP).
3. The bridge is not a National Historic Landmark.
4. FRA or FTA, as appropriate, determines the facts of the project match those set forth in the Historic Bridges Programmatic Evaluation (Alternatives, Findings, and Mitigation sections).
5. Agreement among FRA or FTA, as appropriate, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic

Preservation has been reached through procedures pursuant to Section 106 of the National Historic Preservation Act.

More information on the Nationwide Historic Bridges Programmatic Evaluation can be found in the original *Federal Register* notice. 48 FR 38135-03, July 5, 1983.

On April 20, 2005, FHWA approved the use of a nationwide programmatic Section 4(f) evaluation for uses that have a net benefit to a Section 4(f) property from certain federally funded transportation projects. A net benefit is achieved when: (1) the transportation use, the measures to minimize harm, and mitigation incorporated into the project result in an overall enhancement to the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property; and (2) the use will not result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection. The net benefit programmatic evaluation cannot be applied to a project if FRA or FTA, as appropriate, and the official(s) with jurisdiction over the Section 4(f) property cannot reach an agreement that the project will result in a net benefit to the property. The net benefit programmatic evaluation applicability criteria are as follows:

1. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.
2. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.
3. For historic properties, the project does not require the major alteration of the characteristics that qualify the property for the NRHP such that the property would no longer retain sufficient integrity to be considered eligible for listing.

For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR part 800.

4. For historic properties, consistent with 36 CFR part 800, there must be agreement amongst the SHPO and/or THPO, as appropriate, FRA or FTA, as appropriate, and the Applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.
5. The official(s) with jurisdiction over the Section 4(f) property agrees in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.
6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination, and Public Involvement sections of this programmatic evaluation.

More information on the Nationwide Net Benefit Programmatic Evaluation can be found in the original *Federal Register* notice. 70 FR 20618, April 20, 2005.

The Agencies currently do not utilize any Section 4(f) programmatic evaluations and rely on individual evaluations to satisfy Section 4(f) requirements for proposed rail and transit projects that use Section 4(f) properties. However, the Agencies were afforded more flexibility to create programmatic approaches to expedite the overall environmental

review process under section 1305 of Moving Ahead for Progress in the 21st Century Act (MAP-21). The “programmatic approaches” language from MAP-21 is codified at 23 U.S.C. 139(b)(3) and implemented by the Agencies in regulation at 23 CFR 771.105. Additionally, as described in the final rule in which FRA adopted 23 CFR part 771, FRA evaluated whether to adopt, in whole or in part, any of the FHWA programmatic evaluations. Based on that evaluation, FRA determined adopting FHWA’s net benefit and historic bridge programmatic evaluations is appropriate for its programs. See 83 FR 54480, 54484 (October 29, 2018). Similarly, FTA revisited being part of the net benefit and historic bridge programmatic evaluations after considering projects that have gone through the Section 4(f) process that could have benefitted from using the programmatic evaluations. Accordingly, the Agencies are adopting these two nationwide programmatic evaluations with minor technical modifications, described below. The technical modifications are limited to replacing references to FHWA with the Agencies and definitions necessary to accommodate both railroad and transit projects. FRA and FTA will provide the full text of the Section 4(f) Programmatic Evaluations, as modified below, on their websites.

Technical Modifications to FHWA’s Historic Bridges Programmatic Evaluation

The Agencies are replacing the terms “Federal Highway Administration” and “FHWA” with “Federal Railroad Administration,” “Federal Transit Administration,” “FRA.” or “FTA,” as appropriate. The Agencies are replacing “FHWA Division Administrator” with “Associate Administrator for Railroad Policy and Development, or designee,” or “FTA Regional Administrator, or designee,” as appropriate. Additionally, the Agencies are modifying the reference to a “Federal-aid highway system or a state or local highway system” to include a “rail or transit system.”

Technical Modifications to FHWA’s Net Benefit Programmatic Evaluation

The Agencies are replacing the term “FHWA” with “FRA” or “FTA,” as appropriate. The Agencies are also modifying the following definitions:

1. “Administration” to refer to the Federal Railroad Administration or the Federal Transit Administration, as appropriate.
2. “Applicant” to be more broadly defined, as follows: “Applicant” refers to the Federal, State, local, or federally recognized Indian Tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project.

Through this Notice, the Agencies are adopting FHWA’s Nationwide Net Benefit Programmatic Evaluation and the Nationwide Historic Bridges Programmatic Evaluation in full, with the minor technical modifications described above.

Issued in Washington, DC.

Quintin C. Kendall,

Deputy Administrator,

Federal Railroad Administration.

K. Jane Williams,

Deputy Administrator,

Federal Transit Administration.

[FR Doc. 2020-26968 Filed: 12/7/2020 8:45 am; Publication Date: 12/8/2020]