



Resilient Food Systems Infrastructure Program

Overview of Environmental Compliance

For the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS)
Resilient Food System Infrastructure Program (RFSI)



Agricultural Marketing Service
U.S. DEPARTMENT OF AGRICULTURE

Learning Objective

Understand how the National Environmental Policy Act (NEPA), federal environmental regulations, and other laws/statutes may apply to the RFSI grant program.



RFSI Grant Program Projects

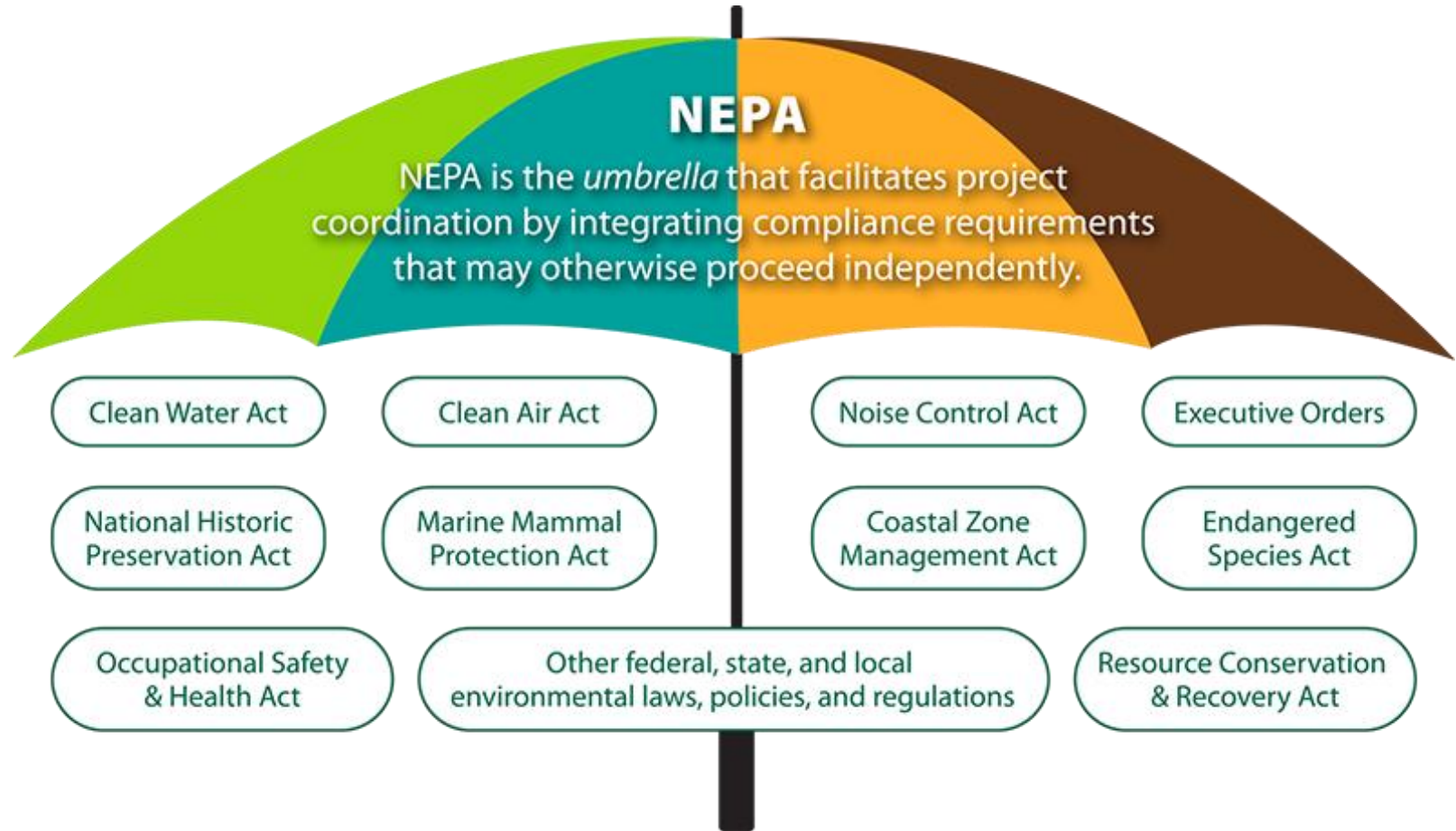
- The types of projects that will be funded by Infrastructure Grant subawards can be categorized as the following types:
 - **Infrastructure Grants** – infrastructure projects to expand capacity and upgrade facilities and new buildings (new construction) that involve more than the purchase of new equipment.
 - **Equipment Only Grants** – smaller grants to fund only equipment purchases (between \$10,000 and \$100,000).
 - No additional activities outside of equipment will be authorized.
- All projects must be evaluated for NEPA compliance; however, Infrastructure Grants are likely to require more in-depth evaluation due to the potential for ground disturbance and associated environmental impacts.

Federal Environmental Regulations for Consideration

- **National Environmental Policy Act (NEPA)**
- Endangered Species Act (ESA)
- Clean Water Act (CWA)
- Clean Air Act (CAA)
- National Historic Preservation Act (NHPA)
- Food Quality Protection Act (FQPA)
- Toxic Substances Control Act (TSCA)
- Noise Control Act (NCA)

NEPA Overview

- Signed into law in 1970.
- NEPA is a procedural statute requiring Federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
- Environmental resource areas under NEPA consideration include air, land, noise, water, natural resources, cultural resources, socioeconomic conditions, and aesthetics.



How is NEPA Implemented?



- Regulations – Federal, State, and local
 - 40 Code of Federal Regulations (CFR) Parts 1500-1508: Counsel on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA.
 - States may have their own regulations in addition to Federal regulations. In some States, these regulations may be more stringent.
- Federal Agency NEPA Implementing Procedures
 - USDA AMS NEPA Implementing Procedures are under development.
 - CEQ Regulations and NEPA documentation requirements apply RFSI Grant Program Projects.

Types of NEPA Documentation

USDA NEPA Implementing Procedures are under development; CATEX cannot be utilized at this time.

CATEX – Categorical Exclusion (40 CFR Part 1501.4)

*For efficiency, USDA would identify in their **NEPA procedures** categories of actions that normally do not have a significant effect on environment, and therefore do not require preparation of an environmental assessment of environmental impact statement.*

If USDA then determines that a categorical exclusion identified in its NEPA procedures covers a proposed action, USDA will evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

Types of NEPA Documentation

- EA – Environmental Assessment (40 CFR Part 1501.5)

USDA would prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless USDA finds that a categorical exclusion is applicable or has decided to prepare an environmental impact statement.

- FONSI – Finding of No Significant Impact (40 CFR Part 1501.6)

USDA would prepare a finding of no significant impact if, based on the environmental assessment, the proposed action will not have significant effects.

Types of NEPA Documentation

- EIS – Environmental Impact Statement (40 CFR Part 1502)

The primary purpose of an environmental impact statement is to ensure agencies, including USDA, consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

- ROD – Record of Decision (40 CFR Part 1505.2)

USDA would prepare and timely publish a concise public record of decision or joint record of decision.

- Tiering (40 CFR Part 1501.11)

USDA may tier their environmental impact statements and environmental assessments when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review.

Programmatic Environmental Assessment (PEA)

- “Programmatic” is defined by the Council on Environmental Quality (CEQ) as any broad or high-level NEPA review that assesses the environmental impacts of proposed policies, plans, programs, or projects for which subsequent actions will be implemented.
- A PEA is utilized when actions under a specific program are routine actions done repeatedly and therefore are likely to have similar impacts that can be evaluated at a broad scale, providing for a more streamlined and efficient process.
- A PEA does not eliminate the need for project- and site-specific environmental review.

The Draft PEA will be made available via www.ams.usda.gov. Elements of the RFSI PEA are discussed on the following slide.

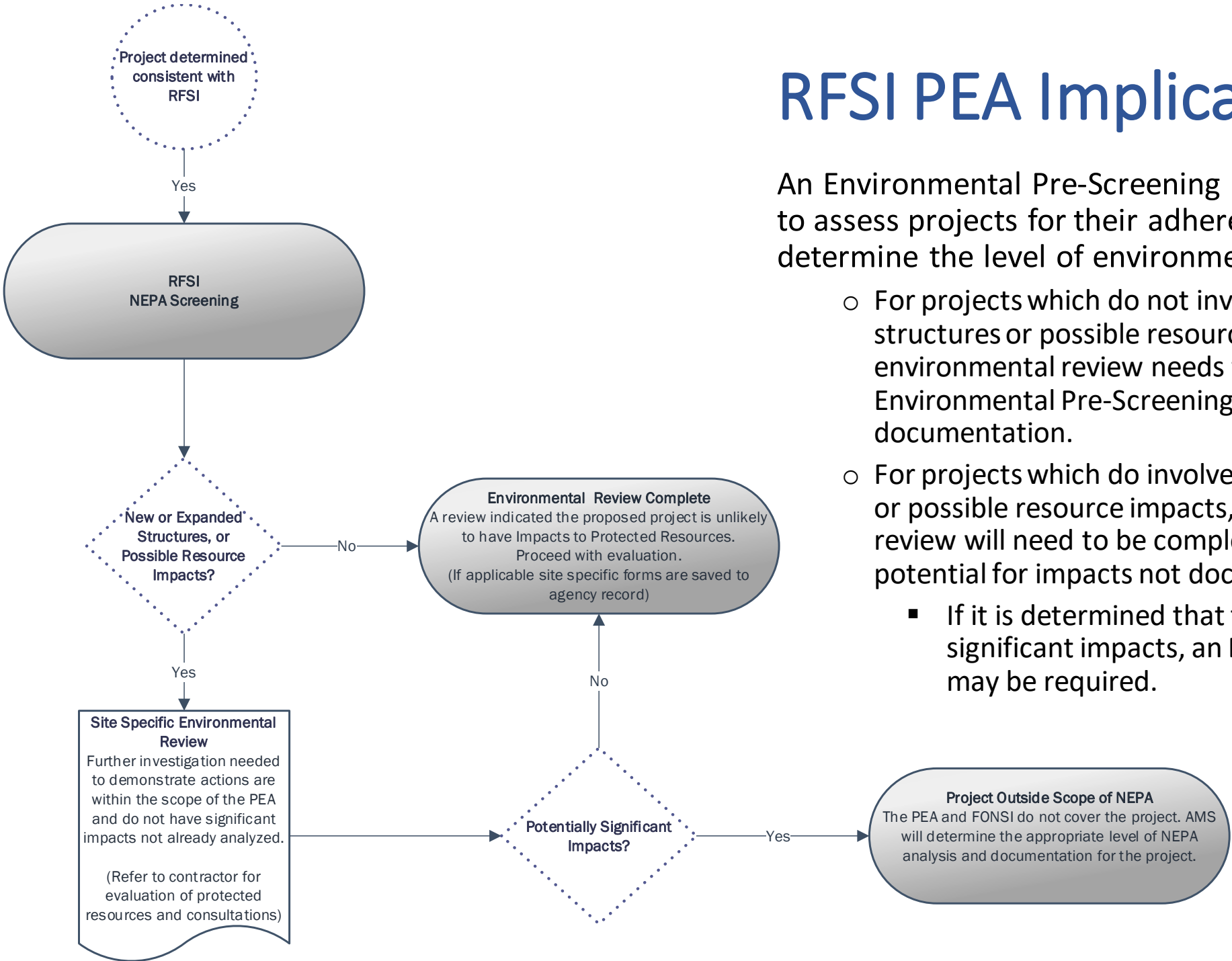
RFSI Programmatic Environmental Assessment

- The PEA finds **no significant adverse impacts** or **beneficial impacts** to the following environmental resource areas:
 - Water Quality
 - Socioeconomics and Environmental Justice
 - Climate Change
- Additionally, the following **are resources not fully considered at the programmatic level:**
 - Vegetation and Wildlife
 - Cultural resources
 - Coastal Barrier Resource and Coastal Zones
 - Wild and Scenic Rivers and Nationwide Rivers Inventory
 - Wilderness Areas and Natural Landmarks
 - Floodplains and Wetlands
 - Soils and Other Important Land Resources
 - Air Quality
 - Noise
- Any activities not clearly within the scope of the PEA review, have extraordinary circumstances, or involve new or expanded structures would be further evaluated by AMS.
 - **The site-specific review, if necessary, would be conducted by AMS and State agencies.**

RFSI PEA Implications

An Environmental Pre-Screening Worksheet was developed to assess projects for their adherence with the PEA and determine the level of environmental review necessary.

- For projects which do not involve new or expanded structures or possible resource impacts, no further environmental review needs to be completed, and the Environmental Pre-Screening Worksheet serves as NEPA documentation.
- For projects which do involve new or expanded structures or possible resource impacts, a site-specific environmental review will need to be completed to determine the potential for impacts not documented in the PEA.
 - If it is determined that there is potential for significant impacts, an Environmental Assessment may be required.



Additional Environmental Laws

The following slides provide an overview of relevant environmental laws that commonly apply to USDA actions.

Please note that this is not a comprehensive list of all environmental laws that could apply to a proposed project.



National Historic Preservation Act Overview

- Signed into law in 1966.
- The National Historic Preservation Act (NHPA) established a partnership between the Federal government and State, Tribal, and local governments.
- Section 106 of the NHPA requires USDA to consider the impact of their actions on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings.



USDA Agricultural Research Service, Appalachian Fruit Research Station, "Stone House."

No Adverse Effect findings should be provided to the State Historic Preservation Office (SHPO) and other consulting parties for a **30-day review period**.

Endangered Species Act Overview

- Signed into law in 1973.
- The Endangered Species Act (ESA) provides a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species.
- Section 7 of the ESA requires USDA to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats.



Whooping Crane (Grus americana) nesting at Necedah National Wildlife Refuge (photo credit: USFWS).

*Final Biological Opinions are generally provided by USFWS within **135 days** of consultation initiation.*

Clean Water Act Overview

- Signed into law in 1972.
- The Clean Water Act (CWA) made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained.
- Section 401 of the CWA requires that a water quality certification is issued by a State or authorized Tribe.
- Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.
- The CWA establishes several major integrated regulatory programs, such as the National Pollutant Discharge Elimination System (NPDES) Program under Section 402.



Wetland in Colorado, protected under the Clean Water Act.

NPDES Program Overview

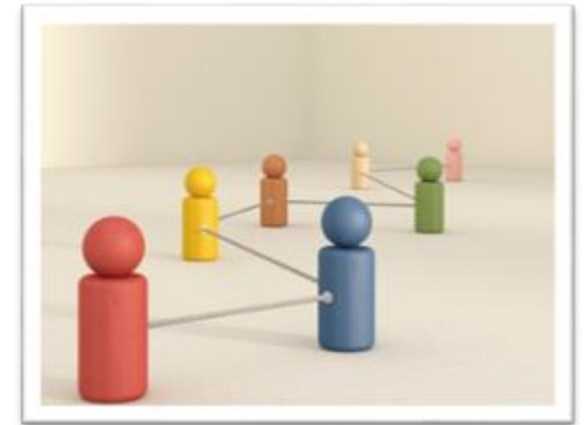
- The National Pollutant Discharge Elimination System (NPDES) Program establishes an effluent permit system for point source (i.e., pipe, ditch, sewer) discharges of pollutants into waters of the U.S.
- The NPDES permit system requires those permitted to maintain records and report on the amount and nature of discharged effluent waste components.
- The stormwater program is a part of the NPDES Program and is designed to reduce or eliminate the discharge of contaminated stormwater into waters of the U.S.

Permitting

Common environmental permits that may be required as a result of a USDA's proposed actions include:

- National Pollutant Discharge Elimination System (NPDES) Permit (required by the CWA) or State equivalent
- Section 404 Permit (required by the CWA)
- Title V Operating Permit (required by the CAA)
- New Source Review Permit (required by the CAA)
- Incidental Take Permit (required by the ESA)
- Construction General Permit

State and Federal Responsibilities



- **States are responsible for:**

- Ensuring Grant Recipients comply with NEPA and all Federal environmental laws and regulations.
- Supporting AMS in conducting environmental compliance reviews and NEPA documentation.
- Assisting Grant Recipients with obtaining any authorizations, permits, easements or other approvals necessary for the implementation of the activities.

- **USDA AMS is responsible for:**

- Providing training to the States on how to support environmental reviews and maintain NEPA compliance.
- Overseeing the program, providing consistent guidance, and supporting States.
- Conducting environmental compliance screenings and NEPA documentation prior to issuing grant awards.

USDA AMS will serve as the Responsible Federal Official (RFO) for all NEPA documentation.

Lead State Agency Undertaking (Synopsis)

- ✓ Facilitate distribution of requests for information and support applicant response.
 - *Project details will support site-specific environmental reviews conducted by AMS.*
 - *Requests for information made to the applicant must come from the States and Territories.*
- ✓ Respond to questions and recommendations from AMS and work with Infrastructure Grant recipients to refine the scope of proposed projects, as needed.
- ✓ Support Infrastructure Grant recipients in identifying any authorizations, permits, easements, or other approvals necessary.
- ✓ Serve as a primary communication channel between the applicant and AMS to support NEPA documentation.
- ✓ Ensure environmental clearance, signed off by the RFO, is obtained before project commencement.

Next Steps:

- Lead State Agencies should:
 - Attend the Advanced-level Environmental Compliance Training, which will cover:
 - Process of achieving environmental compliance for complex RFSI projects.
 - Application of NEPA and concepts reviewed in the Environmental Compliance Overview.
 - Tools to facilitate the environmental review process.
 - Review the Draft PEA at: <http://www.ams.usda.gov/>
 - Connect with their state NEPA experts and identify internal resources (i.e., subject matter experts).



Thank You

For additional questions or training requests, please email: rfsi@usda.gov