



NATIONAL ENVIRONMENTAL POLICY ACT AND THE BIPARTISAN INFRASTRUCTURE LAW (BIL)

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NEPA and the BIL

Topics Covered in this Briefing

- List of Federal Agencies that have awarded BIL Grants to Kansas Projects & Project Sponsors
- NEPA compliance is required to receive BIL Grant awards
- Can grant funds cover costs of NEPA compliance? – It depends
- Lead Agency & Cooperating Agencies for NEPA process
- NEPA Timelines and Potential Project Implications from the Fiscal Responsibility Act (part of BIL)

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Topics Covered in this Briefing (continued)

- Kansas DOT (KDOT) managed Federal DOT Programs that have received funding
- Summary of NEPA process planning considerations
- Where to find NEPA regulations & guidance for Federal Agency BIL Grantors

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Federal Agencies that have awarded BIL Grants to Kansas Projects & Project Sponsors

- U.S. Department of Transportation (DOT)
- U.S. Environmental Protection Agency (USEPA)
- U.S. Army Corps of Engineers' (USACE) Civil Works Program
- U.S. Department of Agriculture (USDA)
- U.S. Department of Commerce, Tribal Broadband Program

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Federal Agencies that have awarded BIL Grants to Kansas Projects & Project Sponsors

- U.S. Department of Energy (DOE)
- U.S. Department of the Interior
- U.S. Department of Homeland Security, Indian Health Service

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NEPA Compliance is required as a condition of a BIL Grant award.

- So how is the NEPA process going to be completed?

Questions to think about include:

- Who will lead this process?
- Who will fund document development and completion?
- Which federal and state agencies may be involved?

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- **Questions to think about (continued):**
 - What special studies or surveys may need to be conducted to provide information to assess environmental impacts to different natural, community and cultural resources?
 - What are the time limits to get everything done to get award funding for BIL grants?
 - What needs to be done to get the NEPA process started?

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Can BIL grant funds cover costs of NEPA compliance?

– It depends. Specific federal agency examples:

- USEPA Community Grant Recipients Guidelines for allowable “Pre-Award” costs
 - Costs incurred prior to receiving a grant award will be assessed on a case-by-case basis
 - Costs incurred prior to a grant award may be allowable if the costs are in conformance with applicable regulations
 - Before the EPA awards the grant, all costs are the responsibility of the recipient

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Can BIL grant funds cover costs of NEPA compliance?

– It depends.

- The EPA Community Grant Program Guidelines state that environmental impacts must be considered before the grant award
 - EPA may fund development of an Environmental Information Document (EID) in order to provide supporting information (the EID will be used to prepare the NEPA document)
 - EPA may not fund federal document development (EA or EIS)

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Can BIL grant funds cover costs of NEPA compliance?

– It depends. Specific federal agency examples:

- Department of Commerce, National Telecommunications and Information Administration (NTIA) Broadband Infrastructure Program (BIP)
 - BIP Grant Recipient Handbook states that allowable costs include engineering designs, construction, improvement or acquisition of facilities and equipment, and environmental, historical and cultural reviews, and subsequent permits.

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Can BIL grant funds cover costs of NEPA compliance?

– It depends. More federal agency examples

- Department of Energy Electric Grid Resilience Formula Grants to States and Indian Tribes Administrative and Legal Requirements Document states:
 - all recipients will be required to assist in the timely and effective completion of the NEPA process....
 - If certain records must be prepared to complete the NEPA review process (e.g., biological evaluations), the costs to prepare the necessary records may be included as part of the project costs.

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Need to know who the Lead Agency is for NEPA compliance and other cooperating agencies that may need to be involved.

For example, the following federal agencies all have Broadband Programs under the BIL:

- NTIA Broadband Equity Access and Deployment & Tribal Connectivity Programs
- Federal Communications Commission Wireline Competition Bureau – Direct Federal spending
- USDA Rural Utilities Service Distance Learning, Telemedicine and Broadband Reconnect Program

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NEPA Timelines from the Fiscal Responsibility Act (BIL Section 139)

- All authorization decisions (defined as permits, review, approvals or studies) necessary for construction of a “major project” must be completed within 90 days after the issuance of a Record of Decision for an EIS or a Finding of No Significant Impact for an EA.
 - Major projects are those projects that require multiple permits, approvals, reviews, or studies under federal laws other than NEPA, and for which the lead agency has determined that an EIS is required.

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NEPA Timelines from the Fiscal Responsibility Act (BIL Section 139)

- Project schedules for major projects must be consistent with an agency average of not more than 2 years for completion of the environmental review process.
- For EA-level actions, sponsors can request the Federal Highway Administration (FHWA) for designation as a major project. If a project is not designated as a major project, the EA must be completed within 1 year unless the senior agency official approves a new time limit per (40 CFR 1501.10(b)(1)).

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NEPA Timelines from the Fiscal Responsibility Act (BIL Section 139)

- EISs should be completed in less than 2 years unless the senior agency official approves a new time limit.
- What are some potential implications for these NEPA timelines?
 - While these new requirements could speed up the NEPA process, they can impose more burdens on project sponsors and federal agencies.

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Potential Implications of NEPA Timelines in the Fiscal Responsibility Act

- Agencies may need training on providing more rapid and coordinated environmental reviews and permitting
- Rushing or abbreviating environmental reviews in order to meet permitting schedules could make agencies more vulnerable to legal challenges
- Project sponsors and consultants may be anxious to start the NEPA process before Federal agencies are ready.

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NEPA Timelines from the Fiscal Responsibility Act

- The BIL has a provision on Early Utility Relocation that could be helpful in achieving the NEPA timelines
- BIL Section 11315 allows States to carry out an early utility relocation for a transportation project before the completion of the environmental review process. Federal funding can be used to reimburse a state for costs incurred for the utility relocation. (FHWA Memo 3/17/23).

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Kansas DOT management of Federal DOT Programs that have received BIL funding

- Commercial Motor Vehicle Operators Grant Program
- Federal Aviation Administration (FAA) Airport Infrastructure Grants
- FAA Airport Terminal Program
- Local and Regional Project Assistance Grants (Rebuilding American Infrastructure for Sustainability and Equity or RAISE)

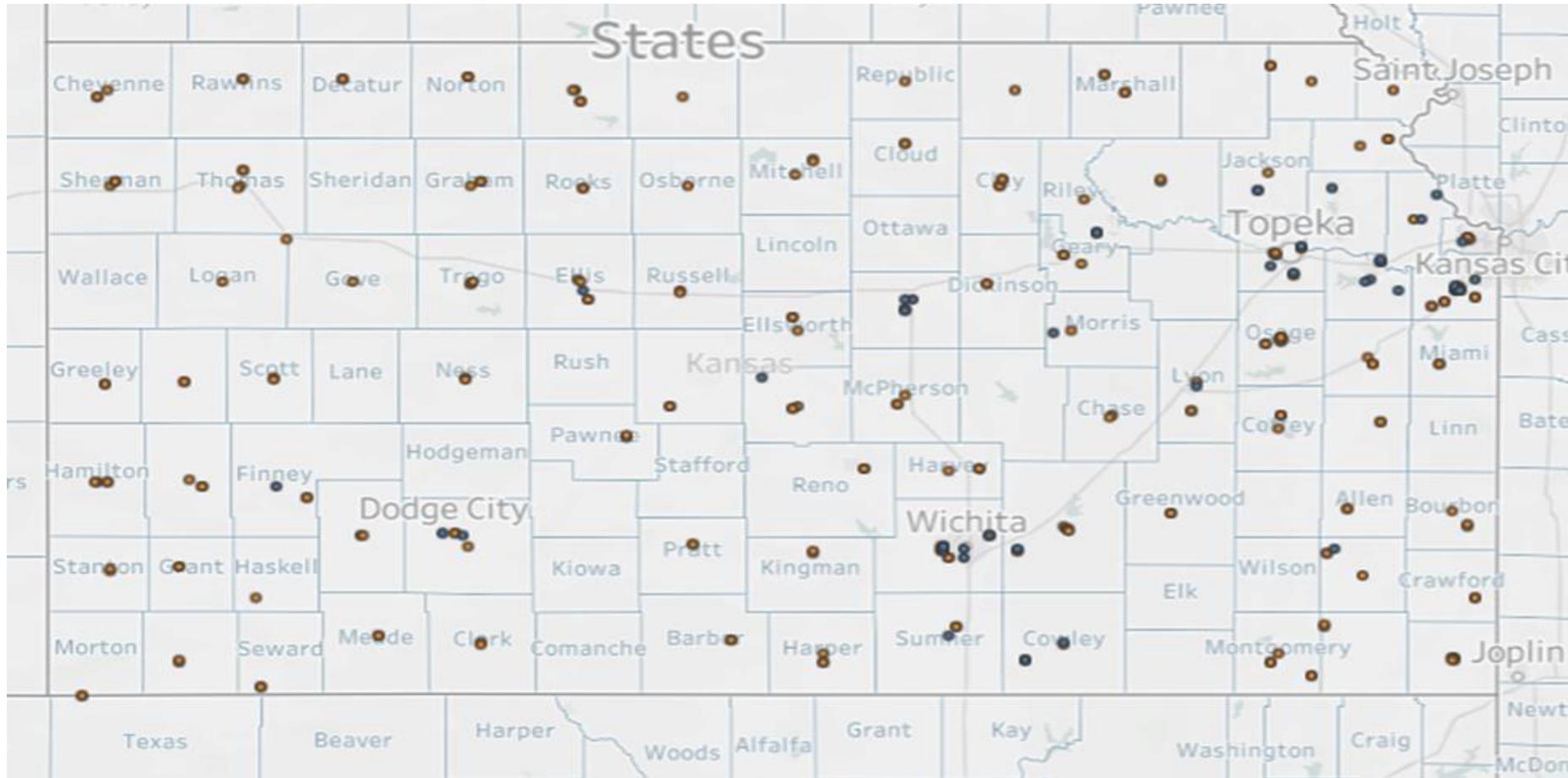
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Kansas DOT-managed Federal DOT Programs that have received BIL funding (continued)

- National Highway Performance Program
- Safe Streets and Roads for All
- Surface Transportation Block Grant Program
- 9 other DOT programs have awarded BIL Grants for Kansas projects. For locations and project information go to the BIL Maps Dashboard webpages at:
<https://d2d.gsa.gov/report/bipartisan-infrastructure-law-bil-maps-dashboard>.

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Location Map for Kansas BIL Transportation Projects



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Summary of NEPA process planning considerations before project implementation

- Does the lead agency have specific NEPA guidance for BIL projects? Talk to the grants manager. Look at the Notice of Funding Opportunity (NOFO).
- Does the NOFO say anything about eligibility for covering NEPA and other environmental costs?
- Know who the “players” are that you have to coordinate with such as the lead agency, cooperating agencies, project sponsors, engineering design staffs, etc.

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Summary of NEPA process planning considerations before project implementing

- If NEPA, supporting studies, and agency consultation costs do not qualify for pre-award funding or are not allowable BIL grants, focus the initial investment of time and resources on the tasks most likely to have the longest lead time or potential for delay
 - Typically, these are wetlands surveys and cultural resources, and/or threatened and endangered species surveys and consultations.

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Where do I find NEPA regulations & guidance for Federal Agency BIL Grantors?

- Go to the Council on Environmental Quality's (CEQ) webpage at ceq.doe.gov/nepa-practice/categorical-exclusions.html.
 - Click on the List of Federal Agency Categorical Exclusions (CE List) to be taken to a CEQ Fact Sheet on Federal Agency CEs (May2021_CE_Catalog.xlsx).
 - At the bottom of the CE Fact Sheet are 78 separate tabs that link to specific agency CE lists.

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Where do I find NEPA regulations & guidance for Federal Agency BIL Grantors?

- Click “Laws and Regulations” in the row of terms at the top of the CEQ webpage and select “Federal Agency NEPA Implementation Procedures” to be taken to a separate 3 page list of Executive Departments and Sub-agencies.
- Click on the desired Department or Sub-agency to be taken to that organizations NEPA regulations or NEPA webpage(s)
- See the following webpage excerpts

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Where do I find NEPA regulations & guidance for Federal Agency BIL Grantors?



NEPA.GOV
NATIONAL ENVIRONMENTAL POLICY ACT

- Home
- News & Updates
- Laws & Regulations
- Guidance
- Get Involved
- NEPA Practice
- CEQ Publications
- CEQ Reports

Categorical Exclusions

Home / Categorical Exclusions

NEPA PRACTICE

- > Agency NEPA Contacts
- > Agency Jurisdiction and Expertise
- > Categorical Exclusions
- > Climate Change Resources
- > Ecosystem Services
- > EIS Length

A categorical exclusion (CE) is a class of actions that a Federal agency has determined, after review by CEQ, do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required. The use of categorical exclusions can reduce paperwork and save time and resources.

CEQ has developed a comprehensive list of the Federal agencies' CEs. This resource is intended to assist agencies in revising their CEs, as well as to help CEQ in reviewing proposed revisions, by identifying how similar classes of actions are treated in the CEs established by various agencies.

- > [List of Federal Agency Categorical Exclusions \(CE LIST\), May 2021](#)

[Click here for CE list](#)

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- Click on the List of Federal Agency CEs to be taken to a CEQ Fact Sheet on Federal Agency CEs.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Fact Sheet: Council on Environmental Quality List of Federal Agency Categorical Exclusions (CE List)

- This resource will assist agencies in revising their CEs, as well as CEQ in reviewing proposed revisions, by identifying how similar classes of actions are treated in the CEs established by various agencies. The CE List will also provide states, tribes, project applicants, stakeholders, and interested members of the public increased access to CE information.

- This resource reflects CEs listed as of May 2021.

- While CEQ has undertaken to provide the most up-to-date list of currently available CEs, Federal agencies and stakeholders should review the relevant agency's NEPA procedures for applicable extraordinary circumstances and to ensure that a CE is currently available for use.

Additional Background:

- Under NEPA, Federal agencies, in consultation with CEQ, develop CEs for categories of agency actions that they have found do not have a significant impact on the environment. Federal agencies' CEs cover a broad range of actions, including administrative functions, operations and maintenance activities, research and information collection, emergency preparedness and response, and certain land management and infrastructure activities.

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- The bottom of the CEQ Fact Sheet has tabs to link to each Federal agency's CE list.

| A | B | C | D | E | F | G | H |
|---|---|---|---|---|---|---|---|
| U.S. Department of Agriculture (USDA) Categorical Exclusions (CE) | | | | | | | |
| Agricultural Research Service (ARS) | | | | | | | |
| §520.5 Categorical exclusions. | | | | | | | |
| https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=849f2fdbdeb878e8b309d93c9e9206ff&ty=HTML&h=L&n=pt7.6.520&r=PART#se7.6.520_15 | | | | | | | |
| For the following categories of actions, the preparation of an EA or EIS is not required: | | | | | | | |
| (a) Department of Agriculture categorical exclusions (7 CFR 1b.3). (1) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes or similar administrative functions; | | | | | | | |
| (2) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, transfer or reprogramming of funds; | | | | | | | |
| (3) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity; | | | | | | | |
| (4) Educational and information programs and activities; | | | | | | | |
| (5) Activities which are advisory and consultative to other agencies, public and private entities, and | | | | | | | |
| (6) Activities related to trade representation and market development activities overseas. | | | | | | | |
| (b) ARS categorical exclusions. ARS actions which, based on previous experience, have been found to have limited scope and intensity and produce little or no individual or cumulative impacts to the human environment. Some examples are: | | | | | | | |
| (1) Repair, replacement of structural components or equipment, or other routine maintenance of facilities controlled in whole or in part by ARS; | | | | | | | |
| (2) Research programs or projects of limited size and magnitude or with only short-term effects on the environment. Examples are: | | | | | | | |
| (i) Research operations conducted within any laboratory, greenhouse or other contained facility where research practices and safeguards prevent environment impacts such as the release of hazardous materials into the environment; | | | | | | | |
| (ii) Inventories, studies or other such activities that have limited context and minimal intensity in terms of changes in the | | | | | | | |
| < > ... ARS APHIS About FSA USFS NRCS RD DOC EDA FirstNet NOAA DLA DTRA MDA | | | | | | | |

Federal Agency
Tabs



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■ Federal Agency NEPA Implementation Procedures

 NEPA.GOV
NATIONAL ENVIRONMENTAL POLICY ACT

Enter search request 

[Home](#) [News & Updates](#) [Laws & Regulations](#) [Guidance](#) [Get Involved](#) [NEPA Practice](#) [CEQ Publications](#) [CEQ Reports](#)

Agency NEPA Implementing Procedures

[Home](#) / [Agency NEPA Implementing Procedures](#)

LAWS & REGULATIONS

- > Laws
- > NEPA Amendments in Fiscal Responsibility Act of 2023
- > Executive Orders
- > CEQ NEPA Regulations
- > State NEPA Information

Each Federal agency is required to develop NEPA procedures that supplement the CEQ Regulations. Developed in consultation with CEQ, a Federal agency's NEPA procedures must be consistent with the CEQ Regulations while reflecting the agency's mandate and mission. Agency NEPA procedures may reflect agency-specific statutory requirements, regulations, and guidance, and the agency's use of NEPA analysis to satisfy other review requirements.

This resource is a listing of Federal agency NEPA procedures. Some agencies issue their procedures as regulations, while others issue them as agency guidance documents. Questions concerning an agency's NEPA procedures may be addressed to the agency's NEPA Contact.

-  [Federal Agency NEPA Implementing Procedures \(revised January 27, 2023\)](#)

[Click here to go to list of agencies](#)

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■ List of Federal Agency NEPA Implementation

Federal Agency NEPA Implementing Procedures

Executive Departments and Sub-agencies

[Agriculture](#)

[Agricultural Research Service](#)

[Animal and Plant Health Inspection Service](#)

[Farm Service Agency](#)

[Forest Service](#)

[Natural Resources Conservation Service](#)

[Rural Development](#) (*Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service*)

[Commerce](#)

[Economic Development Administration](#)

[FirstNet](#)

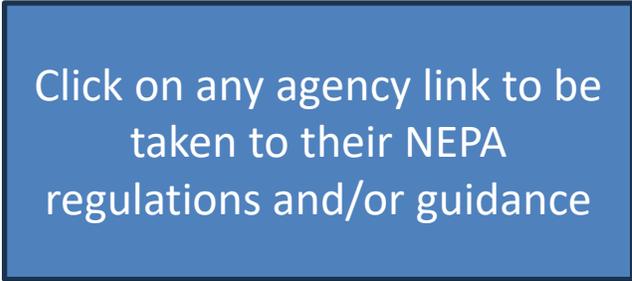
[National Oceanic and Atmospheric Administration](#)

Defense

[Defense Logistics Agency](#)

[Defense Threat Reduction Agency](#)

[Department of the Air Force](#)



Click on any agency link to be taken to their NEPA regulations and/or guidance