

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Categorical Exclusion Guidance

February 2013



U.S. Department of Transportation  
Federal Transit Administration

# Background

- FTA has issued two final rules on Categorical Exclusions (CE) that apply to FTA actions:
  - Addition of new section for FTA CE actions with ten new CEs (23 CFR 771.118) on February 7, 2013
  - Addition of Emergency Recovery Action CE (23 CFR 771.118(c)(11)) on February 19, 2013
- The CEs contained in the final rules are effective upon publication

# New 771.118 Final Rule

- NPRM
  - FTA proposed changes to 23 CFR 771, including a new section (Section 771.118) for FTA CEs
    - Received approximately 380 comments
- Final Rule
  - Effective Date: February 7, 2013
  - Designates Section 771.118 for FTA actions
    - Contains 10 new c-list CEs and 6 new d-list examples
  - Section 771.117 is no longer valid for FTA actions

# New 771.118 Final Rule

- Final Rule, cont'd
  - Expanded public involvement methods to include electronic means (Section 771.111(i)(1), (3), (4))
  - Added “early scoping” into the regulations (Section 771.111(i)(2))
  - Modified the list of project types normally resulting in an EIS
    - Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) **that will not be located within an existing transportation right-of-way.** (Section 771.115)

# Emergency CE Final Rule

- NPRM
  - Proposed modification to 23 CFR 771.117(c)(9) for emergency relief pursuant to section 1315(a) of MAP-21
  - Published October 1, 2012
- Final Rule
  - Effective Date: February 19, 2013
  - Designates Section 771.118(c)(11) for FTA emergency recovery actions
    - New CE covers emergency repairs under 49 U.S.C. 5324
    - New CE includes language pursuant to MAP-21, Section 1315(a)

## Section 771.118(c)

### The “c-list”

- CEs are now longer and structured as broad categories with conditions, followed by non-exhaustive list of examples
- Other environmental requirements might still apply (e.g., Section 106, Section 4(f), Section 7 of the Endangered Species Act), as well as “unusual circumstances”
- Can use the “Environmental Finding Details/Justification” box in TEAM to document other requirements that have been met

## Section 771.118(c)

- (I) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

## Section 771.118(c)

- CE (I): Utility and Similar Appurtenance Action
  - Possible actions include: acquisition, installation, operation, evaluation, replacement, and improvement
  - Conditions:
    - existing or new discrete utilities and similar appurtenances
    - work is performed within or adjacent to existing transportation right-of-way
  - Examples:
    - utility poles, underground wiring, cables, and information systems
    - power substations and utility transfer stations



## Section 771.118(c)

- (2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: a multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

## Section 771.118(c)

- CE (2): Pedestrian or Bicycle Action
  - Possible Actions Include: acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion
  - Conditions:
    - stand-alone recreation, pedestrian, or bicycle facilities
  - Examples:
    - a multiuse pathway, lane, trail, or pedestrian bridge
    - transit plaza amenities

## Section 771.118(c)

- (3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

## Section 771.118(c)

- CE (3): Environmental Mitigation or Stewardship Activity
  - Possible actions include: activities designed to mitigate environmental harm
  - Conditions:
    - cause no harm themselves or to maintain and enhance environmental quality and site aesthetics
    - employ construction best management practices
  - Examples:
    - noise mitigation activities
    - rehabilitation of transit buildings, structures, or facilities
    - retrofitting for energy or other resource conservation
    - landscaping or re-vegetation

## Section 771.118(c)

- (4) Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

## Section 771.118(c)

- CE (4): Planning and Administrative Activity
  - Possible actions include: planning and administrative activities
  - Conditions:
    - activities do not involve or lead directly to construction
  - Examples:
    - training, technical assistance and research
    - promulgation of rules, regulations, directives, or program guidance
    - approval of project concepts
    - engineering
    - operating assistance to transit authorities to continue existing service or increase service to meet routine demand

## Section 771.118(c)

- (5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: the deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

## Section 771.118(c)

- CE (5): Action Promoting Safety, Security, Accessibility
  - Possible actions include: repairs, replacements, and rehabilitations
  - Conditions:
    - designed to promote transportation safety, security, accessibility, and effective communication
    - within or adjacent to existing right-of-way
  - Examples:
    - deployment of Intelligent Transportation Systems and components
    - installation and improvement of safety and communications equipment, including hazard elimination and mitigation
    - installation of passenger amenities and traffic signals
    - retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards



## Section 771.118(c)

- (6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

## Section 771.118(c)

- CE (6): Acquisition, Transfer of Real Property Interest
  - Potential actions include: acquisition or transfer of an interest in real property
  - Conditions:
    - not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas)
    - does not result in a substantial change in the functional use of the property or in substantial displacements
    - will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property
  - Examples:
    - acquisition for scenic easements or historic sites for the purpose of preserving the site

## Section 771.118(c)

- (7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

## Section 771.118(c)

- **CE (7): Acquisition, Maintenance of Vehicles / Equipment**
  - Possible actions include: acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment
  - Conditions:
    - within or accommodated by existing facilities
    - does not result in a change in functional use of the facilities
  - Examples:
    - equipment to be located within existing facilities and with no substantial off-site impacts
    - vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion

## Section 771.118(c)

- (8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

## Section 771.118(c)

- CE (8): Maintenance, Rehab, Reconstruction of Facilities
  - Possible actions include: maintenance, rehabilitation, and reconstruction of facilities
  - Conditions:
    - occupy substantially the same geographic footprint
    - do not result in a change in functional use
  - Examples:
    - improvements to bridges, tunnels, storage yards, buildings, stations, and terminals
    - construction of platform extensions, passing track, and retaining walls
    - improvements to tracks and railbeds

## Section 771.118(c)

- (9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

## Section 771.118(c)

- CE (9): Assembly or Construction of Facilities
  - Possible actions include: assembly or construction of facilities
  - Conditions:
    - consistent with existing land use and zoning requirements (including floodplain regulations)
    - uses primarily land disturbed for transportation use
  - Examples:
    - buildings and associated structures
    - bus transfer stations or intermodal centers
    - Busways, streetcar lines, or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations
    - parking facilities



## Section 771.118(c)

- (10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

## Section 771.118(c)

- CE (10): Joint Development of Facilities
  - Possible actions include: development of facilities for transit and non-transit purposes
  - Conditions:
    - located on, above, or adjacent to existing transit facilities
    - not part of a larger transportation project
    - do not substantially enlarge the facilities
  - Examples:
    - police facilities, daycare facilities, public service facilities, amenities
    - commercial, retail, and residential development

## Section 771.118(c)

- (II) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
  - (i) Emergency repairs under 49 U.S.C. 5324; and ...

## Section 771.118(c)

- (c)(II) Emergency Recovery Actions, cont'd
  - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
    - (A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
    - (B) Is commenced within a 2-year period beginning on the date of the declaration.

## Section 771.118(c)

- CE (II): Emergency Recovery Actions
  - Paragraphs (i) and (ii)
  - General actions include: *to be discussed in the following slides*
  - General conditions:
    - emergency declared by the Governor of the State (and concurred in by the Secretary) OR
    - a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121)

## Section 771.118(c)

- CE (I I)(i): Emergency Recovery Actions
  - Possible actions include: emergency repairs
  - Conditions:
    - pursuant to 49 U.S.C. 5324 (Public Transportation Emergency Relief Program)
  - Examples:
    - capital projects
    - operating assistance

## Section 771.118(c)

- CE (I I)(ii): Emergency Recovery Actions
  - Possible actions include: repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility
  - Conditions:
    - the facility must be in operation or under construction when damaged
    - within the existing right-of-way
    - substantially conforms to the preexisting design, function, and location as the original
    - *may* include upgrades to meet existing codes and standards, as well as upgrades warranted to address conditions that have changed since the original construction
    - commenced within a 2-year period beginning on the date of the declaration

## Section 771.118(c)

- CE (II): Emergency Recovery Actions
  - Paragraph (ii), cont'd
  - Examples:
    - repair and reconstruction of bus garage after earthquake
    - dewatering of subway tunnels after flood event
    - reconstruction of subway bridge after collapse



## Section 771.118(d)

- The “d-list”
  - Implemented the same way as old list (Section 771.117(d)), including the possibility of “unusual circumstances”
  - Section 771.118(d) is generally FTA’s “Other” CE category: paragraphs listed under (d) are *only examples* of typically categorically excluded actions
  - Any action can be a CE under the d-list if documentation shows that there is no potential for significant environmental impacts (e.g., any action that fails to meet one of the “conditions” of a CE in the c-list could potentially use a documented CE)
  - Documentation can be as brief as a paragraph in TEAM

## Section 771.118(d)

- (I) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (e.g., lanes for parking, weaving, turning, climbing).
  - “Highway Modernization”
  - Mirrors the language found at Section 771.117(d)(I)
  - May move (in whole or in part) to Section 771.118(c) in the future
  - Not a frequent CE for FTA
  - Requires documentation

## Section 771.118(d)

- (2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.
  - “Bridge Replacement or Rail Grade Separation”
  - Modified language from what is/was covered under Section 771.117(d)(3)
  - Distinguishing between (d)(2) and (c)(8)
    - rehabilitation v. replacement
  - Due to greater potential for impacts, these actions require documentation

## Section 771.118(d)

- (3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels.
  - “Hardship or Protective Property Acquisition”
  - Mirrors the language found at Section 771.117(d)(12)
  - Applies where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects
  - No project development on such land may proceed until the NEPA process has been completed

## Section 771.118(d)

- (4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.
  - “Acquisition of Right-of-Way”
  - Essentially mirrors the language found at Section 771.117(d)(13)
  - Pursuant to MAP-21 (Section 20016), the “railroad” limitation no longer exists
  - Due to the broad language, FTA needs documentation to justify purchases through this CE example

## Section 771.118(d)

- (5) Construction of bicycle facilities within existing transportation right-of-way.
  - “Bicycle Facility Construction”
  - Expansion of Section 771.118(c)(2), and similar to Section 771.118(c)(9)
  - Activity must occur within the existing transportation right-of-way (i.e., the right-of-way purchase is not part of the bicycle facility construction activity)
  - Documentation is required

## Section 771.118(d)

- (6) Facility modernization through construction or replacement of existing components.
  - “Facility Modernization”
  - For actions that do not meet Secs. 771.118(c)(5) or (c)(8)
  - Examples:
    - major rehabilitation of a facility where various components need to be replaced to meet modern standards and involves more than a minor expansion of the footprint
    - expansion (construction) of a facility to meet modern standards/codes and involves more than a minor expansion of the footprint or results in a change in functional use

## Section 771.118(d)

- Other
  - Section 771.118(d) is generally FTA’s “Other” CE category: paragraphs listed under (d) are *only examples* of typically categorically excluded actions when documentation supports the finding
  - Not a separate paragraph under Section 771.118(d)
  - Currently, and will continue to be, listed in TEAM as “Other”



# Reference Chart

## Comparison of Section 771.118(c) to Section 771.117

| NEW Section 771.118(c) (FTA only)                    | OLD Section 771.117 (FHWA only) |
|--|---------------------------------|
| (1) Utility and similar appurtenance action          | (c)(2)                          |
| (2) Pedestrian or bicycle action                     | (c)(3)                          |
| (3) Environmental mitigation or stewardship activity | (c)(6), (7)                     |
| (4) Planning and administrative activity             | (c)(1), (16), (20)              |
| (5) Action promoting safety, security, accessibility | (c)(8), (9), (15), (21)         |
| (6) Acquisition, transfer of real property interest  | (c)(5), (10); (d)(12)*, (13)*   |
| (7) Acquisition, maintenance of vehicles / equipment | (c)(14), (17), (19)             |
| (8) Maintenance, rehab, reconstruction of facilities | (c)(18); (d)(3)*, (9)           |
| (9) Assembly or construction of facilities           | (d)(4), (8), (10), (11)         |
| (10) Joint development of facilities                 | N/A                             |
| (11) Emergency recovery actions                      | (c)(9)                          |

\*Note, actions under these CEs partially fall under Sections 771.118(c) and (d)

# Reference Chart, cont'd

## Comparison of Section 771.118(d) to Section 771.117

| NEW Section 771.118(d) (FTA only)               | OLD Section 771.117 (FHWA only) |
|---|---------------------------------|
| (1) Highway modernization                       | (d)(1)                          |
| (2) Bridge replacement or rail grade separation | (d)(3)*                         |
| (3) Hardship or protective property acquisition | (d)(12)*                        |
| (4) Acquisition of right-of-way                 | (d)(13)*                        |
| (5) Bicycle facility construction               | N/A                             |
| (6) Facility modernization                      | N/A                             |

\*Note, actions under these CEs partially fall under Sections 771.118(c) and (d)

# Implementation

- Guidance on Using the New CEs in TEAM
  - All new CEs are reflected in TEAM
  - Grant applications for which funds were not reserved by February 6, 2013 will need to be updated and must use the new CEs
  - Short descriptions are limited by TEAM – will need to look carefully at the long descriptions, especially at first
  - Previous, but completed, CE findings from the old list can be seen with View/Print function in TEAM

# Questions?

Please submit questions through the Q&A box on the webinar site



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