

Title: Review and File Management of Categorical Exclusions
Date: March 2019
SOP No.: 16
Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance on the review and processing of categorical exclusions (CEs), in compliance with the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations (40 CFR parts 1500-1508) and the FTA environmental impact regulations (23 CFR part 771).

### **2. Applicability/Scope**

This guidance applies to projects that qualify for a CE as detailed and defined under 23 CFR 771.118. A CE is a category of actions that do not typically result in individual or cumulative significant environmental effects or impacts. The first type, known as "c-list" CEs (23 CFR 771.118(c)), normally require no more than an adequate description of the project in FTA's online grant management system in terms of documentation. The second type, known as "d-list" CEs (23 CFR 771.118(d)), generally require documentation beyond the project description to verify there are no significant environmental impacts associated with the project. For more information regarding the application of individual CEs, see *Guidance for Implementation of FTA's Categorical Exclusions* (23 C.F.R. 771.118) found on FTA's website.

### **3. Responsibilities**

The FTA Regional Administrator is responsible for making the CE determination, though Regional Administrators may delegate responsibility for some or all CE determinations to FTA Regional staff.

FTA Regional staff reviews the project and proposed CE determination to ensure the CE is appropriate and the project description/documentation is adequate, and to determine whether other environmental laws/requirements apply or unusual circumstances exist. As part of this review, Regional staff consult Regional Counsel when there are questions about the application of the CE or compliance questions concerning other environmental laws.

The Office of Chief Counsel reviews proposed CE determinations for legal sufficiency and that function is usually assigned to the Regional Counsel for that Region.

### **4. Standard Procedures**

**4.1. Definition of CEs and determining CEs.** CEs are actions that do not individually or cumulatively have significant environmental effects or impacts and are excluded from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) when there are no unusual circumstances (40 CFR 1508.4, 23 CFR 771.118). CEs are not exempt from NEPA; instead, they are the NEPA action.

**4.2. Segmentation and CEs.** The scope of the action covered by a CE must meet the scope requirements in FTA's environmental regulation to ensure an action is not impermissibly

segmented (23 CFR 771.111(f)). In order to avoid impermissible segmentation a project must demonstrate independent utility, connect logical termini, and not restrict consideration of alternatives. This does not prohibit the *construction* of a transportation facility in phases.

### **4.3. Processing CEs.**

**4.3.1. C-list CEs (23 CFR 771.118(c)).** The c-list CEs require an adequate description of the project so FTA Regional staff can verify that the CE applies and that other environmental requirements are met; this normally occurs through a review of the grant application. Projects approved as c-list CEs must fit the description and conditions of, or be similar enough to, what is outlined in the specific CE's language. FTA Regional staff should ensure that the description in FTA's online grant management system is sufficient to support the CE determination. There should be enough documentation to determine there are not unusual circumstances that would prohibit the use of the CE. If the project could be approved under more than one of the CEs, Regional staff will identify or verify which CE is most appropriate. In some instances, documentation will be needed to show there are no unusual circumstances that would make the use of the CE inappropriate (e.g., where a project description would lead staff to otherwise believe that an unusual circumstance, such as demolition of a historic property, might be involved).

If at any point the original description or revised description of the project indicates that it does not fit within one of the c-list CEs, FTA must reassess the project as a d-list CE or evaluate it in an EA or EIS, as appropriate.

**4.3.2. D-list CEs (23 CFR 771.118(d)).** A d-list CE normally requires documentation to verify the application of a CE is appropriate (i.e., the action meets the criteria established in section 771.118(a) and (b)); generally this means documentation beyond what is described in the grant application in FTA's online grant management system. The extent of that documentation will vary depending on the project, but d-list CEs require documentation sufficient to ensure that no significant environmental impact will result and that no unusual circumstance is present. The level of documentation needed for these purposes varies and depends on the type and severity of impacts that may result, varying from a few paragraphs describing the project to multiple pages with graphics. Typically, the documentation would describe the project, its location and existing conditions, and demonstrate there will be no significant impact to the natural or built environment as a result of the project.

**4.3.3. Cross-Agency CEs (23 CFR 771.118(e)).** Under the Cross-Agency CE, FTA may apply a Federal Highway Administration (FHWA) or Federal Railroad Administration (FRA) CE under 23 CFR 771.117 or 771.116, respectively, to an FTA action if the FHWA or FRA better addresses the project. Per 23 CFR 771.118(e), FTA may consult with FHWA or FRA to ensure proper application of one of their CEs but it is not required for applying a Cross-Agency CE.

**4.3.4. CE worksheets/templates.** Regional offices may provide project sponsors with worksheets or templates to assist in determining whether a CE is the appropriate class of action for a project. The templates are tools to help demonstrate that FTA considered potential environmental impacts and are generally more appropriate for d-list CEs. In general, the narrative documentation for CEs should be brief and can reference a more detailed technical study on a particular environmental topic, if necessary. This should

include documents useful to decision-makers that (1) focus on issues pertinent to the question of environmental importance; and (2) support the determination that there is no potential for a significant environmental impact.

**4.4. Coordination for CEs.** Some level of general consultation with other agencies may be appropriate for a CE. For example, when other environmental laws apply to a project, Regional staff may need to consult with other agencies regarding the specific environmental impacts to ensure compliance with the other requirements. Note, it is best to initiate coordination before submitting the grant.

FTA Regional staff determines the need for coordination and records the coordination in the project file (e.g., when it took place and what resulted). Documenting coordination may be as simple as including a short note in the project file or grant application. Other examples of interagency coordination often appropriate with a CE include:

- Consultation with the State Historic Preservation Officer (SHPO), pursuant to Section 106, regarding the eligibility and effects to historic resources within the Area of Potential Effects for projects that have the potential to cause effects on historic properties (note this coordination also supports Section 4(f) compliance for applicable historic resources);
- Consultation with park or wildlife refuge officials, pursuant to Section 4(f), with an opportunity for public involvement for *de minimis* determinations;
- Consultation with the appropriate State environmental agency on the appropriate remediation and construction techniques for a project on a brownfield site;
- Consultation with the U.S. Army Corps of Engineers on the applicability of a Section 404 nationwide permit; or,
- Consultation with other DOT modes when the project may involve the use of funds or approvals of another mode.

**4.5. Consider FTA funding source.** FTA only has a NEPA responsibility for Federally-funded projects. Regional staff should confirm that the project is eligible to receive Federal funding and has identified FTA formula or flex funds for the project, has applied for a discretionary grant program (e.g., TIGER), or the project sponsor has stated that it will seek Capital Investment Grant funds.

**4.6. Issuing a CE determination.** When a Regional Office issues a CE determination for a project, it represents FTA's final agency NEPA action. Therefore, if a Section 106, Section 4(f) or other finding/determination is required, it needs to be completed prior to issuance of the CE. Additionally, before FTA may complete NEPA for the project, it must satisfy applicable transportation conformity requirements (40 CFR part 93).


**4.7. Pre-award authority.** The CE determination by FTA may provide the project sponsor with pre-award authority to incur certain project costs before grant award and at its own financial risk, as detailed in the annual Apportionment Notice in the *Federal Register*, and found on FTA's public website. As a c-list CE may be treated differently from a d-list CE under pre-award authority, FTA recommends reading the latest apportionment notice for guidance.

**4.8. Public availability of CEs.** CE documentation is not required to be made available to the public but would be released in response to a request under the Freedom of Information Act, and may be made available when complying with other environmental laws that have their own public involvement requirements (e.g., Section 106).

**4.9. Limitation on Claims notices.** CE determinations are not normally included in FTA's "Limitation on Claims" notices in the *Federal Register*. In the rare instance where the Region anticipates a legal challenge to the CE determination, the Region should notify FTA Headquarters' Office of Environmental Programs (TPE-30). The FTA Regional Office should notify TPE-30 prior to making the CE determination so that it can be included in the next Limitation on Claims notice for the *Federal Register* in these limited cases. The notice will start the 150-day statute of limitations on challenges to the CE determination.

**5. References**

- CEQ regulations implementing NEPA, [40 CFR 1508.4](#)
- FTA's Environmental Impact and Related Procedures, [23 CFR 771.118](#) and [23 CFR 771.111\(f\)](#)
- [FTA Guidance on CEs](#)
- Section 4(f) regulations, [23 CFR part 774](#)
- Transportation Conformity regulations, [40 CFR part 93](#)
- Section 106 regulations, [36 CFR part 800](#)

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DATE: 3/29/2019