

Title: Project Initiation and Determining NEPA Class of Action
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Issued by the Office of Planning and Environment (TPE)

1. Purpose

This document provides guidance for the earliest phase of the environmental review process for FTA projects.

2. Applicability/Scope

FTA determines if and when it will be involved in the environmental review process. Prior to initiating review, FTA needs to decide if there is an FTA action (i.e., a transit project proposed for FTA funding; see 23 CFR 771.107 for full definition). If there is no FTA action, FTA will likely not be involved. If there is an FTA action, FTA Regional staff should determine the appropriate time for project initiation (i.e., the action is sufficiently defined that assessment of its environmental impacts is feasible) in consultation with the Regional Counsel, as appropriate. The Regional Office must also make a National Environmental Policy Act (NEPA) class of action determination.

3. Responsibilities

The FTA Regional Administrator, or designee, as appropriate, is generally responsible for all environmental decisions, including project initiation and determining the class of action, related to any FTA action, in consultation with the Regional Counsel. The project sponsor (generally the sponsoring transit agency) may recommend a certain class of action based on the project's potential impacts.

FTA Regional staff is responsible for managing the environmental review process for the project. This means the staff is responsible for regularly communicating with the project sponsor and ensuring FTA has the necessary information and documentation, as appropriate, to support the Regional Administrator's decisions on a project.

4. Standard Procedures for Project Initiation

4.1. Project information. Project sponsors should coordinate with FTA Regional staff for an initial determination as to whether an environmental impact statement (EIS) will likely be required. Per 23 U.S.C. § 139(e), for projects that will be evaluated with an EIS, the project sponsor must provide Regional staff with project initiation information on the proposed project, including the project description (i.e., the type of work, termini, length and general location of the project), a list of any anticipated Federal approvals, and any additional information that the project sponsor considers important for initiating a project. Additionally, FTA recommends the project sponsor provide a summary of prior planning work on the project; the project's general purpose and need (EIS); and, a graphic showing the location of the proposed project—its proposed termini, station and maintenance facility locations and sizes, and other pertinent project features. The project sponsor fulfills this information requirement by providing FTA Regional staff with any relevant documents that contain the required and suggested project information; the information may take the form of a draft notice of intent (NOI) for an EIS.

If a project may qualify for a categorical exclusion (CE) or environmental assessment (EA), the information needed is normally less than that described above, but the project sponsor should at a minimum provide a basic project description and location map/graphic.

4.2. Review of application. Once FTA has received the project initiation information from the project sponsor, FTA Regional staff evaluate the information to determine whether there is sufficient information to initiate the environmental review process, including confirming the class of action. The information should be used to determine the factors below.

4.2.1. Eligibility and likelihood of Federal funding. The Regional Office should determine (1) whether the project is eligible for FTA funding, and (2) whether the project sponsor seeks FTA funding. In determining whether a project is eligible and may be funded by FTA, the Region should consider the following:

- **Metropolitan Transportation Plan (MTP).** The Regional Office should verify the project is eligible for Federal funding by demonstrating that the proposed project has been adopted into the Metropolitan Planning Organization's (MPO) fiscally constrained MTP. The project may also be identified in the MPO's transportation improvement program (TIP) for "environmental study" or "preliminary engineering" or another phase of project development, but it is not necessary to program a project for "construction" in the MPO's TIP prior to initiation of the NEPA process. As the MTP is financially-constrained, it is reasonably likely that any project included in the MTP will be funded and there will be an FTA action (23 CFR part 450). However, there are occasions when FTA expects to fund a project that is not initially in the MTP; the decision to initiate NEPA for these projects should be made on a case-by-case basis.
- **Funding nexus.** Occasionally, a project sponsor will request FTA conduct an environmental review for a project that has no identified or planned/programmed FTA funding (i.e., the project has not been adopted into the MTP). FTA does not generally conduct NEPA reviews for projects with no FTA funding currently identified or planned, but that decision is at the discretion of the Regional Administrator.

4.2.2. FTA's role in the process. After determining that a project is eligible for and will likely receive FTA funding, the Regional Administrator determines FTA's role in the environmental review process (e.g., lead vs. cooperating agency). This should be done in coordination with the project sponsor and may include discussions with other Federal, State, and local agencies. The environmental review process roles and responsibilities are discussed in detail in 23 U.S.C. § 139, 23 CFR part 771, and 40 CFR parts 1500-1508. For more information see the Agency SOP.

4.2.3. Scope requirements (23 CFR 771.11(f)). The Regional Office should ensure that any project under consideration connects logical termini (if linear) and is of sufficient length to address environmental matters on a broad scope; has independent utility or significance (i.e., is a useable and reasonable expenditure even if no additional transportation improvements in the area are made); and does not restrict consideration of alternatives for

other reasonably foreseeable transportation improvements. This applies to all classes of action.

4.2.4. Limitation on actions prior to and during environmental review.

- **Evaluation of prior actions.** Regional staff should ensure that the project sponsor has not prematurely taken action that would affect FTA's ability to comply with NEPA and other environmental requirements, such as Section 4(f) and Section 106. Examples of impermissible actions include demolition of buildings on the proposed project site without prior FTA approval or certain cases of advance acquisition of real property. For more information on permissible early acquisition of real property, see FTA's Corridor Preservation Guidance and FTA's Categorical Exclusion Guidance.
- **Limitations on activity during the environmental review process.** A project sponsor may exercise pre-award authority to take certain implementation activities, but many restrictions on such actions still apply. Pre-award authorities and restrictions are detailed in FTA's Annual Appropriation Notice in the *Federal Register*.

4.2.5. Class of action. As detailed further in Section 5, Regional staff should make a preliminary determination on class of action, in particular, whether the proposed class of action is an EIS, in order to be able to provide a written response to the project sponsor on a timeline and anticipated *Federal Register* publication date for a NOI to prepare an EIS.

4.3. Written response to project sponsor. For EIS documents, no later than 45 days after the date when the Regional Office received the project initiation information from the project sponsor, the Regional Office must provide a written response in the form of a letter or email to the project sponsor. The response to the project sponsor will provide the determination of the Regional Administrator, or designee, to:

- Initiate the environmental review process and provide a timeline and expected date for publishing a NOI in the *Federal Register*;
- Decline the application and explaining the reasons for that decision; or
- Request additional information in order to make a determination on project funding eligibility and likelihood of funding, scope, history, and likely class of action.

5. Standard Procedures for Determining the NEPA Class of Action

5.1. Timing of class of action determination. After taking into account the above considerations regarding project initiation, the Regional Administrator, or their designee, will confirm the class of action—deciding initially whether the project requires the preparation of an EIS or an EA, or is categorically excluded from the need to prepare either an EIS or an EA. FTA should notify the project sponsor of its class of action determination as well as our expectations for the review process (e.g., project tasks to be completed, FTA's role in the review).

5.2. Determining significance. The class of action for a project should reflect the level of significance of the potential impacts. For example, NEPA requires an EIS for major Federal actions that “significantly” affect the quality of the human and natural environment. The term “significantly” requires consideration of both the context and intensity of the action (40 CFR 1508.27).

5.2.1. Context. Context means that the significance of an action (both long- and short-term) should be analyzed in several contexts relative to environmental conditions at an appropriate scale, such as society as a whole (human, national), the affected region, the affected interests, and/or the locality. Significance varies with the proposed action’s setting.

5.2.2. Intensity. Intensity refers to the severity of impact. FTA typically considers the following in evaluating the intensity of project impacts: unique characteristics of the project, such as its location in park lands, wetlands, or ecologically critical areas; difficulties in relocating displaced businesses or residences, especially environmental justice populations; the degree of controversy regarding environmental matters; the degree to which the action may adversely affect resources on or eligible for the National Register of Historic Places; the degree to which the action may adversely affect an endangered or threatened species or designated critical habitat; and whether the action may lead to a violation of a Federal, State, or local environmental law or requirement.

5.3. Classes of action (23 CFR 771.115). There are three classes of actions that prescribe the level of documentation and the associated environmental review process requirements.

5.3.1. Categorical Exclusion (CE). CEs are categories of actions that in the absence of unusual circumstances do not individually or cumulatively have a significant environmental effect and are ordinarily excluded from the requirement to prepare an EA or EIS. See 23 CFR 771.118. CEs are not exempt from NEPA; they are a NEPA action.

- **“C-list” actions (23 CFR 771.118(c)).** To apply a c-list CE, FTA must determine that the proposed action falls within the scope and conditions described for the CE. An action not explicitly described in the c-list but is similar in nature to an action described within a c-list CE may still qualify as a c-list CE.
- **“D-list” actions (23 CFR 771.118(d)).** The d-list provides examples of actions that may qualify as d-list CEs. These examples are broader than those in the c-list; the d-list is representative and not an exhaustive list of all actions. When determining whether a d-list CE is appropriate for a project, the Regional Office should work with the project sponsor to prepare concise documentation supporting the selection of the CE.
- When considering whether to process an action that is not explicitly found in the c-list or d-list as a CE, Regional staff should consult with the Regional Counsel to ensure the action can be categorically excluded (i.e., the action meets the conditions found in 23 CFR 771.118(a) and (b)) through 23 CFR 771.118(d). Alternatively, FTA may apply the Cross-Agency CE at 23 CFR 771.118(e) to a project if a Federal Highway Administration or Federal Railroad Administration CE (23 CFR 771.117 and 771.116, respectively) most appropriately captures the action.

5.3.2. Environmental Assessment (EA). EAs are concise public documents that include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted (40 CFR 1508.9). Typically, FTA requires an EA in two situations:

- Further investigation is needed to determine if the project would significantly affect the quality of the human and natural environment and require an EIS (23 CFR 771.119(a)); or
- For other purposes in compliance with NEPA (40 CFR 1508.9).

5.3.3. Environmental Impact Statement (EIS). EISs are detailed written statements for major Federal actions that will significantly affect the quality of the human and natural environment. Per 23 CFR 771.115(a), FTA actions that normally require an EIS include:

- 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 (ROW); or
- New construction or extension of a separate roadway for buses not located within an existing transportation ROW.

If a project qualifies for an EIS, FTA must determine whether the project meets the definition of a “major infrastructure project,” as defined in Executive Order 13807—*Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* (Aug. 15, 2017). The Regional staff should contact the Office of Environmental Programs when they anticipate a new EIS, and must contact the Office thirty days prior to NOI signature.

5.4. Distinguishing between CEs and EAs. If Regional staff has determined that an EIS is not necessary, FTA must then decide between an EA and a CE. There is no clear line that distinguishes whether a project warrants an EA or CE. If a proposed project fits within one of the c-list or d-list CEs, it does not automatically mean that an EA will not be required. Likewise, if the action is not explicitly listed on the c-list or among the d-list examples, it does not automatically trigger an EA. Regional staff should consider the factors below in deciding between an EA and a CE.

5.4.1. Unusual Circumstances. Section 771.118 includes the requirement for considering unusual circumstances, which is how the agencies consider extraordinary circumstances, in accordance with the CEQ regulations (40 CFR 1508.4). The presence of “unusual circumstances” requires that the agencies “conduct appropriate environmental studies to determine if the CE classification is proper” pursuant to section 771.118(b). The potential for unusual circumstances for a project does not automatically trigger an EA or EIS, but Regional staff needs to consider them to determine whether applying a CE to the project is appropriate. Unusual circumstances include significant environmental impacts, substantial controversy on environmental grounds, significant impact on Section 4(f)- or Section 106-

protected properties, or inconsistencies with other Federal, State, or local environmental laws or requirements.

5.4.2. Agency and public involvement. An EA ensures that agencies and the public have information on the project and an opportunity to comment through its required 30-day public availability period, while CEs do not carry any public involvement requirements. When public involvement seems appropriate due to potential impacts or environmental controversy, FTA may wish to consider an EA. For example, a transit bus center with a number of impact areas located within an environmental justice community might warrant an EA, whereas a CE would be adequate for the same kind of project in a predominantly commercial area. Either a c-list or d-list CE can, however, be accompanied by public involvement in situations such as these.

5.4.3. Alternatives. An EA may sometimes be appropriate if the proposed project site is currently occupied by a resource that is protected by a statute, regulation, or executive order that requires the consideration of alternatives. Examples include Section 4(f) resources (e.g., parks, recreation areas, wildlife refuges, and historic sites), where the use of the resource results in impacts that are greater than *de minimis*, and wetlands or other waters of the United States, where the encroachment would not qualify for a nationwide permit from the U.S. Army Corps of Engineers (33 CFR part 323). Usually, the project sponsor considers alternative sites before coming to FTA and the possibility of using a d-list CE for the project will incentivize the project sponsor to select a site that has no significant impacts and does not require the consideration of alternatives. Either a c-list or d-list CE may still be used, however, for these types of projects if determined appropriate.

5.5. Distinguishing between EAs and EISs. FTA has occasionally diverged from the list of actions that typically require an EIS (found in section 771.115(a)). This demonstrates that FTA considers projects on an individual basis when determining whether an EIS is the correct class of action. The Regional Office should consider the following:

5.5.1. Potential for significant impact. To determine whether a project's environmental document should be an EA vs. an EIS, FTA considers the significance (i.e., context and intensity) of the environmental impacts, as well as potential mitigation. For example, per section 771.115(a), an EIS is typically required when constructing rail transit facilities (including new stations and park-and-ride lots) outside of existing ROW due to the potential for significant impacts. If the new rail transit project or extension is predominantly located within existing railroad ROW, then a lesser class of action is possible because the land is likely previously disturbed.

5.5.2. Interagency and public involvement. Both EA and EIS documents carry agency and public involvement requirements, but the EA process has fewer requirements. At times, it may be appropriate to select an EIS class of action in order to satisfy project concerns (e.g., response to public controversy regarding environmental issues) or another Federal agency's requirements when FTA is a joint lead Federal agency (e.g., U.S. Army Corps of Engineers' requirements pursuant to the Clean Water Act).

5.6. Contracting and the environmental review process.

5.6.1. FTA review of the consultant's scope of work. Where possible, Regional staff should offer input on the consultant's scope of work or performance work statement, as appropriate, prior to finalization to ensure an effective and efficient review process, helping the project sponsor to avoid the development of analysis not needed for compliance with environmental review requirements.

5.6.2. Conflict of interest form. Regional staff must require the project sponsor's environmental contractor and subcontractors (if any) to fill out and return a conflict of interest form (see attachment to SOP No. 1) as required by CEQ regulations (40 CFR 1506.5) and FTA regulations (23 CFR 771.119(a)(2) and 771.123(d)).

6. References

- CEQ regulations implementing NEPA, [40 CFR parts 1500-1508](#)
- FTA's Environmental Impact and Related Procedures, [23 CFR part 771](#)
- FTA's Metropolitan Planning Regulations, [23 CFR part 450](#)
- Efficient environmental reviews for project decisionmaking, [23 U.S.C. § 139](#)
- FTA's [CE Guidance](#)
- FTA's [Corridor Preservation Guidance](#)
- [SAFETEA-LU Environmental Review Process Final Guidance](#) (2006)

APPROVAL:



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