CHANGES TO FHWA CATEGORICAL EXCLUSIONS

23 CFR 771.117
What is a Categorical Exclusion?

- Actions which, based on past experience with similar actions, do not involve significant environmental impacts.
  - do not induce significant impacts to planned growth or land use for the area;
  - do not require the relocation of significant numbers of people;
  - do not have a significant impact on any natural, cultural, recreational, historic or other resource;
  - do not involve significant air, noise, or water quality impacts;
  - do not have significant impacts on travel patterns;
  - do not otherwise, either individually or cumulatively, have any significant environmental impacts.
FHWA has 2 groups of CEs: c-list and d-list. 
- Comes from 23 CFR 771.117 (c) and (d)
- Actions in c-list normally do not require further NEPA approval by FHWA.
- Actions in d-list require formal approval (i.e. signature) by the appropriate FHWA official.
(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

1) Significant environmental impacts;
2) Substantial controversy on environmental grounds;
3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
MAP-21 Required CE Changes

- Section 1315: CEs in Emergencies
- Section 1316: CEs for Projects within ROW
- Section 1317: CEs for Projects of Limited Federal Assistance
- Section 1318: Additional CEs
  - Move 3 specific CEs in the d-list to the c-list
  - Survey the Department’s use of CEs since 2005 and propose designation of new actions as CEs
Changes/Additions to 23 CFR 771.117

- (c)(9) emergencies
- (c)(22) within a right-of-way
- (c)(23) within certain funding thresholds
- (c)(24) geotechnical and other investigations
- (c)(25) environmental restoration
- (c)(26) modernization of a highway
- (c)(27) highway safety
- (c)(28) bridge rehabilitation
- (c)(29) ferry vessels
- (c)(30) rehabilitation of ferry facilities

Formerly

- (d)(1)
- (d)(2)
- (d)(3)
  
- (d)(13) actions in (c)(26), (c)(27), and (c)(28) that do not meet certain constraints
The following actions for transportation facilities damaged in emergencies declared by the Governor and concurred by the DOT Secretary, or declared by the President:

(i) Emergency repairs under 23 U.S.C. 125; and
(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility, including ancillary transportation facilities, 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 2-years of the date of the declaration.
(c)(22) Action Within a ROW

- Projects...entirely within the existing operational ROW
- Existing operational ROW?
  - ROW has been disturbed for an existing transportation facility
    OR
  - ROW is maintained for an existing transportation facility
The existing facility or structure must be related to surface transportation.

- Physical footprint (roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.); AND
- Other areas maintained for transportation purposes (clear zone, signage, landscaping, parking facilities w/ direct access, transit maintenance facilities….)

Existing Transportation Facility
Guidance on “Disturbed/Maintained Areas”

- Provide evidence area is disturbed (photographs, visual inspection)
  - Demonstrating disturbance does not require archaeology surveys or producing as-built plans.
- Do not need to develop or engage in regular maintenance actions for area to be considered an Operational ROW
- Natural methods of managing roadside vegetation, clear zones, and areas needed to maintain safety and security of transportation facilities are part of Operational ROW
What’s Not Considered Existing Operational ROW?

- Portions of ROW that have not been disturbed
- Portions of ROW not maintained for existing transportation purposes, e.g.:
  - Utility agreements, occupancy agreements, or other real property interests
  - Uneconomic remnants or excess ROW secured by no-trespassing fence
  - Areas acquired for future transportation projects
If project receives < $5M of Federal funds; or

Has a total estimated cost of not more than $30M and Federal funds <15% of total estimated project cost.
To provide information for design, environmental analysis, and permitting purposes.

- Soil sample drilling
- Archaeological investigations
- Wetland surveys
To minimize or mitigate the impacts of any existing transportation facility.

Actions to return a habitat, ecosystem, or landscape to a productive condition that supports natural ecological functions.

- Retrofit or construct stormwater treatment systems to address water pollution or environmental degradation (detention/infiltration ponds; erosion control establishment; pervious pavements).
- Retrofit or construct fish passage culverts.
- Restore/create wetlands and other natural habitats.
(c)(29): Purchase, Construction, Replacement, or Rehabilitation of Ferry Vessels

- includes improvements to ferry vessel safety, navigation, and security systems
- would not require a change in the function of the ferry terminals
- can be accommodated by existing facilities or by new facilities which themselves are within a CE.
(c)(30): Rehabilitation or Reconstruction of Existing Ferry Facilities

- occupy substantially the same geographic footprint
- do not result in a change in functional use
- do not result in a substantial increase in the existing facility's capacity

Example actions:
- work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.
(c)(26): Modernization of a Highway...

- by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes)
- if the action meets the constraints in paragraph (e) of this section.
(c)(27): Highway Safety or Traffic Operations Improvement Projects

- including the installation of ramp metering control devices and lighting
- if the project meets the constraints in paragraph (e) of this section.
(c)(28): Bridge Rehabilitation

- reconstruction
- replacement
- construction of grade separation to replace existing at-grade railroad crossings
- if the actions meet the constraints in paragraph (e) of this section.
(e) Actions described in (c)(26), (c)(27), and (c)(28) may not be processed as CEs under the c-list if they involve:

- Acquisition of more than a minor amount of right-of-way
- Would result in any residential or non-residential displacements
- Needs a bridge permit from the U.S. Coast Guard
Does not meet the terms and conditions of a U.S. Army Corps of Engineers permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899

- A finding of “adverse effect” to historic properties under the National Historic Preservation Act

- The use of a resource protected under Section 4(f) except for actions resulting in de minimis impacts

- A finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act
Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions

Changes in access control

A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths)

Construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers
(d)(13): Actions described in (c)(26), (c)(27), and (c)(28) that do not meet the constraints

- An action would normally fall under (c)(26), (c)(27), or (c)(28), but because it does not meet the constraints, it cannot be processed under those CEs.
- See if the action would fall under one of the other c-list CEs
- If not, then use (d)(13)
- Requires FHWA approval (signature of appropriate official)
Implementation of New CEs

- Action still must meet 771.117(a) and (b)
- Have no unusual circumstances
- Comply with segmentation requirements (have independent utility and logical termini)
- May require:
  - Collection & Analysis of Information
  - Coordination and Consultation
  - Actions by other Federal agencies (e.g., approvals, permits)
Not an exemption from other applicable environmental laws, regulations, executive orders, permits

- Clean Water Act (404, 401, NPDES/SWPPP)
- Clean Air Act
- Section 4(f) of DOT Act
- National Historic Preservation Act
- Endangered Species Act
- Farmlands Protection Act
- Floodplain executive order
- Wetlands executive order, etc.
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QUESTIONS??