



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **ACTION:** Programmatic Agreements for  
Categorical Exclusions

Date: May 31, 2016

From: Gloria M. Shepherd  
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Realty

In Reply Refer To:  
HEPE

To: Directors of Field Services  
Division Administrators

Section 1315 of the Fixing America's Surface Transportation (FAST) Act directed FHWA to revise its regulation on programmatic categorical exclusion agreements (PCE agreements), which allows State Departments of Transportation (SDOTs) to make categorical exclusion (CE) determinations on FHWA's behalf. Accordingly, FHWA issued a final rule in the Federal Register for 23 CFR 771.117(g) on May 31, 2016 ([81FR 34271](#)).

The FHWA has updated the PCE agreement template to address these changes. Use of the template is not mandatory and another format may be used to address the unique needs and characteristics of a State provided that it includes any required information listed in 23 CFR 771.117(g). However, as required by Section 1315, FHWA will use the template if the State requests its use for the agreement. The FHWA has also updated the PCE agreement guidance to account for the modifications required by the FAST Act and the amended regulation.

The FAST Act and the amended regulation allow SDOTs entering into these PCE agreements to make CE determinations on FHWA's behalf for actions that qualify for CEs listed in 23 CFR 771.117(c)-(d), or actions that qualify for State-specific CEs that have been designated in accordance with guidance from the Council on Environmental Quality (CEQ).<sup>1</sup> This designation process entails three steps. The first step is gathering information for substantiation, based on the State's experience or other information, to show that such types of actions typically do not have significant environmental impacts. Second, FHWA consults with the Office of the Secretary of Transportation (OST) and CEQ about the new CE(s). And third, FHWA solicits and considers public comments received through the required notice-and-comment process, before receiving formal approval by OST and CEQ.

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<sup>1</sup> Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (75 Fed. Reg. 75628, Dec. 6, 2010), [https://ceq.doe.gov/ceq\\_regulations/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](https://ceq.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf); DOT Order 5610.1C (44 Fed. Reg. 56420, Oct. 1, 1979), <https://www.transportation.gov/office-policy/transportation-policy/procedures-considering-environmental-impacts-dot-order-56101c>.

The previous memorandum dated October 26, 2015, indicated we are no longer requesting that each revised agreement be forwarded for HEPE and HCC review, so long as the revised agreement closely follows the guidance and template agreement. The October 2015 memo continues to be effective; however, coordination with these offices will be necessary if the SDOT and Division Office plan to include CE designations not listed in the regulation. I encourage Divisions to consult with HEPE and their respective field HCC offices on these agreements, regardless of whether any of these issues arise.

Thank you in advance for your cooperation with these procedures. If you have any questions about this matter, please contact April Marchese, Acting Director of the Office of Project Development and Environmental Review, at (202) 366-2037, or Jennifer Mayo, Assistant Chief Counsel for Program Legal Services, at (202) 366-1523.