

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, ARKANSAS DIVISION
AND
THE ARKANSAS STATE HIGHWAY COMMISSION, by and through
THE ARKANSAS DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL
EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT (“Agreement”) made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of ARKANSAS, acting by and through the ARKANSAS STATE HIGHWAY COMMISSION, by and through its DEPARTMENT OF TRANSPORTATION [Arkansas Department of Transportation] (“ARDOT”) hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 et seq., direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

Whereas, the Federal Highway Administration’s distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

Whereas, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA’s primary responsibilities (49 CFR 1.81(a)(5));

Whereas, the FHWA’s NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or collectively have a significant effect on the natural and human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117 (c) & (d));

Whereas, the Arkansas State Highway Commission, acting by and through the Arkansas Department of Transportation (collectively referred to herein as ARDOT) is a state agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for ARDOT projects (23 CFR 771.109);

Whereas, the FHWA and ARDOT’s Stewardship and Oversight Agreement sets forth the roles and responsibilities of the FHWA and ARDOT with respect to Title 23 project approvals and related responsibilities, be it local or state-sponsored, and FHWA oversight activities;

Whereas, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

Whereas, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014 (23 CFR 771.117 (g));

Whereas, the FHWA and ARDOT have designated additional CEs for the State and identified them in this programmatic agreement pursuant to Section 1315 of the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312 (Dec. 4, 2015), and 23 CFR 771.117 (g);

Now, therefore, the FHWA and ARDOT enter into this Programmatic Agreement ("Agreement") for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the FHWA and the Arkansas State Highway Commission, acting by and through ARDOT.

II. PURPOSE

The purpose of this Agreement is to authorize ARDOT to determine on behalf of FHWA whether a local and/or state-sponsored federal-aid project qualifies for a CE specifically listed in 23 CFR 771.117(c) and (d) (listed in Appendix A and B of this Agreement) or a CE designated for the State (listed in Appendix C of this Agreement). This Agreement also authorizes ARDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117(c) & (d) but meeting the CE criteria in 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. §§ 4321et seq.
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- C. Fixing America's Surface Transportation Act, P. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. DOT Order 5610.1C
- E. 23CFR 771.117

IV. RESPONSIBILITIES

A. ARDOT is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c)), Appendix B (CEs established in 23 CFR 771.117 (d)), and designated CE actions in Appendix C, that do not exceed the thresholds in Section IV(A)(1)(b) of this Agreement, ARDOT may make a CE approval on behalf of FHWA. ARDOT will identify the applicable listed CE(s) from Appendix A, B, and/or C, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE(s) by FHWA is required. Referred to by ARDOT as a Programmatic CE (PCE).
 - b. ARDOT may not approve actions listed in Appendix A, B, and/or C that exceed the thresholds described below. ARDOT may certify to FHWA that the action qualifies for a CE. An action requires FHWA CE review and approval based on ARDOT certification if the action:
 - i. Involves acquisitions of more than a minor amount of right-of-way (ROW). A minor amount of ROW is defined as less than five (5) acres;
 - ii. Involves acquisitions that result in more than five (5) residential or non-residential displacements;
 - iii. Results in capacity expansion of a roadway by addition of through lanes;
 - iv. Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions. Major traffic disruption is defined as changes that would significantly impact economic prospects, create a significant hardship for the local business community, or significantly disrupt school, emergency, or commercial traffic;
 - v. Involves the following changes in access control: significantly limits access to established businesses or significantly alters traffic patterns within a community;
 - vi. Results in a determination of an adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) that cannot be resolved through a Memorandum of Agreement (MOA);

- vii. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303 / 23 U.S.C. § 138) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation;
- viii. Requires the conversion of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i, 50 Stat.917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;
- ix. Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit and/or a General Permit;
- x. Requires a U.S. Coast Guard Bridge Permit (33 U.S.C. § 401);
- xi. Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;
- xii. Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture;
- xiii. Is defined as a “Type I Project” per 23 CFR 772.5 and any ARDOT Noise Manual/Policy for purposes of a noise analysis except if the project does not require new ROW.
- xiv. Includes a “May Affect, Likely to Adversely Affect” determination under Section 7 of the Endangered Species Act (16 U.S.C. § 1536) for a federally listed or candidate species, or proposed or designated critical habitat except when covered under a FHWA Formal Programmatic Agreement (PA) or other PA between ARDOT/FHWA and USFWS; or requires a permit subject to the conditions of the Bald and Golden Eagle Protection Act;
- xv. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project(s) (23 U.S.C. § 108(d));
- xvi. Does not conform to the State Implementation Plan, which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;

- xvii. Is not included in or is inconsistent with the Statewide Transportation Improvement Program (STIP) and in applicable urbanized areas, the Transportation Improvement Program (TIP); and
 - xviii. The project involves unresolved controversy with the public, interested agencies, or tribes.
- c. ARDOT may not approve actions not specifically listed as CEs in Appendix A, B, and/or C. Instead, if ARDOT believes that an action meets the requirements of a CE under 23 CFR 771.117(a), ARDOT may certify that an action will not result in significant environmental impacts if ARDOT concludes that the action qualifies for a CE, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. ARDOT shall submit this certification to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project. If requested by the Division Office, ARDOT shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section V of this Agreement.
- i. If any project requires a Section 4(f) *de minimis* determination or programmatic evaluation, ARDOT shall submit the 4(f) documentation to FHWA for determination and approval;
 - ii. ARDOT may request notice to proceed with final design, acquisition of ROW, or construction from FHWA once ARDOT has completed its certification that a project is a CE.
 - iii. The Division Office's objection to an ARDOT certification may not constitute a disapproval of the action but signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies.
2. Providing a list of certified actions pursuant to this Agreement to the Division Office semi-annually allowing the Division Office ten (10) business days to either agree that some or all certifications are a basis for FHWA's approval of a CE for those actions, or to object to the certifications. The list of actions certified will contain the following information:
- a. ARDOT Project Number and a project name; including the county and route number or facility name where the project will occur;
 - b. Identification of the CE action listed in Appendix A, B and/or C; or if the action is not listed in 23 CFR 771.117, identification of the action as "CE not categorized";
 - c. Consultations or technical analyses that are pending (if applicable); and
 - d. Whether the project included a Section 4(f) *de minimis* or programmatic evaluation.

3. Consulting early in project development with FHWA for actions that involve unusual circumstances (23 CFR §771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. ARDOT may decide or FHWA may require additional studies to be performed and/or to hold public involvement meetings prior to making a CE approval, or the preparation of an EA or EIS.
4. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by ARDOT to make CE approvals or certifications submitted to FHWA under this Agreement. ARDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).

B. FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to ARDOT, as requested.
2. Providing timely input and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by ARDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF ARDOT CE APPROVALS AND CERTIFICATIONS

- A. For State CE approvals and State CE certifications to FHWA for approval, ARDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
 1. For actions listed in Appendix A, B and/or C, ARDOT shall identify the applicable action(s), ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a ARDOT signature evidencing approval.
 2. In addition, for actions listed in 23 CFR 771.117 (d) and Appendix C, ARDOT shall prepare documentation that supports the CE determination and that no unusual circumstances as described in Section IV (A)(1)(b) of this agreement exist that would make the CE approval inappropriate.
- B. ARDOT shall maintain a project record for CE approvals it makes on FHWA's behalf, and each CE submitted to FHWA for approval. This record shall include at a minimum:

1. Any checklists (see Appendix D), forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of ARDOT's approval or FHWA's final approval;
 5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary);
 6. Evidence documenting ARDOT's review and determination that the project has: (1) independent utility, (2) logical termini, and (3) does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements; and
 7. Evidence documenting that at the time of the CE approval or certification, ARDOT has complied, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.
- C. ARDOT shall provide any electronic or paper project records maintained by ARDOT to FHWA at their request. ARDOT shall retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve ARDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

- A. ARDOT's CE approvals and CE certifications submitted to FHWA for approval may only be made by officers or offices specifically identified below:
1. Approval of CEs in Appendix A and Appendix B is delegated to the ARDOT Environmental Division Head/Assistant Environmental Division Head.
 2. Certification of CEs is delegated to the ARDOT Environmental Division Head.
- B. In accordance with 23 CFR 771.129, if a change in the project scope, project limits, existing conditions, or pertinent regulations occurs after the CE has been approved, the approved CE determination shall be re-evaluated, commensurate with the change, to ensure the CE determination is appropriate. This should occur at the time the change is

identified, but at a minimum, the project must be assessed for changes when the project moves to the next subsequent phase of development (final design, ROW acquisition, or construction obligation).

If during the re-evaluation, the impacts exceed any threshold defined in section IV(A)(1)(b) of this Agreement or unusual circumstances defined in 23 CFR 771.117(b) exist, due to the change in scope of work or unforeseen conditions, ARDOT will send the re-evaluation to FHWA for review and a decision on how to proceed. The re-evaluation shall describe the project scope change(s) including an assessment of any consequential impacts. Include any mitigation commitment changes resulting from the re-evaluation, and documentation of coordination with resource agencies and the public, as appropriate. ARDOT shall not remove or alter commitments that resulted from coordination with resource agencies without the applicable agencies prior approval. ARDOT shall not remove or alter commitments that resulted from public coordination without prior appropriate public involvement and FHWA approval. Based on the re-evaluation process described herein, ARDOT will prepare additional documentation, if necessary, to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. ARDOT Quality Control & Quality Assurance

ARDOT shall carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.

B. ARDOT Performance Monitoring and Reporting

1. FHWA and ARDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. ARDOT agrees to annually submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement. The report will identify any areas where improvement is needed and what measures, if any, ARDOT is taking to implement those improvements. The report will include a description of the actions taken by ARDOT as part of its quality control efforts under Section VII (a).

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of ARDOT, as well as ARDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of ARDOT's CE approvals, CE submissions to FHWA for approval, adequacy, and capability of ARDOT staff and consultants, and the effectiveness of ARDOT's administration of its internal CE approvals.

2. FHWA will conduct one (1) or more program reviews as part of its oversight activities, during the term of this Agreement. ARDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. ARDOT should draft the corrective action plan within forty-five (45) days of FHWA finalizing its review. The results of that review and corrective actions taken by ARDOT shall be considered at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to ARDOT's performance under this Agreement. FHWA may require ARDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. ARDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and ARDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. ARDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if ARDOT requests renewal and FHWA determines that ARDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least thirty (30) days written notice to the other party.
- D. **Expiration or termination of this Agreement shall mean that ARDOT is not able to make CE approvals on FHWA's behalf.**

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature shown below.

02/06/2026

Jeffrey A. Schmidt, P.E.
Acting Division Administrator
Federal Highway Administration - Arkansas Division

Date



Jared D. Wiley, P.E.
Director
Arkansas Department of Transportation 

Date

APPENDIX A: 23 CFR 771.117 (c) - CRITERIA FOR PROGRAMMATIC CEs

This programmatic CE applies to the types of projects listed below and also do not exceed thresholds defined in Section IV(A)(1)(b) of this Agreement.

“c” list; The following actions meet the criteria for CEs in §771.117(a) and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) 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 23 U.S.C. 125; and

(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:

- 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
- Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally funded projects:

(i) That receive less than \$6,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov/legislation/authorizations/bil/bil_guidance.aspx or www.fta.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$35,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov/legislation/authorizations/bil/bil_guidance.aspx or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(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 23 CFR 771.117 (e).

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the action meets the constraints in 23 CFR 771.117 (e).

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the action meets the constraints in 23 CFR 771.117 (e).

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

APPENDIX B: 23 CFR 771.117 (d) and (h) - CRITERIA FOR PROGRAMMATIC CEs

This programmatic CE applies to the types of projects listed below and do not exceed thresholds defined in Section IV(A)(1)(b) of this Agreement.

“d” list, Additional actions that meet the criteria for a CE in paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) 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. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and/or (c)(28) of Appendix A that do not meet the constraints of Section IV(A)(1)(b) of this Agreement.

“h” list, any action qualifying as a CE under § 771.116 or § 771.1 18 may be approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

APPENDIX C: State Designated CE Actions - CRITERIA FOR PROGRAMMATIC CEs

No additional State Designated CE Actions currently.

APPENDIX D: Example CE Checklist

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job _____ **FAP** _____

Job Title _____

Class Determination _____

Environmental Resource	None	Minimal	Major	Comments
Air Quality				
Community/Social				
Cultural Resources				
Economic				
Federal Lands				
Floodplains				
Hazardous Materials				
Important Farmland				
Land Use				
Protected Species				
Protected Waters				
Public Water Supply				
Relocations				
Section 4(f)/6(f) properties				
Solid Waste				
Streams				
Traffic Noise				
Visual				
Water Quality				
Wetlands				

Permits: Indicate either a "yes" or "no" if permit is required or not.

Section 404 Permit Required? _____ Type _____

Section 408 Approval Required? _____

Section 9 USCG Bridge Permit Required? _____

Section 10 Navigable Waters Permit Required? _____

Section 401 Water Quality Certification Required? _____

Short-term Activity Authorization Required? _____

Remarks: _____

Signature of Evaluator _____ **Date** _____