



Chapter 10: NEPA Processes and Compliance for Other Federal Agencies

	<u>Page</u>
10. NEPA PROCESSES AND COMPLIANCE FOR OTHER FEDERAL AGENCIES.....	10-1
10.1 FRA and NEPA Compliance	10-1
10.2 FTA NEPA Compliance	10-2
10.2.1 Class I - Environmental Impact Statement (EIS).....	10-3
10.2.2 Class II - Categorical Exclusion (CatEx).....	10-3
10.2.3 Class III - Environmental Assessment (EA).....	10-6
10.3 References	10-7



10. NEPA Processes and Compliance for Other Federal Agencies

This chapter discusses the coordination process and timelines for environmental compliance on projects using Federal Transit Administration (FTA) or Federal Railroad Administration (FRA) funds administered through the Colorado Department of Transportation (CDOT) Division of Transit and Rail (DTR). Note that most major transit projects receive funding directly from FTA and are not administered and managed by CDOT. These projects, like the Regional Transportation District's (RTD) FasTracks program and the Fort Collins Mason Bus Rapid Transit (BRT) system, are coordinated directly with FTA by the agency for the planning, design, engineering, environmental, construction, and funding processes as required. This chapter solely focuses on those projects that receive state and Federal transit funds administered by DTR; the majority of which are Categorical Exclusions (CatExs).

This chapter also discusses the FTA process and procedures for NEPA compliance. FTA's processes for Environmental Impact Statements (EIS), CatExs, and Environmental Assessments (EA) have similarities and differences when compared to Federal Highway Administration (FHWA) processes discussed in **Chapters 4, 5, and 6**, respectively. For the most part, FTA follows the same regulations and guidance as FHWA with the differences noted throughout this chapter as appropriate. The regulations found in 23 Code of Federal Regulations (CFR) 771 are issued jointly by FHWA and FTA and apply to projects funded by either agency. Currently, there is no Stewardship Agreement between FTA and CDOT as there is between FHWA and CDOT. For all FTA -funded projects, National Environmental Policy Act (NEPA) approval is granted by FTA only.

10.1 FRA and NEPA Compliance

In 2018, FRA joined FTA and FHWA's CFR 771 rule, which harmonizes the NEPA implementing procedures of the three operating administrators. While the FRA has not yet been integrated with CDOT as fully as FTA and FHWA, DTR's Passenger Rail Branch will begin working more closely with FRA on NEPA projects. The FRA is moving to adopt FHWA and FTA regulations in past bills to complement established FRA guidance on NEPA projects.

Some existing FRA guidance includes regularly held and recorded webinars primarily focused on introductory information for NEPA and key environmental reviews related to FRA processes, such as Section 106. More information on CDOT's process with Section 106 can be found in **Chapter 9**. Further guidance on FRA and NEPA Classes of Action is available at their website as well, including relevant legislation for EAs, EISs, and CatExs, along with additional guidance and worksheets for completing FRA CatExs.



FTA defines a *designated recipient* as “an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 USC 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.”



For more information on at the FRA's current NEPA guidance and resources, visit the FRA website and webinar resources page.

<https://railroads.dot.gov/rail-network-development/environment/fra-nepa-documentation>



10.2 FTA NEPA Compliance

As discussed in **Chapter 2**, to address the NEPA responsibilities established by the Council on Environmental Quality (CEQ), FHWA and FTA jointly issued regulations, *Environmental Impact and Related Procedures* (23 CFR 771). The regulations set forth the agencies' policy of combining all environmental analyses and reviews into a single process. It defines the roles and responsibilities of FTA and its grant applicants in preparing documents and in managing the environmental process within the various project development phases.

For all categories of NEPA documentation (EIS, CatEx, or EA), FTA makes the class of action determination (**Section 2.4** and 23 CFR 771.115) and the approval. The NEPA document and any other required environmental documentation should be complete before applying for or approving Federal assistance. Grant applicants intending to apply for CDOT-administered FTA funds should work with DTR during the application process to ensure that all information required by FTA is complete. For these funds, DTR will submit an application, along with any required NEPA documentation, on behalf of the grant applicant in FTA's grant management system, TrAMS.

The vast majority of projects that DTR administers on behalf of FTA are non-construction projects and qualify as a CatEx. Projects include routine vehicle and equipment acquisition; rehabilitation and maintenance; planning, administration, training, and operating activities; and safety, security and communication equipment. FTA typically approves these types of projects as a c-list CatEx. Unless unusual circumstances exist, these project require no formal documentation by DTR or FTA (see **Section 10.2.2** for more information on FTA CatEx requirements). The CatEx determination and approval occur in TrAMS for these types of projects.

While a project involving construction may be considered a CatEx, it is not exempt from other environmental laws that may apply to the project, such as Section 106 of the National Historic Preservation Act, Section 4(f) of the US Department of Transportation Act of 1966, Section 404 of the Clean Water Act, or Section 7 of the Endangered Species Act. Applicants need to apply and obtain applicable environmental permits and approvals even for projects that qualify as CatExs.

All DTR and FTA projects involving construction are required to go through a Title VI Equity Analysis. This analysis takes place before design activities and includes an analysis of the impacted populations, project impacts, and potential alternative project locations. Projects should coordinate with DTR, the Equity and Environmental Justice Branch at CDOT, and FTA when conducting an equity analysis. The FTA's Title VI Circular to 4702.1B includes guidance and requirements for conducting an Equity Analysis.

If a project has unusual circumstances, such as the presence of wetlands, historic buildings or structures, parklands, or floodplains in the project area, the grant applicant must work with FTA to determine what documentation may be required.



FTA NEPA-Related Regulations and Guidance:

- FHWA/FTA Environmental Impact and Related Procedures. 23 CFR 771
- FTA Categorical Exclusions. 23 CFR 771.118
- Guidance for Implementation of FTA's Categorical Exclusions. (23 CFR § 771.118)
- FTA Region 8 Bulletin No: 2016-12 FTA Environmental Standard Operating Procedures
- FTA Region 8 Bulletin No: 2016-16 Region 8 Revised Categorical Exclusion Worksheet and Instructions



The FTA's guidance on Title VI can be accessed here:

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/title-vi-requirements-and-guidelines-federal-transit>



10.2.1 Class I – Environmental Impact Statement (EIS)

The introduction of **Chapter 4** provides general information about Class I. If an EIS is deemed necessary, the FTA process is similar to the FHWA/CDOT process described in **Chapter 4** and can generally be followed with coordination and guidance from FTA.

FTA projects typically requiring an EIS include:

- ▶ New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit)
- ▶ New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility

Unless it is a joint EIS process among FTA, FHWA, CDOT and a transit agency, such as RTD, CDOT will not be involved in the development, review or signing of the EIS. The Southeast Corridor EIS (TREX) is an example of a joint EIS process, where all parties were involved and signatories on the document. While CDOT staff may be part of a project team and provide input, the document will not be processed through CDOT for review or signature.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ FTA conducts all contact and consultation with resource and regulatory agencies, and Tribes.
- ▶ Requirements for some analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA's Transit Noise and Vibration Impact Assessment guidance (2018). Some transit projects are exempt from air quality conformity and/or regional air quality emissions analyses.
- ▶ FTA issues Letters of Intent to indicate the intention to obligate future funds for multi-year capital transit projects. FTA will not issue Letters of Intent until the NEPA process is complete.
- ▶ CDOT is typically not a signatory on FTA EIS documents. The exception occurs when it is a joint project, such as the Southeast Corridor EIS (TREX). On these documents FHWA, FTA, RTD, and CDOT signed the signature page.
- ▶ FTA does not have a stewardship agreement with CDOT and does not delegate environmental review and approval to CDOT.

10.2.2 Class II – Categorical Exclusion (CatEx)

The majority of transit projects funded through DTR-administered FTA funds qualify as a CatEx, including many of the construction projects. FTA is responsible for determining whether the action described by the grant applicant falls within the CatEx category (i.e., the action meets all conditions listed in the CatEx regulations), whether the action is



impermissibly segmented from a larger project, and whether there are unusual circumstances (e.g., substantial controversy on environmental grounds, significant impact to properties protected by Section 4(f) or Section 106) that would make a CatEx determination inappropriate.

Grant applicants should include sufficient project information for FTA to make a class of action determination (see **Section 2.4** for more information on classes of action). For non-construction projects, a description of the project in the grant application is sufficient for FTA approval. The CatEx category is selected and approved directly in TrAMS and no further documentation is required.

While many transit projects processed through DTR are non-construction projects and fall within c-list CatExs requiring no formal documentation, a few involve construction and require additional environmental review. Documentation demonstrating compliance with other environmental requirements, such as Section 106 or Section 7, may be necessary for construction projects. This information is required before DTR will submit an application to FTA on behalf of the grant applicant.

Before submitting an application for capital construction projects (maintenance facilities, stations, etc.), the grant applicant will initiate the design phase (e.g., conceptual design, preliminary engineering), the environmental review/clearance process, utility/third party coordination; determine right-of-way (ROW) requirements; identify the amount and source of local match, and other related activities, as applicable. Applicants cannot undertake final design, ROW acquisition, or construction prior to completion of NEPA and compliance with other environmental laws.

FTA and DTR require a grant applicant to complete the following activities before an application will be submitted to FTA on their behalf:

- ▶ Complete the Agency Profile and Capital Asset Inventory in CoTRAMS.
- ▶ Complete the CoTRAMS application, providing information on project description, amount of funding needed, purpose and need for project, project location, consistency with planning process, and any coordination activities.
- ▶ Complete and get approval of the *Region 8 Categorical Exclusion Worksheet* (CatEx worksheet) for construction projects. Projects that do not lead to or involve construction do not need to complete the CatEx worksheet. FTA will review the CatEx worksheet to determine whether the project qualifies as a CatEx and if compliance with other environmental laws is required.
 - Upon receipt of applications in CoTRAMS, DTR will identify all construction projects requiring completion of the CatEx worksheet. Primarily these are facility construction projects. Non-construction projects seeking funding will not require completion of the CatEx worksheet. FTA can assist the grant applicant with completing the CatEx worksheet.
 - The draft CatEx worksheet should be submitted to FTA **at least 45 days** prior to submitting a grant application. FTA will review



the draft CatEx worksheet to determine if any unusual circumstances exist and if additional work or permits may be required.

- DTR will submit the final CatEx worksheet as part of the grant application to FTA on behalf of the grant applicant, along with the CatEx approval letter from FTA.
- ▶ Obtain all required environmental permits.
- ▶ Technical specifications and a procurement plan, once funding is secured, for a capital equipment project.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ The list of projects that qualify for FTA CatExs is found in 23 CFR Part 771.118. FHWA CatExs listed in 23 CFR Part 771.117 or as added or changed by the Programmatic Agreement CDOT has with FHWA do not apply to FTA projects.
- ▶ FTA conducts all contact and consultation with resource and regulatory agencies and with Tribes as needed.
- ▶ Requirements for some of the analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA’s Transit Noise and Vibration Impact Assessment guidance (2018). Some transit projects are exempt from air quality conformity and/or regional air quality emissions analyses.
- ▶ FTA CatExs for construction projects should be submitted using the FTA Region 8 Categorical Exclusion Worksheet at least 45 days before submitting a grant application.
- ▶ CDOT is not a signatory on FTA CatExs.
- ▶ FTA does not have a stewardship agreement with CDOT and does not delegate environmental review and approval to CDOT.

FTA CatEx Regulations 23 CFR 771.118

To provide a more efficient environmental review process for projects relating specifically to transit, the FTA CatEx should be followed (23 CFR 771.118), which differs from the FHWA CatEx (23 CFR 771.117). Guidance for the Implementation of FTA’s Categorical Exclusion (23 CFR 771.118) was most recently updated January 5, 2023, at the time of this manual update. CatExs included in 23 CFR 771.117 (FHWA CatExs) should no longer be used for FTA’s actions on projects. However, multimodal projects containing both FHWA-funded and FTA-funded elements (such as the reconstruction of a highway lane within existing ROW for express bus service) should be processed under both, as appropriate. **Chapter 5** includes information about CatExs in general and about FHWA/CDOT CatEx processes.

Per CEQ’s *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* guidance (November 2010), the CatExs in 23 CFR 771.118 are presented as general categories that include limitations, as appropriate, and provide an informative, but not exhaustive, list of examples.



The *FTA Region 8 Categorical Exclusion Worksheet Instructions and Environmental Resources Information* are located on the Region 8 page of the FTA website:

<https://www.transit.dot.gov/about/regional-offices/region-8/fta-region-8-categorical-exclusion-worksheet-instructions-and>



Note that the regulations use “CE” rather than “CatEx.” CDOT has traditionally used “CatEx,” and that is what the NEPA Manual reflects.



If an action could fall under multiple CatExs listed in section 771.118(c) due to their broad nature and/or one or more of the examples under section 771.118(d), then the best option (only one) is chosen (i.e., the CatEx that most closely fits the proposed activities) for the particular project in consultation with the FTA Region 8 Office. Ultimately, the selected CatEx must cover all aspects of the proposed project's scope, and the project description should include all project elements.

10.2.3 Class III – Environmental Assessment (EA)

As stated previously, FTA determines the class of action (Section 2.4 and 23 CFR 771.115). General information about Class III is included in the introduction of Chapter 6. If an EA is deemed necessary, the FTA process is similar to the FHWA/CDOT process described in Chapter 6 and the process described in that chapter can generally be followed with coordination and guidance from FTA.

While CDOT staff may be part of a project team and provide input on an EA, the document will not be processed through CDOT for review or signature.

Differences to note between the FTA and FHWA/CDOT processes include:

- ▶ FTA conducts all contact and consultation with resource and regulatory agencies and with Tribes.
- ▶ Requirements for some of the analyses can be different. For example, noise and vibration should be assessed for proposed mass transit projects using FTA's *Transit Noise and Vibration Impact Assessment* guidance (2018). Some transit projects are exempt from air quality conformity and/or regional air quality emissions analysis.
- ▶ FTA issues Letters of Intent to indicate the intention to obligate future funds for multi-year capital transit projects. FTA will not issue Letters of Intent until the NEPA process is complete.
- ▶ CDOT is typically not a signatory on FTA EA documents.
- ▶ FTA does not have a stewardship agreement with CDOT and does not delegate environmental review and approval to CDOT.



For additional details and examples for each CatEx category, see the FTA's *Guidance for Implementation of FTA's Categorical Exclusions* (23 CFR. §771.118)

<https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-01/section-118-guidance-January-2023-Updated.pdf>



10.3 References

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