

# FHWA Categorical Exclusions: What are they and how have they changed?

Presented By: Ian Chidister, Environmental Program Manager, FHWA - Wisconsin

## Regulatory Background

The National Environmental Policy Act of 1969 (NEPA)

- Purpose: "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality" (42 USC 4321)
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## Significance & Classes of Action



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## Significance & Classes of Action

- NEPA established the concept of a *significant* environmental impact.
- Significance = Context + Intensity
  - Context = setting in which the action occurs
  - Intensity = severity of impact
- Whether an action includes significant environmental impacts assigns it to one of three classes of action: (1) Environmental Impact Statement, (2) Environmental Assessment, or (3) Categorical Exclusion.

# Environmental Impact Statement (EIS)

- Prepared when an action includes a significant environmental impact.
- The most comprehensive form of NEPA documentation.
- Prepared in 3 stages:
  1. Draft EIS (DEIS)
  2. Final EIS (FEIS)
  3. Record of Decision (ROD)
- FHWA regulatory changes under MAP-21 direct that the FEIS and ROD be combined whenever possible.

## Environmental Assessment (EA)

- Prepared when the significance of environmental impact is unknown.
- Prepared in 2 stages:
  - (1) Environmental Assessment (EA)
    - \*\*If no significant impacts are identified, then:*
  - (2) Finding of No Significant Impact (FONSI)
    - \*\*If significant impacts are identified, then:*
- (2) Draft EIS (DEIS)

## Categorical Exclusion (CE)

- Prepared when an action does not include a significant environmental impact.
- NEPA regulations provide flexibility to Federal Agencies to determine what types of actions will be categorically excluded.
- FHWA implementing regulations for CEs are found in 23 CFR 771.117.
- Classification of an action as a CE does not relieve it of requirements to comply with other laws and regulations (e.g. NHPA, 4(f), CWA, CAA, ESA, etc.).





## The (c) List

- Described in FHWA regulations at 23 CFR 771.117(c).
- Traditionally, (c) list actions have included non-construction activities and activities with minor construction impacts.
- (c) list actions do not normally require individual review and approval by FHWA.

## The (d) List

- Described in FHWA regulations at 23 CFR 771.117(d).
- (d) list includes actions that have potentially greater construction impacts than (c) list actions.
- (d) list actions require State DOTs to submit documentation for FHWA review and approval to confirm that the action will not have significant environmental impacts.

## Programmatic Agreements

- Specified by state-specific programmatic agreements between the State DOT and FHWA Division.
- Most agreements provide programmatic approval of certain (d) list actions if they meet specific environmental impact criteria.
- The "current" WisDOT-FHWA Agreement (from 1990) identifies 5 types of actions ~ (d)(1) and (d)(3), and impact criteria.

## **(c) List Documentation**

- WisDOT does not currently have a standard documentation format for (c) list projects.
- Updates to the WI CE Programmatic Agreement will include a brief checklist for (c) list actions to be retained in the project file and aid with project tracking.

## (d) List Documentation

- WisDOT currently uses an Environmental Report (ER) comprising Basic Sheets and Factor Sheets for (d) list projects.
- ERs are prepared by WisDOT, then submitted to FHWA for review and approval.
- WisDOT and FHWA regularly update the format and content of the Basic and Factor Sheets to better reflect compliance with State and Federal laws and policies.

## pER Documentation

- WisDOT currently uses a Programmatic Environmental Report (pER) checklist to document the projects subject to the WI CE Agreement.
- The pER is internally prepared, reviewed, and approved by WisDOT.
- FHWA conducts periodic reviews of WisDOT's use of pERs.
- Updates to the WI CE Programmatic Agreement include some revisions to the existing pER form and content.

## MAP-21 Changes: (c) List

- MAP-21 substantially changed the (c) list through:
  - Modifications to an existing CE [(9)].
  - Additions of new CEs [(22), (23), (24), (25), (29), & (30)].
  - Moving some (d) list actions to the (c) list, with conditions [(d)(1-3) become (c)(26-28) if the conditions in paragraph (e) are met].

## MAP-21 Changes: (d) List

- The only MAP-21 change to the (d) list is to allow (d)(1-3) to be processed as (c) list actions if the criteria in paragraph (e) are met.
- If a project does not meet the criteria in paragraph (e), then it can still be processed as a (d) list action, using ER documentation.



## WI Programmatic Agreement Changes

- MAP-21 formalized standard requirements for PAs.
- Proposed updates to the WisDOT-FHWA PA include:
  - Expanding the project types that WisDOT can internally document and approve with the pER.
  - Added stipulations for monitoring, reporting, quality control, professional qualifications, term, and renewal to comply with MAP-21.
  - Updates to existing forms and new documentation forms.

