

environment and for which, therefore, neither an EA nor an EIS is required. The use of a CE is intended to reduce paperwork and delay by eliminating the unnecessary preparation of EAs and EISs. All CEs are subject to "extraordinary circumstances" (40 CFR 1508.4).

b. *FMCSA List of CEs.* A list of current FMCSA CEs can be found in Appendix 2 of this Order. The CEs listed in Appendix 2 are subject to review and any suggested modifications should be provided to the Administrator. Additional CEs should be suggested by the responsible FMCSA official when it becomes clear that the category of actions does not individually or cumulatively result in significant effects. For example, when through the preparation of EAs, FONSI result after numerous analyses of similar types of actions and monitoring confirms the FONSI are appropriate, a new CE should be proposed.

3. Limitations on Using Categorical Exclusions

a. Extraordinary circumstances that preclude the use of a categorical exclusion are when the proposed action:

(1) Has greater size or scope than is generally experienced for the category of action.

(2) Is reasonably likely to create controversy regarding the potential for significant environmental effects (direct, indirect, and cumulative).

(3) Has highly uncertain effects on the environment that involve unique or unknown risks, or are scientifically controversial.

(4) Is reasonably likely to establish a precedent (or makes decisions in principle) for future or subsequent actions that would have a future significant effect.

(5) Is reasonably likely to have significant effects on public health, safety, or the environment.

(6) Is reasonably likely to be inconsistent with or cause a violation of any Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(7) Is reasonably likely to cause reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(8) Is reasonably likely to cause releases of petroleum, oils, and lubricants, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(9) Is reasonably likely to generate air emissions that would exceed *de*

minimis levels or otherwise require a formal Clean Air Act conformity determination.

(10) Has reasonable potential for degradation of already existing poor environmental conditions. Also, reasonable initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Is reasonably likely to have an unresolved effect on environmentally sensitive resources unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc). Environmentally sensitive resources include:

(A) Proposed federally listed, threatened, or endangered species or their habitats.

(B) Properties listed or eligible for listing on the National Register of Historic Places.

(C) A site that involves a unique characteristic of the geographic area, such as prime or unique agricultural land, a coastal zone, a historic or cultural resource, park land, wetland, wild and scenic river, designated wilderness or wilderness study area, 100-year floodplain, sole source aquifer (potential sources of drinking water), ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). (Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the Department of Transportation (DOT) Act, which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or any historic site).

(12) Is considered together with other past, present and reasonably foreseeable future actions, and is likely to create cumulatively significant impacts.

(13) Has a reasonably disproportionate (high and adverse) effect on a minority or low income population, change in traffic patterns or an increase in traffic volumes (road and/or waterway) that could require rerouting of roads, waterways, or traffic.

b. The listed circumstances above and those in the DOT Order are addressed in the Environmental Checklist (Appendix 1). If a CE is *not* appropriate, an EA or an EIS must be prepared.

c. When the specific CE requires that a checklist be completed, an Environmental Checklist (Appendix 1) will be completed and used to substantiate the use of the CE. The checklist must be submitted with the proposal for the action. If a CE is not appropriate, the Environmental Checklist will be used for developing an EA or EIS. A written Categorical Exclusion Determination (CED) must be prepared when a CE will be relied on to

promulgate a regulation that requires an environmental checklist. Checklists and CEDs supplementary to the requirements of this Order may be developed by subordinate commands for specific types of actions. Those documents must be approved by the Administrator before they are adopted for use.

d. Even though a CE is appropriate, that fact does not exempt the action from compliance with any other Federal law or any review or consultation requirements contained in any applicable agreement. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act (conformity requirements), etc., is always mandatory, even for actions that do not require an EA or EIS.

4. Environmental Assessment (EA)

An EA is a brief report that provides sufficient evidence and analysis to determine the significance of the potential environmental effects of the proposed action and its alternatives. The EA documents, in summary, set forth the agency's consideration of environmental effects in the planning stages of the action. The EA is the document used to determine whether to prepare an EIS, a Finding of No Significant Impact (FONSI), or a decision withdrawing the proposal on the basis of its environmental impacts (40 CFR 1508.9).

a. An Environmental Assessment (EA) means a concise public document that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to provide:

(A) An Environmental Impact Statement; or

(B) A Finding of No Significant Impact.

(2) Aid an agency's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

b. All EAs shall include brief discussions of:

(1) The need for the proposal;

(2) The no action alternative and alternatives as required by section 102(2)(E) of NEPA;

(3) The environmental impacts of the proposed action and alternatives;

(4) The significance of effects:

(A) Context(s) in which effects may occur.

(B) Intensity of effects, using the Environmental checklist as an outline, and including mitigation measures