

**U.S. DEPARTMENT OF
TRANSPORTATION**

ADMINISTRATIVE RECORD

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U.S. DEPARTMENT OF TRANSPORTATION

ADMINISTRATIVE RECORD TO UPDATE EXISTING AND SUPPORT NEW CATEGORICAL EXCLUSIONS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

I. Overview

The U.S. Department of Transportation (DOT or Department) is proposing to revise its National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.* (NEPA) implementing procedures, DOT Order 5610.C, Procedures for Considering Environmental Impacts (existing Order),¹ to ensure DOT’s environmental reviews and activities conform to the requirements of NEPA, the Council on Environmental Quality (CEQ) regulations, and recent Congressional authority directed towards accelerated and efficient environmental reviews.² DOT is seeking public review and comment in a Notice of Proposed Rulemaking (NPRM) that would revise the existing Order and would codify those revisions at part 13 of Title 49 of the Code of Federal Regulations (CFR) as the DOT NEPA Implementing Procedures. As part of this, DOT would update its list of categorical exclusions (CEs). Based upon its review and consistent with CEQ regulations and guidance, DOT would modify 5 of the existing CEs, add 11 new CEs, and eliminate 1 CE and 1 subpart of a CE no longer deemed useful or appropriate.

Existing CE #	New CE #	CE Description	Status
1	1	Routine procedural, administrative, financial, and management actions	Modified
2	2	Personnel actions	Modified
3		Project amendments	Removed
	3	Training, technical assistance, educational and informational programs and activities	New
4	4	Operating or maintenance subsidies	Modified
5	5	OA CEs – allowing cross-Department use of OA CEs	Modified
6(a)-(n)	16(a) – (l)	Economic regulation	Removed 6(b) as no longer needed
	6	Leasing space in existing buildings and facilities	

¹ The Department issued minor updates to DOT Order 5610.1C, 44 FR 56420 (Oct. 1, 1979), on July 13, 1982, 47 FR 34243-03 (Sept. 30, 1982) and July 30, 1985. These updates did not alter the list of CEs, except for CE (6), related to the economic regulation of airlines, which was added in 1985.

² See Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94 (2015) § 1444(a)(1) (Congress declared that it is in the national interest for the Department, among other things, “to identify, accelerate, and deploy innovation aimed at shortening project delivery . . . and protecting the environment”); Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141 (2012), § 1301(a)(1) (Congress declared that “it is in the national interest for” DOT and others “to accelerate project delivery and reduce costs” and to ensure that project planning and design is conducted in “an efficient and effective manner . . . while enhancing safety and protecting the environment”). See also *id.* § 1301(c), codified at 23 U.S.C. § 101(b)(4)(A) (declaring “that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process”).

7	Remodeling existing buildings or facilities	New
8	Gardening existing buildings or facilities	New
9	Investigations, research activities, and studies including data collection	New
10	Administrative, organizational or procedural issuance of rules, guidance, and policies	New
11	Safety standards and regulations that do not result in substantial increases in emissions, noise, traffic congestion or reportable hazardous materials	New
12	Hearings, meetings, and public outreach activities	New
13	Administrative actions and proceedings	New
14	Financial assistance for purposes of refinancing outstanding debt	New
15	Agreements with foreign governments	New

This document provides the rationale and supporting information for the proposed new CEs and the modifications to certain existing CEs. It further explains DOT's approaches to reviewing its existing CEs and ensuring that the retained and modified CEs continue to be appropriate and useful. DOT is making this document available to the public concurrent with the publication of the NPRM for public review and comment.

DOT's approach was informed by CEQ's Memorandum, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (November 23, 2010) (CEQ Guidance). CEQ developed this guidance to explain the requirements of NEPA and CEQ regulations, describe CEQ policies, and recommend procedures for agencies to use to ensure that their use of CEs is consistent with applicable law and regulations.³ When substantiating a new CE, the guidance recommends that agencies rely upon several sources of supporting information. These sources include the experiences and opinions of professional staff, comparative benchmarking of other agencies' CEs, and the agencies experiences with their own CEs and assessments of the environmental effects of previously implemented agency actions. DOT gathered and evaluated information from these types of sources to substantiate each proposed new CE set forth in the NPRM, which this document describes below.

The CEQ Guidance also recommends agencies periodically review their existing CEs to ensure they remain current and appropriate.⁴ This review can assess if an agency is not using a CE because the CE is too narrowly defined, if a CE includes actions that regularly raise the potential for significant environmental effects, or if other modifications are merited.⁵ DOT has conducted a review of the CEs set forth in the existing Order to ensure they continue to be appropriate, accurate, and useful. In this review, DOT relied upon the experiences and opinions of its professional staff, DOT's knowledge of the applicability of the existing CEs to earlier DOT actions, and the experience of individual DOT Operating Administrations (OAs).⁶

³ CEQ Guidance, 1.

⁴ *Id.* at 16

⁵ *Id.* at 15-16.

⁶ *Id.* at 17.

DOT has determined that this updated list would be consistent with DOT’s obligations under NEPA and will improve the effectiveness and efficiency of the Department’s programs. This updated set of CEs would be available Department-wide, and they would be in addition to any CE available to each OA under that OA’s NEPA implementing procedures.

II. Methods Used to Substantiate Proposed New CEs

This section outlines the methods used to substantiate the new CEs: comparative benchmarking of other agency and OA CEs, agency professional experience, and supporting EAs and findings of no significant impact (FONSI)s). Consistent with CEQ guidance, DOT drafted the new CEs to “clearly define the eligible category of actions, as well as any physical, temporal, or environmental factors that would constrain [their] use.”⁷ In addition, as appropriate, the text includes “representative types of examples of the types of activities covered in the text of the categorical exclusion,” to “provide further clarity and transparency regarding the types of action covered by the [CEs].”⁸ The proposed 10 new CEs are for categories of actions that DOT reasonably expects to have little or no impact.⁹

A. Comparative Benchmarking of Other Agency Experience

For each proposed new and modified CE, DOT examined similar CEs from other Federal agencies as well as OA CEs.¹⁰ In selecting the CEs for comparative benchmarking, DOT’s review focused on both the plain text of the CE and whether the types of activities described therein were substantially similar to those that DOT conducts. These comparable CEs are sufficiently descriptive to allow DOT to determine that those CEs’ activities are similar in nature, scope, and impact on the human environment as those performed by DOT in the proposed new and modified CEs. These comparative benchmarks illustrate that other Federal agencies are categorically excluding similar activities.

Existing Comparable OA CEs

All of the proposed new CEs, with one exception specific to evaluating airport fees, are comparable to CEs already in use by other DOT OAs, and DOT developed them in part based upon the historical success of those OAs’ application of the comparable CEs. These new CEs cover activities that are similar in scope, nature, and intensity to activities undertaken by other DOT OAs and identified as CEs in those OAs’ NEPA procedures. DOT OAs have been applying many of these CEs for over a decade or more, and thus have substantial experience with them and can conclusively attest to their lack of potential to result in a significant impact.

Therefore, DOT relied on existing comparable OA CEs to support the establishment of new CEs in the NPRM that any OA can apply. In relying on existing comparable CEs, DOT performed a careful evaluation to determine that the activities are appropriately excluded from the need to perform an EA or EIS because they do not individually or cumulatively have the potential to result in significant impacts on the quality of the human environment.

⁷ *Id.* at 5.

⁸ *Id.* at 5.

⁹ *Id.* at 7.

¹⁰ Appendix B provides a List of Other Agencies and DOT OAs Used for Benchmarking, Agency Abbreviations, and CE Citations.

Professional Experience

The Department relied upon the experience and knowledge of its NEPA practitioners, including environmental protection specialists and legal professionals, to develop and substantiate some of the proposed new CEs. DOT's NEPA Working Group, which recommended many revisions and updates set forth in the NPRM, was comprised of representatives from each of the DOT OAs except one.^{11, 12} The NEPA Working Group members embody a broad range of policy, legal, and program expertise to contribute to the assessment of the potential environmental effects of proposed DOT actions. This includes decades of environmental planning and compliance experience, including the performance of programmatic and site-specific environmental impact analyses and preparation of environmental documentation such as CEs, EAs, FONSI, EISs, and Records of Decision. Many group members were integral to drafting or modifying their own OAs' CEs. Members also conferred with colleagues from within their own OAs to ensure the highest degree of consistency and knowledge was represented. The expertise of the NEPA Working Group was supplemented by additional experts from within OAs and OST who possess specialized knowledge regarding an OA activity encompassed within a proposed CE. The NEPA Working Group reviewed and deliberated the concept, coverage, applicability, and wording of the new proposed CEs set forth below. The NEPA Working Group also identified CEs for similar activities both in OAs' NEPA procedures and those of numerous other Federal agencies. The Working Group found that these CEs were sufficiently descriptive of the activity such that the Working Group determined that those activities were similar in nature, scope, and impact on the human environment to activities performed by Department. The Working Group determined from its members' experience in or on behalf of DOT OAs and other Federal agencies that the characteristics of the activities in the Department were no different from those performed by other Federal agencies. Accordingly, through a thorough and deliberative process, the NEPA Working Group determined that the proposed new CEs encompassed activities that inherently did not have individual or cumulative significant impact on the human environment.

A small team of DOT Office of the Secretary NEPA practitioners—environmental protection specialists and legal professionals—developed the Administrative Record (Administrative Record Team), with support from OA representatives. This Team includes individuals with extensive experience in developing and reviewing NEPA documents, drafting and reviewing proposed NEPA procedures and supporting CE records, and reviewing draft NEPA guidance. The Administrative Record Team carefully reviewed information on each of the proposed new or modified CEs to identify examples of other OA and Federal agency CEs for benchmarking purposes as well as examples of EAs completed for similar actions. The Administrative Record Team also supplemented its expertise by relying upon additional experts from within OAs and within OST who had the requisite experience to assist in developing this Administrative Record. The Administrative Record Team sought to ensure that the proposed CEs fulfill the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements.

Supporting EAs and FONSI

¹¹ It did not include the Saint Lawrence Seaway Development Corporation because that OA was unable to participate due to other program responsibilities. The list of members of the NEPA Working Group appears in Appendix C.

¹² In 2020, staff in the Office of Policy and the Office of the General Counsel reviewed and updated, as appropriate, the work of the DOT NEPA Working Group represented in this Administrative Record.

While completing this review, DOT also considered certain completed projects in which EAs were prepared and resulted in FONSIIs, to determine whether they represented categories of actions without significant impact and could inform DOT's determinations regarding the activities covered by the proposed CEs.

III. Methods Used to Ensure Continued Appropriateness and Usefulness of Existing CEs and, as Appropriate, to Revise, Consolidate, or Remove Certain Existing CEs

DOT's existing Order identifies six specific categories of action as categorically excluded from EA and EIS requirements under NEPA. Five of these CEs have been in place since their adoption in 1979. A sixth, relating to the economic regulation of airlines, included 14 subcategories, and was added in 1985 to reflect new duties transferred to the Department from the former Civil Aeronautics Board. Consequently, DOT has a long history of working with these CEs and has had the opportunity to assess the potential for helpful modifications, or ones to consolidate or eliminate. The Department relied upon the professional experience and judgment of its NEPA practitioners, including environmental protection specialists and legal professionals, to review and ensure the continued appropriateness and usefulness of these existing CEs, modify them as appropriate, and ensure they have not been impacted by changed circumstances since their establishment.

Based upon this review, as identified below, DOT made modifications to 10 of the CEs or CE subparts.¹³ These modifications add clarifying language, for example, to provide "representative examples of the types of activities covered in the text of the categorical exclusion," or "further clarity and transparency regarding the types of action covered by the [CEs]."¹⁴ In addition, based upon its review of its existing CEs, DOT eliminated two CEs or subparts that were no longer useful or appropriate, and eliminated two others that were subsumed into other new CEs, and retained the remainder.¹⁵ For the CEs that were modified, other than for minor modifications, DOT relied upon its Administrative Record Team to provide substantiation for those modifications, just as it did for the new CEs. It also solicited input from others with expertise relevant to specific CEs.

A. Modifications to Certain Existing CEs

CE # 1:¹⁶ Routine procedural, administrative, financial, and management actions necessary to support the normal conduct of DOT business. Routine procurements and contract actions for goods and services including general supplies, equipment, utility services, contractor services, and personnel services.

Original CE # 1:¹⁷ Administrative procurements (e.g., general supplies) and contracts for personal services.

¹³ A number of these modifications consist solely of updates to citations.

¹⁴ CEQ Guidance, 5.

¹⁵ The chart attached as Appendix A sets forth the updated list of CEs, the current numbers as compared to the original numbers, and which CEs were modified.

¹⁶ These numbers are the numbers of the CEs as they appear in the NPRM

¹⁷ These numbers are those that appear in DOT Order 5610.1C, § 4(c).

Rationale and Support for Updates to CE # 1

This CE focuses on standard routine actions undertaken to support DOT’s daily business. DOT’s original CE # 1 included a set of administrative actions necessary to conduct DOT business.

Upon review, and based upon DOT’s experiences over the past decade, DOT determined it needed additional detail and clarity to better define the appropriate scope of this CE. The modifications also reflect an effort by DOT to provide “representative examples of the types of activities covered in the text of the categorical exclusion,” to “provide further clarity and transparency regarding the types of action covered by the [CEs].”¹⁸ By their nature, these actions in the revised CE have no inherent potential for significant impact on the human environment. The Federal Aviation Administration (FAA) has had a CE in its NEPA Procedures comparable to the first sentence in this CE for decades, and its experience applying that CE further establishes its propriety.¹⁹ In addition, DOT has confirmed through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the propriety of designating this category of actions as a CE, as identified below.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
Air Force	Routine procurement of goods and services. 32 CFR Part 989, Appendix B, A2.3.1
DHS	Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L2
DOI	Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties. 43 CFR § 46.210(c)
FAA	Administrative and agency operating actions, such as procurement documentation, organizational changes, personnel actions, and legislative proposals not originating in the FAA. FAA Order 1050.1F, 6.1(j)(asterisk omitted)
DOE	Routine actions necessary to support the normal conduct of DOE business limited to administrative, financial, and personnel actions. 10 CFR Part 1021, Subpart D, Appendix A, A1

¹⁸ CEQ Guidance, 5.

¹⁹ The earlier version of the FAA CE comparable to the benchmarked CE read: “Administrative and operating actions, such as procurements, organizational changes, personnel actions, and legislative proposals not originating in FAA.” FAA Order 1050.1D, CHG 3, Policies and Procedures for Considering Environmental Impacts (Dec. 21, 1983), Section 31(a)(1).

DOI	Management, formulation, allocation, transfer, and reprogramming of the Department’s budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.) 43 CFR § 46.210(g)
DHS	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, A1
NIH	Routine administrative and management support, including budget and finance, planning, procurement of supplies and services, management and oversight of grants and other funding instruments, legal counsel, public affairs, program evaluation, travel, and human resources management. 65 FR 2977, (B)(1)
USDA	Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions. 7 CFR § 1b.3(a)(1)

CE # 2: Personnel actions including recruiting, hiring, promotions, processing, paying, and recordkeeping.

Original CE # 2: Personnel actions (e.g. promotions, hirings).

Rationale and Support for Updates to CE # 2

DOT modified this CE slightly to provide additional clarity and transparency though the use of “representative examples of the types of activities covered in the text of the categorical exclusion.”²⁰ DOT’s review of this CE confirmed, through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE, that such personnel actions do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support this updated CE language.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
DHS	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, A1
DOI	Personnel actions and investigations and personnel services contracts. 43 CFR § 46.210 (a)
Navy	Routine personnel actions. 32 CFR § 775.6(f)(10)

CE # 4: Operating or maintenance subsidies or agreements, such as operating subsidies to transit agencies or to air carriers under the Essential Air Service program, when the subsidy or agreement will

²⁰ CEQ Guidance, 5

not result in a change in the effect on the environment.

Original CE # 4: Operating or maintenance subsidies when the subsidy will not result in a change in the effect on the environment.

Original CE # 6(a): Actions implementing the essential air service program.

Rationale and Support for Updates to CE # 4

DOT modified original CE # 4 slightly to provide additional clarity and transparency with “representative examples of the types of activities covered in the text of the categorical exclusion.”²¹ Moreover, as modified, CE # 4 now also encompasses the implementation of the essential air service (EAS) program included in Original CE # 6(a). Through the EAS program, DOT ensures that eligible communities (small communities served by certificated air carriers prior to the Airline Deregulation Act in 1978) maintain a minimum level of air service. DOT may provide a subsidy to the air carrier providing essential air service when necessary to maintain the minimum level of air service at an eligible community. The EAS program subsidizes air carriers as needed to ensure air service that meets the minimum service requirements established by statute. This does not result in an increase in air traffic at the eligible community and generally does not change the environmental impacts associated with the air service. Likewise, the Department added the term “agreement” because certain programs involve operating agreements where a set payment amount is provided in exchange for a service. While the new language adds some specificity, it does not alter the substance of the CE. DOT’s review of this long-established CE confirmed, based upon the professional knowledge and experience of its staff familiar with the application of this CE, that these types of activities continue to not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs as well as another Federal agency further support the continued designation of this CE, as modified.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FRA	Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not result in a change in the effect on the environment. 78 FR 2713 4(c)(13)
MARAD	Administrative procurements (e.g., general supplies), contracts for personal services, personnel actions, project amendments which do not significantly alter the environmental impact of an action; and operating or maintenance subsidies, ship financing guarantees, deferred tax programs, etc., not resulting in a change in the effect on the environment. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 1

²¹ CEQ Guidance, 15

HUD	Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations. 24 CFR § 58.35(b)(4)
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CE # 5: Actions categorically excluded in OA Procedures where the action is administered by another OA. The OA with the CE must provide a written determination that the CE applies to the action proposed by the other OA and provide expertise in reviewing the action being categorically excluded. The extraordinary circumstances provided in the OA Procedures where the CE is listed should be considered in lieu of the extraordinary circumstances provided in § 13.17(b). This CE is not applicable to actions that meet the definition of multimodal project in 23 U.S.C. 139(a); instead, an OA may follow the process in § 13.17(c).

Original CE # 5: Other actions identified by the administrations as categorical exclusions pursuant to paragraph 20 (“Implementing Instructions”).

Rationale and Support for Updates to CE # 5

DOT has modified CE # 5 to clarify that, with one important exception noted below, one OA can apply another OA’s CE when the OA with the CE provides a written determination that the CE applies to the action proposed by the other OA and expertise in reviewing the action being categorically excluded. Using this approach, the OA applying the CE to its proposed action would request that the OA with the CE determine based upon its expertise that application of the CE is appropriate. This will ensure the CE is appropriately applied and at the same time, result in a more expedited and efficient review of certain actions.

As a preliminary matter, this modified CE provides that this CE does not apply to those actions that meet the definition of a multimodal project as defined in 23 U.S.C. § 139(a), and are thus governed by paragraph (c) of proposed Section 13.17 of the NPRM, which provides:

An OA may use the alternative process for the application of another OA’s CEs for certain multimodal projects, as defined by 23 U.S.C. § 139(a), created under 49 U.S.C. § 304.

This footnote expressly recognizes that the statutory multimodal CE provision set forth at 49 U.S.C. § 304 governs the application of CEs in multimodal project that fall within the definition of 23 U.S.C. § 139(a). However, this provision is limited to projects that meet the “multimodal project” definition in 23 U.S.C. § 139(a), which requires an action by more than one OA. Accordingly, this modified CE # 5 would apply to a broader range of actions that do not fall within this definition, including those where only one OA has an action.

Given the limited applicability of 49 U.S.C. § 304, the Working Group remained cognizant of the important need for DOT to allow, in certain circumstances (including those other than set forth in 49 U.S.C. § 304), an OA taking an action to apply a CE that is included in another OA’s NEPA procedures. Specifically, in the past decade, the Department has moved away from siloed projects that clearly fall under one OA’s area of responsibility toward more innovative, multimodal projects that involve the expertise of multiple OAs, even where only one of those OAs may have an action. CEQ’s Guidance recognizes that changing conditions or circumstances, as well as frequency of use, may prompt an

agency to alter a CE.²² Accordingly, and as explained further below, DOT modified CE # 5 to reflect this changing need and condition.

DOT's experience administering the Better Utilizing Investments to Leverage Development, or (BUILD) Transportation Discretionary Grant program,²³ demonstrates the value, propriety, and need for a cross OA CE beyond that applicable to a narrow set of multimodal projects in 49 U.S.C. § 304. Many of the selected BUILD projects have been multimodal, multijurisdictional, yet do not fall within the definition of multimodal project under 23 U.S.C. § 139(a)(5). Over this time, DOT has accumulated significant experience with the unique challenges of delivering multimodal projects under existing NEPA procedures. The Fixing America's Surface Transportation (FAST) Act also established the Nationally Significant Freight and Highway Projects grant program, known as FASTLANE, and other multimodal programs that would benefit from a cross OA CE.

Moreover, DOT's review and proposed modification of this CE were also prompted by recent Congressional and Executive efforts to accelerate and increase the efficiency of project delivery. In the FAST Act, Congress declared that it is in the national interest for the Department, among other things, "to identify, accelerate, and deploy innovation aimed at shortening project delivery. . . and protecting the environment."²⁴ Similarly, in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Congress declared that "it is in the national interest for" DOT and others "to accelerate project delivery and reduce costs" and to ensure that project planning and design is conducted in "an efficient and effective manner . . . while enhancing safety and protecting the environment."²⁵ A number of recent Executive Orders and Presidential Memoranda also emphasize the importance of improving efficiencies associated with regulatory requirements and review of infrastructure projects.²⁶ Moreover, project delivery in transportation is an area where Congress has specifically directed the application of innovative approaches.²⁷ As mentioned above, Congress has enacted a legislative provision that permits OAs to rely upon the CEs of other OAs for certain multimodal projects, 49 U.S.C. § 304, that is limited to multimodal projects where more than one OA is taking an action.

Accordingly, in light of these considerations, DOT revisited the language and DOT application practice of the original CE # 5. Reviewing its experience with this CE, DOT determined that it had been used only for OST rulemakings in recent years, as shown in the examples below. All of these applications of this CE include the same two sentences: "Paragraph [4].c.5 of DOT Order 5610.1C incorporates by

²² CEQ Guidance, 16.

²³ The BUILD Program provides a unique opportunity for DOT to invest in road, rail, transit and port projects that promise to achieve national objectives. It was previously known as Transportation Investment Generating Economic Recovery, or TIGER Discretionary Grant Program, which DOT began to administer in 2010. Since that time, Congress has dedicated billions for several rounds of national infrastructure investments to fund local or regional projects.

²⁴ FAST Act § 1444(a)(1).

²⁵ MAP-21 § 1301(a)(1). *See also id.* § 1301(c), *codified at* 23 U.S.C. § 101(b)(4)(A) (declaring "that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process").

²⁶ *See, e.g.*, Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, (Aug. 24, 2017); Executive Order 13604, Improving Performance of Federal Permitting and Review of Infrastructure Projects (March 22, 2012); Presidential Memorandum, Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review (August 17, 2015); and Presidential Memorandum, Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures (May 17, 2013).

²⁷ *See* FAST Act, § 1444(a)(4) ("creat[ing] a culture of innovation within the highway community is in the national interest"); *id.*, § 1444(b)(2) (directing FHWA to "deploy proven innovative practices" that expedite project delivery).

reference the categorical exclusions for all DOT Operating Administrations.²⁸ This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, '[p]romulgation of rules, regulations, and directives.' 23 CFR 771.117(c)(20)."

- o [Transportation for Individuals with Disabilities; Reasonable Modification of Policies and Practices](#), 80 FR 13253, 13260 (Mar. 13, 2015)
- o [Maintenance of and Access to Records Pertaining to Individuals](#), 79 FR 59448, 59450 (Oct. 2, 2014) (Note: this is an interim rule).
- o [Organization and Delegation of Powers and Duties in the Transportation Acquisition Regulation](#), 79 FR 54626, 54627 (Sept. 12, 2014).
- o [Organization and Delegation of Powers and Duties](#), 79 FR 15704, 15705 (Mar. 21, 2014)
- o [Disadvantaged Business Enterprise: Program Implementation Modifications](#), 79 FR 59565, 59590 (Oct. 2, 2014)
- o [Miscellaneous Civil Rights Amendments \(RRR\)](#), 79 FR 21402, 21404 (Apr. 16, 2014)
- o [Public Availability of Information; Freedom of Information Act](#), 79 FR 16207, 16208 (Mar. 25, 2014)

In addition, DOT applied this CE in another recent rule, [Operation and Certification of Small Unmanned Aircraft Systems](#), 81 FR 42063, 42186 (June 28, 2016), which relies upon FAA Order 1050.1F, paragraph 5-6.6(f) ("The Department of Transportation has determined that this proposed action qualifies for categorical exclusion pursuant to Paragraph 4.c.5 of DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979) and FAA Order 1050.1F, paragraph 5-6.6(f). Paragraph 4.c.5 of DOT Order 5610.1C incorporates by reference actions identified by FAA as categorical exclusions.").

Thus, upon its review of CE # 5, DOT determined that while its language was consistent with authorizing use of a cross OA CE, and, as described above, had been used in limited situations for that purpose, it lacked clarity in its scope, and needed modification to ensure its proper application. Accordingly, DOT added language to clarify that DOT's professional staff from the OA whose CE is being applied, with the requisite expertise relevant to the implementation and environmental effects of the CE, would be the one to decide whether the proposed action is properly treated as a CE under that OA's procedures. Additionally, DOT modified the language to ensure that this determination would be documented in writing, establishing a record that this approach has been followed.

This cross OA CE as set forth in modified CE # 5 will avoid duplication, increase efficiency and innovation, and save time in the environmental review process, while fulfilling DOT's NEPA review obligations. It also furthers an important purpose of the NPRM to "maximize the use of proven

²⁸ The citations in these rulemakings to Paragraph 3(c)(5) of DOT Order 5610.1C are typos; the correct paragraph is 4(c)(5).

strategies to complete the environmental review process efficiently.” NPRM, § 13.5(d). As all of the OAs are part of one Department, and answer to the same Secretary, they will be able to readily communicate and exchange information and expertise, assuring proper application.

Benchmarked and Comparable CEs and Analysis

1. Gulf Coast Ecosystem Restoration Council

Recently, the Gulf Coast Ecosystem Restoration Council (GCERC or “the Council”) adopted NEPA procedures that include a CE that allows the council to apply a CE of another Federal agency council member. This provision states as follows:

(4) Council Funded Activities that Fall Under a CE of a Federal Council Member
(Documentation Required):

i. Any environmental restoration, conservation, or protection activity that falls within a CE established by a Federal agency Council member, provided no extraordinary circumstances preclude the use of a CE and the Federal agency that established the CE is involved in the Council action. A Federal agency is involved in the Council action when that Federal agency advises the Council that use of the CE would be appropriate for the specific action under consideration by the Council. Use of this CE will be documented following the procedures described in subsection 4(f) [(Documented CE)].²⁹

Subsection 4(f), in turn provides in pertinent part, that the documentation should include: (1) A description of the proposed action. (2) The CE relied upon, including the information or process used to determine that no extraordinary circumstances are present. (3) A determination by the Responsible Official that the CE applies. The Council will post documented CEs on its Web site.³⁰

The traits below are important elements that would be common to both the GCERC CE processes, as well as the updated CE # 5:

1. Where a number of Federal entities are unified structurally as part of a larger entity, it authorizes one of the smaller entities to apply the CE of another entity within that larger entity;
2. The Federal entity that established the CE is intimately involved in the determination that the CE can be applied, ensuring it is applied appropriately; and
3. It requires documentation of the process involved in application of the CE.

Likewise, the rationale supporting DOT’s modified CE # 5 is similar to that of the GCERC’s, which is premised on the fact that, where “an activity is appropriately covered by a [council member’s] CE, it would be inefficient and unnecessary to require additional NEPA compliance documentation above

²⁹ Gulf Coast Ecosystem Restoration Council NEPA Implementing Procedures and Categorical Exclusions, 80 FR 25680 (May 5, 2015) § 4(d)(4) (“Council Funded Activities that Fall Under a CE of a Federal Council Member (Documentation Required)”).

³⁰ *Id.* at § 4(f).

and beyond what is needed to ensure it fits within the given CE.”³¹ Similarly, where one OA is taking an action covered by another OA’s CE, and the latter OA, which in effect “owns” the CE determines that it can be applied, efficiency and common sense counsel that the OA taking the action be allowed to apply the CE that covers that action, as long as it obtains the written determination of the OA whose procedures include that CE. Moreover, like in the GCERC CE, the OA with the CE would be responsible for ensuring the absence of extraordinary circumstances and ensure the permissible application of its CE to the applying OA’s action.

The success of the GCERC’s application of its CE is evident from the records already developed in its short duration. With each use, the Council and the other Federal agency documented the applicable CE, the analysis used to determine that there were no extraordinary circumstances, and the advice or decision of the other Federal agency regarding whether the CE applied to the specific project.³² Just as with GCERC, application of CE # 5 will allow the action OA to efficiently and effectively fulfill its NEPA responsibilities. Likewise, the written determination of the OA with the CE in the application of its CE will help ensure its proper application.

Furthermore, certain similarities in the organizational structures between the GCERC and DOT enhance the precedential value of the GCERC’s experience with this CE. Both Federal entities are “umbrella” organizations where all of the Federal entities whose CEs can be applied operate under that one “umbrella,” broadly sharing a mission when they operate under that umbrella, and as such, have ready access to the exchange of information and expertise in applying the CEs.

2. The Maritime Administration (MARAD’s) CE # 7

MARAD has had a CE in its Procedures for Considering Environmental Impacts (Maritime Administrative Order 600-1) since 1985 that is similar to DOT’s updated CE # 5. MARAD’s CE # 7 provides that the following qualifies as a CE:

Project or program actions for which applicable environmental documentation has been prepared previously and environmental circumstances have not subsequently changed.

DOT’s proposed update to CE # 5 would in practice be similar to this MARAD CE, to the extent MARAD’s CE allows MARAD to rely upon CEs of other OAs for MARAD actions. MARAD’s environmental program experts, who reviewed the application of this CE since its inception in 1985, determined that no environmental consequences have occurred for actions in which this CE was applied. As relevant here, MARAD applies this CE when another OA or Federal agency has applied its own CE to a project, and developed documentation of that CE application. MARAD is able to incorporate that CE application into its CE.

As mentioned above, DOT’s experience administering the BUILD program, now in its eighth year,

³¹ See “Gulf Coast Ecosystem Restoration Council Record of the Establishment of [NEPA] Procedures and Categorical Exclusions, February 2016,” 5 available at:

<https://www.restorethegulf.gov/sites/default/files/ECCouncilNEPAProceduresRecord%20of%20Establishment.pdf>.

³² Documentation associated with such projects can be found at the following links:

https://www.restorethegulf.gov/sites/default/files/FPL_EClib_TX_Plug_Abandoned_Oil_Gas_Wells_CE_signed.pdf;

https://www.restorethegulf.gov/sites/default/files/FPL_EClib_MS_Strategic_Land_Protection_DeSoto_CE_signed.pdf;

https://www.restorethegulf.gov/sites/default/files/FPL_EClib_FL_Beach_Haven_CE_signed.pdf; and

https://www.restorethegulf.gov/sites/default/files/FPL_EClib_FL_Apalachicola_Agriculture_WQ_CE_signed.pdf.

demonstrates the value and propriety of MARAD's CE # 7, and the related need and benefit for a similar, renewed, provision that all OAs can use. Many of the selected BUILD projects have been multimodal and multijurisdictional, providing DOT with significant experience with the unique challenges of delivering multimodal projects under existing NEPA procedures. In several significant projects, MARAD acted as the lead OA and was able to apply its CE # 7, invoking CE determinations made by other OAs in accordance with their NEPA implementing procedures. A number of these are port projects that involve minor rail additions (Tri-City Regional Port District) or rail upgrades (Port of Coos Bay and Port of Gulfport).

Where the rail work is the Federal action, or where the rail work has independent utility from the rest of the project being funded under BUILD, MARAD works with the Federal Railroad Administration (FRA) to examine whether or not the rail work qualifies for an FRA CE. If the FRA determines that one of its CEs applies to the action, then the FRA documents that determination, which MARAD then incorporates into its CE analysis.

This, as well as further details and examples below regarding MARAD's application of its CE # 7, illustrates the precedent for and the value of a CE that allows one OA to rely upon another OA's CE to categorically exclude a project from further environmental review, while ensuring protection of the environment, and streamlining the environmental review process.

- *Tri City Regional Port*: MARAD was the lead authority for improvements to the Tri City Regional Port under the BUILD program.³³ The project sponsor, Tri-City Regional Port District, completed FRA's CE Worksheet, in which it recommended the application of FRA's CE for "minor rail line additions" for the rail portion of the project. The FRA, in accordance with its NEPA implementing procedures, concurred in this classification. MARAD then prepared its Record of Categorical Exclusion determination, incorporating the checklist completed by the project sponsor and in which FRA concurred. Using the checklist as "environmental documentation [that] has been prepared previously, MARAD concluded that the construction of additional rail track was categorically excluded.
- *Port of Gulfport – Kansas City Southern Rail Upgrade*. In this BUILD funded project, the Port of Gulfport proposed to upgrade rail track from Gulfport to Hattiesburg, Mississippi. The upgrade consisted of replacement of track, replacement of two bridges, and renewal of cross ties, crossing, and turnouts. FRA had applied its maintenance CE for these activities, signed in September 2010.³⁴ MARAD, which was lead for this project, relied upon that document to apply its own CE # 7.³⁵
- *Norfolk International Terminals North Gate Complex*: MARAD was the lead authority for this BUILD funded project. As part of the environmental review associated with applying its own CEs, including CE # 7, documented in MARAD's Record of Categorical

³³ This project was funded during TIGER round I.

³⁴ Update to NEPA Implementing Procedures, 78 FR 2713-01, 2718 (Jan. 14, 2013), Section 11 (Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities").

³⁵ For this documentation, see

http://our.dot.gov/team/nepa_order/CE%20Materials/MultiModal%20Administrative%20Record%20Materials/Gulfport%20CE%20signed%2010%2006%2010.pdf

Exclusion, Mar. 16, 2015, MARAD reviewed and relied upon the Federal Highway Administration's (FHWA's) application of FHWA's own CE, for projects that would take place within the existing operational right-of-way (23 CFR 771.117(c)(22)).

These are but a few examples of how MARAD has been able to apply its CE # 7 to accomplish efficient and timely environmental reviews, evidencing how DOT envisions its cross OA would work, as well as its benefits and propriety.

Like the GCERC's CE discussed above, MARAD's CE # 7 is, in the same three important respects described above, analogous to, and provides support for the adoption of, DOT's proposed CE # 5. In all three, the OA applying the CE does so only after the OA whose CE is being applied utilizes its expertise in reviewing the action and makes the determination that application of its CE is proper. Likewise, that determination is documented. Finally, as explained above regarding the GCERC, both OAs involved are part of the same governmental department, DOT, and accordingly, have ready access to the exchange of information and expertise, and share a common mission.

CE # 15: Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments or agencies calling for cooperative activities or the provision of technical assistance, advice, equipment, funds, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral safety relationships with foreign governments and the implementation of such agreements.

Original CE # 6(1): [The following actions related to the economic regulation of airlines . . .] Negotiating bilateral agreements.

Rationale and Support for Updates to CE # 15

DOT reviewed this CE and determined it needed to be, and could appropriately be, expanded beyond the negotiation of bilateral agreements and the confines of OST actions relating to the economic regulation of airlines presently set forth in Original CE # 6(1). Because of the addition of this new proposed CE 15, which now encompasses the actions that fell within this original CE, the NPRM excludes the old CE 6(1).

As detailed below, multiple DOT OAs engage in international activities that fall within the scope of this modified CE. These activities include development and implementation of international agreements, as well as attending related meetings, conferences, and events. DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. DOT's experience applying CE # 6(1), as well as FAA's decades of experience with its comparable CE at Section 6.1(k), as well as comparable CEs from other Federal agencies, further attest to the lack of significant impact on the human environment associated with these types of actions.

For OAs other than FAA, except in the rarest of cases, DOT can only engage in technical assistance and advice that does not impose any fiscal obligation on the Federal Government. Nearly all of DOT's arrangements with other countries are non-binding technical cooperative documents. Typically, this would involve practically engaging on the personnel level as to best practices and data

sharing/exchanges. Examples related to these are described below.

The National Highway Traffic Safety Administration (NHTSA) has an International Policy and Harmonization Division that supports NHTSA's mission through seeking international harmonization of existing national/regional standards under the 1998 United Nations Economic Commission for Europe (UNECE) Global Agreement, setting the international motor vehicle and highway safety agenda, and maintaining strong cooperative relationships with foreign counterpart agencies. NHTSA engages with foreign governments and international organizations to provide technical assistance, coordinate and share research, coordinate regulatory activities (where applicable), and develop Global Technical Regulations (GTR) under the 1998 UNECE Agreement for aspects of vehicle performance not yet regulated by national/regional standards. Recent examples of NHTSA's international activities include: (1) presenting on behalf of the United States at an Organization for Economic Cooperation and Development International Road Traffic and Accident Database (IRTRAD) meeting plenary session; (2) supporting the U.S. Trade Representative's Office at the U.S.-EU Transatlantic Trade and Investment Partnership sectoral negotiations regarding vehicle safety; (3) holding stakeholder meetings jointly with Transport Canada as part of the U.S.-Canada Regulatory Cooperation Council; (4) chairing a UNECE Working Party meeting regarding GTRs; (5) hosting the next meeting of the UNECE Electric Vehicle Safety GTR working group; and (6) representing the U.S. at the upcoming UNECE World Forum for Harmonization of Vehicle Regulations in Geneva, Switzerland to cover progress on several amendments to regulations and the status of GTR development.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) participates in multilateral negotiations to develop international standards for hazardous materials packaging and communication. Along with DOT and Federal partners, PHMSA represents United States interests before the United Nations Transport of Dangerous Goods Sub-Committee of Experts on the Transport of Dangerous Goods, United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals, the International Civil Aviation Organization Dangerous Goods Panel Working Group, and the International Maritime Organization Sub-Committee on Carriage of Cargoes and Containers. Further, PHMSA and Transport Canada participate in the U.S.-Canada Regulatory Cooperation Council, a bilateral safety agreement, to enhance technical collaboration and mutual recognition of standards. PHMSA also helps develop the Emergency Response Guidebook (ERG) along with Transport Canada and Mexico. The ERG is a manual to help first responders assess and respond to hazardous materials transportation accidents.

Other OAs also have actions that fall within the scope of this CE. For example, FHWA has the Border Technology Exchange Program, as well as enters into certain agreements with foreign ministries that include information exchanges on safety issues. MARAD engages with the international community at the Internal Maritime Organization and with the International Organization for Standardization, developing international agreements and standards, and providing technical expertise. The Federal Motor Carrier Safety Administration (FMCSA) has entered into a number of agreements and memoranda of understanding, with both Mexico and Canada, related to the operation of commercial vehicles that cross the countries' borders.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
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FAA	Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments calling for cooperative activities or the provision of technical assistance, advice, equipment, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral aviation safety relationships with foreign governments and the implementation of such agreements; attendance at international conferences and the meetings of international organizations, including participation in votes and other similar actions. FAA Order 1050.1F, 6.1(k) (asterisk omitted)
DOE	Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations (including, but not limited to, assistance in identifying and analyzing another country’s energy resources, needs and options). 10 CFR Part 1021, Subpart D, Appendix A, A14 Approval of DOE participation in international “umbrella” agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities. 10 CFR Part 1021, Subpart D, Appendix A, A15 Planning and implementation of emergency measures pursuant to the International Energy Program. 10 CFR Part 1021, Subpart D, Appendix B, B7.1
EPA	Actions involving approval of EPA participation in international “umbrella” agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions. 40 CFR § 6.204(a)(2)(viii) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities. 40 CFR § 6.204(a)(2)(vii)
USAID	Contributions to international, regional or national organizations by the United States which are not for the purpose of carrying out a specifically identifiable project or projects. 22 CFR § 216.2(c)(2)(vi)

B. Minor Non--Substantive Updates

CE # 16(a): The following actions relating to economic regulation of airlines:

Actions approving an agreement between an air carrier and a foreign air carrier; acquisition of control, merger, consolidation, or interlocking relationship.

Original CE # 6(c): Actions approving a carrier agreement; acquisition of control, merger, consolidation, or interlocking relationship.

The language was updated simply to clarify that the “carrier agreement” referred to an agreement between an air carrier and a foreign air carrier. Although this does not alter the substance of the CE,

based upon its experience with application of this CE, DOT determined this clarification to be useful.³⁶ Likewise, DOT retained the placement of original CE 6, which relates to the economic regulation of airlines, at the end of its list of CEs. Accordingly, the number of this CE is now 16.

CE # 16(b): Finding a U.S. or foreign air carrier fit under 49 U.S.C. chapters 411 or 413.

Original CE # 6(d): [The following actions related to the economic regulation of airlines . . .] Finding a carrier fit under section 401 of the Federal Aviation Act of 1958, as amended.

This slightly modified CE updates the citations and enhances the clarity by specifying its scope to include both U.S. and foreign air carriers. It does not alter its scope. DOT retained the placement of original CE # 6, which relates to the economic regulation of airlines, at the end of its list of CEs. Accordingly, the number of this CE is now 16.

CE # 16(i): Authorizing carriers to serve airports already receiving the type of service authorized, which does not result in significant air quality, noise or other adverse environmental consequences.

Original CE # 6(j): Authorizing carriers to serve airports already receiving the type of service authorized.

This is a slight modification of an existing CE, adding the new clause “which does not result in significant air quality, noise or other adverse environmental consequences.” Based upon its experience with application of this CE, DOT determined it needed this condition to impose a proper limit on the scope of this CE to ensure the authorization would not have a significant effect on the environment. DOT retained the placement of original CE # 6, which relates to the economic regulation of airlines, at the end of its list of CEs. Accordingly, the number of this CE is now 16.

CE # 16(k): Registration of an air taxi operator pursuant to 14 CFR part 298.

Original CE 6(m): Registration of an air taxi operator pursuant to the Department’s Regulations (14 CFR Part 298).

This CE was modified solely to update the legal citations. DOT retained the placement of original CE # 6, which relates to the economic regulation of airlines, at the end of its list of CEs. Accordingly, the number of this CE is now 16.

CE # 16(l): Granting of charter authority to a U.S. or foreign air carrier under 49 U.S.C. chapters 411 or 413.

Original CE 6(n): Granting of charter authority to a U.S. or foreign air carrier under sections 401, 402, or 416 of the Federal Aviation Act or the Department’s Economic Regulations.

This CE was modified solely to update the legal citations. DOT retained the placement of original CE # 6, which relates to the economic regulation of airlines, at the end of its list of CEs. Accordingly, the number of this CE is now 16.

³⁶ Where only slight modifications are made to an original CE, like this one, DOT has not sought to include benchmarking examples, given that the minor modifications do not alter the scope.

IV. Rationale for Removing Certain Existing CEs

Original CE # 3: Project amendments (e.g. increases in costs) which do not significantly alter the environmental impact of the action.

DOT removed this CE because upon review DOT recognized that a project amendment is more appropriately addressed through a re-evaluation to determine if the changes significantly alter the environmental impact of the action.

Original CE # 6(b): Enforcement proceedings.

DOT removed this CE because enforcement proceedings under the law are not subject to NEPA.

V. Substantiation of New CEs Included in DOT's Notice of Proposed Rulemaking

CE # 3: Training, technical assistance, and education and informational programs and activities.

Rationale and Support for CE # 3

The common denominator for this proposed CE is the sharing of information, through training and related exercises, technical assistance, or other educational programs. By their nature, these actions have no inherent potential for significant impact on the human environment. DOT OAs have had comparable CEs in their NEPA Procedures for many years, including one FHWA CE that dates back to 1987, and OA experiences applying those CEs further establish their propriety.³⁷ Additionally, DOT has confirmed through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	Planning and development of training, personnel efficiency, and performance projects and programs. FAA Order 1050.1F, 6.1(q) (asterisk omitted)

³⁷ The CEs from FAA and FHWA's earlier procedures are the same as those benchmarked. FAA Order 1050.1E, CHG 1, Environmental Impacts: Policies and Procedures (March 20, 2006), § 307q, 71 FR 15249-02 (March 27, 2006); Environmental Impact and Related Procedures, 52 FR 32646-01, 32663 (Aug. 28, 1987), Section (c)(16). FAA's CE had a slightly different predecessor version as well. FAA Order 1050.1D, CHG 3, Section 31(a)(7) ("The planning and development of projects and programs leading to Aeromedical Applications and Standards; personnel efficiency and performance"). FMCSA's CE provision in the chart was contained within its original list of CEs, adopted in 2004 (*see* NEPA Implementing Procedures, 69 FR 9680-01, 9702 (March 1, 2004)).

FHWA	Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand. 23 CFR § 771.117(c)(16)
FMCSA	Training of an administrative or classroom nature. Examples would include training to inspect a commercial motor vehicle brake system or to learn more about NEPA and how to prepare and develop environmental analyses for Environmental Assessments (EAs) and Environmental Impact Statements (EISs). 69 FR 9680, Appendix 2, 5(b)
FTA	Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand. 23 CFR § 771.118(c)(4)
Army	Training entirely of an administrative or classroom nature. 32 CFR Part 651, Appendix B, Section II(i)(2)
DHS Coast Guard	<p>Defense preparedness training and exercises conducted on Coast Guard controlled property that do not involve undeveloped property or increased noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electronic simulation or command post personnel. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L32</p> <p>Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L34</p> <p>Training of an administrative or classroom nature. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L35</p>
DOE	Training exercises and simulations (including, but not limited to, firing-range training, small-scale and short-duration force-on-force exercises, emergency response training, fire fighter and rescue training, and decontamination and spill cleanup training) conducted under appropriately controlled conditions and in accordance with applicable requirements. 10 CFR Part 1021, Subpart D, Appendix B, B1.2
DHS	<p>Training of homeland security personnel, including international, Tribal, State, and local agency representatives using existing facilities where the training occurs in accordance with applicable permits and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, or radiological agents except when conducted at a location designed and constructed to contain the materials used for that training. Examples include but are not limited to:</p> <ul style="list-style-type: none"> (a) Administrative or classroom training, (b) Tactical training, including but not limited to training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response, (c) Vehicle and small boat operation training, (d) Small arms and less-than-lethal weapons training,

	(e) Security specialties and terrorist response training, (f) Crowd control training, including gas range training, (g) Enforcement response, self-defense, and interdiction techniques training, and (h) Techniques for use in fingerprinting and drug analysis. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, G1
USDA (ARS)	Educational and informational programs and activities. 7 CFR § 520.5(a)(4)

CE # 6: Leasing of space in existing buildings or facilities.

Rationale and Support for CE # 6

This proposed CE involves leasing pre-existing space. By their nature, these actions have no inherent potential for significant impact on the human environment. FAA has had a comparable CE in its NEPA Procedures for many years, and its experience applying that CE further establishes its propriety.³⁸ Additionally, DOT confirmed through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CE from DOT OAs, as well as multiple other Federal agencies, further support the propriety of this CE designation.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	Lease of space in buildings or towers. FAA Order 1050.1F, 6.4(m)
FMCSA	Purchase, Lease, and Acquisitions. Lease of space in buildings or towers for a firm-term of one year or less when the intended use is in conformity with current uses. 69 FR 9680, Appendix 2, 2
MARAD	Excessing and disposing of Maritime Administration personal or real property to the General Services Administration or otherwise; use of space in Maritime Administration-owned buildings or buildings which are constructed for or controlled by the General Services Administration; lease of existing buildings; lease of space for a term of one year or less; and renewal of existing leases that do not involve significant changes in use of the property. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 8

³⁸ The FAA CE identified in the benchmarking chart was adopted in 2006 and has not been changed. FAA Order 1050.1E CHG 1, § 310m. FMCSA's CE provision below was contained within its original list of CEs, adopted in 2004 (*see* National Environmental Policy Act Implementing Procedures, 69 FR at 9701. MARAD's CE provision cited in the chart was contained within its original list of CEs, adopted in 1985 (*see* MAO 600-1, *Procedures for Considering Environmental Impacts*, Appendix 1, *Maritime Administration Actions Which Are Not Normally Major Actions Significantly Affecting the Environment (i.e., Categorical Exclusions*, (July 23, 1985), Final Procedures for Considering Environmental Impacts, 50 FR 30900-03, 30902 (July 30, 1985)).

Army	Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (REC required). ³⁹ 32 CFR Part 651, Appendix B, Section II(f)(1)
DHS Coast Guard	Acquisition of real property (including fee simple estates, leaseholds, and easements) improved or unimproved, and related personal property from a non-Federal party by purchase, lease, donation, or exchange where the proposed real property use is similar to existing uses for the foreseeable future (acquisition through condemnation not covered). DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L11
DHS	Acquisition of an interest in real property that is not within or adjacent to environmentally sensitive areas, including interests less than a fee simple, by purchase, lease, assignment, easement, condemnation, or donation, which does not result in a change in the functional use of the property. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, C1
NIH	Acquisition of space by lease and modifications of leases, when the use of the space will comply with all applicable Federal, State, and local laws, including all environmental protection and zoning laws, and lease extensions and terminations. 65 FR 2977, (B)(3)

CE # 7: Remodeling existing buildings or facilities including maintenance, reconstruction, rehabilitation, retrofit, or upgrades of existing buildings, facilities, or systems, such as electrical and plumbing systems, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas.

Rationale and Support for CE # 7

This proposed CE involves remodeling of existing buildings or facilities. Multiple DOT OAs, including FAA, the Federal Transit Administration (FTA), and MARAD, have extensive experience applying their OA specific comparable CEs identified below in their environmental reviews, indicating the CE would also be appropriate at a Department-wide level. DOT OAs have had comparable CEs in their NEPA Procedures for many years, including one FRA CE that dates back to 1979, and OA experiences applying those CEs further establish their propriety.⁴⁰ Based upon this and related experience, DOT

³⁹ “REC” refers to a “Record of Environmental Consideration”: “a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review.” 32 CFR § 651.19.

⁴⁰ See Procedures for Considering Environmental Impacts, 44 FR 16062-01, 16066 (March 16, 1979). Section 4(c)(11) included “ Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption “maintenance” means normally period care which does not change the existing character of the facility.” Likewise, a later set of FRA’s NEPA procedures, from 1999, included: “Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks;” Procedures for Considering Environmental Impacts, 64 FR 28545-02, 28547 (May 26, 1999), Section 4(c)(19). Although FRA made some changes to the first CE noted above from the original to the current, none has been made to date to the second. Likewise, the FAA CE identified in the benchmarking chart below was adopted in 2006 and has

has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. The existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	<p>Minor expansion of facilities, including the addition of equipment such as telecommunications equipment, on an existing facility where no additional land is required, or when expansion is due to remodeling of space in current quarters or existing buildings. Additions may include antennas, concrete pad, and minor trenching for cable. FAA Order 1050.1F, 6.4(n)</p> <p>Upgrading of building electrical systems or maintenance of existing facilities, such as painting, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas, and replacement of underground facilities. FAA Order 1050.1F, 6.4(aa)</p>
FRA	<p>Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption ‘maintenance’ means work, normally provided on a periodic basis including the changing of component parts, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs. 78 FR 2713, 11</p> <p>Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks. 78 FR 2713, 19</p>
FTA	<p>Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds. 23 CFR § 771.118(c)(8)</p>

not been changed. FAA Order 1050.1E, CHG 1, § 310n. MARAD’s CE provisions below were contained within its original list of CEs, adopted in 1985. *See* Final Procedures for Considering Environmental Impacts, 50 FR at 30902.

MARAD	<p>Reconstruction, modification, modernization, replacement, repair, and maintenance (including emergency replacement, repair, or maintenance) of equipment, facilities, or structures which do not change substantially the existing character of the equipment/facility/structure. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 4</p> <p>Purchase, installation, or replacement of operating or maintenance equipment to be located within a Maritime Administration facility and with no significant physical impacts off the site. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 5</p>
Air Force	<p>Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building. 32 CFR Part 989, Appendix B, A2.3.8</p> <p>Repairing and replacing real property installed equipment. 32 CFR Part 989, Appendix B, A2.3.9</p> <p>Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos and lead-based paint. 32 CFR Part 989, Appendix B, A2.3.10</p>
DHS	<p>Repair and maintenance of Department-managed buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g. replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, and maintenance of waterfront facilities that does not require individual regulatory permits). DHS Instruction Manual 023- 01-001-01, Rev. 01, Appendix A, D3</p>
DOE	<p>Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (including, but not limited to, pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed, provided that the activities would be conducted in a manner in accordance with applicable requirements. Custodial services are activities to preserve facility appearance, working conditions, and sanitation (such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal). Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Such maintenance may occur as a result of severe weather (such as hurricanes, floods, and tornados), wildfires, and other such events. Routine maintenance may result in replacement to the extent that replacement is in-kind and is not a substantial upgrade or improvement. In-kind replacement includes installation of new components to replace outmoded components, provided that the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor</p>

	<p>vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:</p> <ul style="list-style-type: none"> a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses; b) Door and window repair or replacement; c) Wall, ceiling, or floor repair or replacement; d) Reroofing; e) Plumbing, electrical utility, lighting, and telephone service repair or replacement; f) Routine replacement of high-efficiency particulate air filters; g) Inspection and/or treatment of currently installed utility poles; h) Repair of road embankments; i) Repair or replacement of fire protection sprinkler systems; j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces; k) Erosion control and soil stabilization measures (such as reseeded, gabions, grading, and revegetation); l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, "Radioactive Waste Management," or its successor; m) Repair and maintenance of transmission facilities, such as replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed powerlines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor; n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and <p>Removal of debris. 10 CFR Part 1021, Subpart D, Appendix B, B1.3</p>
<p>DHS Coast Guard</p>	<p>Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care and minor erosion control measures) that are conducted in accordance with applicable Federal, state, and local directives.</p> <p>DHS Instruction Manual 023- 01-001-01, Rev. 01, Appendix A, L31</p>
<p>Navy</p>	<p>Alteration of and additions to existing buildings, facilities, structures, vessels, aircraft, and equipment to conform or provide conforming use specifically required by new or existing applicable legislation or regulations (e.g., hush houses for aircraft engines, scrubbers for air emissions, improvements to storm water and sanitary and industrial wastewater collection and treatment systems, and installation of fire fighting equipment). 32 CFR § 775.6(f)(14)</p>

NIH	Maintenance, including repairs necessary to ensure the operation of existing facilities, grounds maintenance, and the decontamination of laboratory or other space and equipment. 65 FR 2977, (B)(2)
USDA (APHIS)	Minor renovation, improvement, and maintenance of facilities. Examples are: (i) Renovation of existing laboratories and other facilities. (ii) Functional replacement of parts and equipment. (iii) Minor additions to existing facilities. (iv) Minor excavations of land and repairs to properties. 7 CFR § 372.5(c)(5)

CE # 8: Gardening, landscaping, and maintenance of existing landscaping that does not cause or promote the introduction or spread of invasive species that would harm the native ecosystem.

Rationale and Support for CE # 8

This proposed CE involves gardening and landscaping related activities that do not cause or promote the introduction or spread of harmful invasive species. DOT OAs have had comparable CEs in their NEPA Procedures for many years, including one FHWA CE that dates back to 1987, and OA experiences applying those CEs further establish their propriety.⁴¹

DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	New gardening, landscaping, and/or maintenance of existing landscaping that does not cause or promote the introduction or spread of invasive species that would harm the native ecosystem; use of landscape practices that reflect recommendations provided in Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds, 60 Federal Register 40837 (August 10, 1995); and that do not attract wildlife that is hazardous to aviation. FAA Order 1050.1F, 6.4(p)
FHWA	Landscaping. 23 CFR § 771.117(c)(7)

⁴¹ The FHWA CE in the benchmarking chart was included in Environmental Impact and Related Procedures, 52 FR at 32664, Section (c)(7). FAA’s NEPA procedures adopted in 2006 included the following CE, using slightly different language than the subsequent provision in the benchmarking chart: “New gardening or landscaping, and maintenance of existing landscaping that do not cause or promote the introduction or spread of invasive species that would harm the native ecosystem; use landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837); and do not attract wildlife that is hazardous to aviation.” There are some slight changes in wording between this CE and the current one. FAA Order 1050.1E, CHG 1, § 310n.

FTA	Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation. 23 CFR § 771.118(c)(3)
DHS	Federal assistance for planting of indigenous vegetation. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, N12
Forest Service	<p>Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:</p> <ul style="list-style-type: none"> i. Authorizing a user to grade, resurface, and clean the culverts of an established NFS road; ii. Grading a road and clearing the roadside of brush without the use of herbicides; iii. Resurfacing a road to its original condition; Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and v. Surveying, painting, and posting landline boundaries. 36 CFR § 220.6(d)(4) <p>Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:</p> <ul style="list-style-type: none"> i. Applying registered herbicides to control poison ivy on infested sites in a campground; ii. Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex; iii. Repaving a parking lot; and iv. Applying registered pesticides for rodent or vegetation control. 36 CFR § 220.6(d)(5)
FWS	<p>The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.</p> <ul style="list-style-type: none"> a. The installation of fences. b. The construction of small water control structures. c. The planting of seeds or seedlings and other minor revegetation actions. d. The construction of small berms or dikes. <p>The development of limited access for routine maintenance and management purposes. Department of the Interior Departmental Manual, Part 516, Chapter 8, Section 5, 8.5(B)(3)</p>

CE # 9: Investigations, research activities, and studies including data collection and analysis, information gathering, document preparation, and information dissemination.

Rationale and Support for CE # 9

The common elements for this proposed CE are investigation, studies, research, and information collection and dissemination. By their nature, these actions inherently have no potential for significant impact on the human environment. DOT OAs have had comparable CEs in their NEPA Procedures for many years, including one FHWA CE that dates back to 1987, and OA experiences applying those CEs further establish their propriety.⁴² Additionally, DOT confirmed through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment.

Individual DOT OAs have comparable CEs involving information gathering and dissemination, research, studies, and related planning, and experience with them, as well as the existence of comparable CEs from multiple other Federal agencies, further support the designation of this CE

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FHWA	Activities which 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. 23 CFR § 771.117(c)(1)

⁴² An earlier version of FHWA's benchmarked CE dates back to 1987. Environmental Impact and Procedures, 52 FR at 32663, Section (c)(1) ("(Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR Part 630; approval of project concepts under 23 CFR Part 476; 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.")). FRA's identical CE to that which is benchmarked dates back to 1999. Procedures for Considering Environmental Impacts, 64 FR at 28547, Section 4(c)(18). FMCSA's CE provision below was contained within its original list of CEs, adopted in 2004. See National Environmental Policy Act Implementing Procedures, 69 FR at 9701. MARAD's CE provisions below were contained within its original list of CEs, adopted in 1985. See Final Procedures for Considering Environmental Impacts, 50 FR at 30902.

FMCSA	<p>Data Gathering, Review of Environmental Tests, Studies, Analyses and Reports, and Research Activities</p> <ol style="list-style-type: none"> a. Data gathering, information gathering, and studies that involve no detectable physical change to the environment. b. Research activities that are in accordance with inter-agency agreements and which are designed to improve or upgrade the FMCSA’s ability to manage its resources. Examples of these resources would include FMCSA’s stored data, its assets, and its properties, including its Intelligent Transportation System/Commercial Vehicle Operation Technology Trucks and its Safety Trucks. c. Environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed. d. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on FMCSA-contracted property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations. e. Planning and technical studies that do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies. 69 FR 9680, Appendix 2, 4(a)–(e)
FRA	<p>Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided such that research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line. 78 FR 2713, 18</p>
FTA	<p>Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand. 23 CFR § 771.118(c)(4)</p>
MARAD	<p>Research studies and activities, including those at the Computer-Aided Operations Research Facility, which do not involve the direct construction of facilities. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 2</p>
DHS Coast Guard	<p>Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L44</p>

DOE	Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated analysis. Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. 10 CFR Part 1021, Subpart D, Appendix B, B3.8
DOI	Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities. 43 CFR § 46.210(e)
DHS	Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents. If any of these activities result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include but are not limited to: <ul style="list-style-type: none"> a. Document mailings, publication and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions. b. Studies, reports, proposals, analyses, literature reviews; computer modeling; and non-intrusive intelligence gathering activities. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, A4
Navy	Studies, data, and information gathering that involve no permanent physical change to the environment (e.g., topographic surveys, wetlands mapping, surveys for evaluating environmental damage, and engineering efforts to support environmental analyses). 32 CFR § 775.6(f)(18)

CE # 10: Promulgation, modification, or revocation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents that:

- a. Are strictly administrative, organizational, or procedural in nature; or
- b. Are corrective, technical, or minor.

Rationale and Support for CE # 10

This proposed CE involves a set of DOT rulemaking, and the development of a wide range of orders, policies, and guidance related documents where such rules or documents are strictly administrative, organizational, procedural, corrective, technical, or minor. By their nature, these actions have little impact on the human environment. DOT OAs have had comparable CEs in their NEPA Procedures for many years, including one FRA CE that dates back to 1979, and OA experiences applying those CEs further establish their propriety.⁴³ Additionally, DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed

⁴³ FRA's CE from its 1979 NEPA procedures is identical to the present benchmarked one. Procedures for Considering Environmental Impacts, 44 FR at 16066, Section 4(c)(5). Similarly, FHWA's procedures adopted in 1987 included a CE that is identical to the benchmarked one. Environmental Impact and Related Procedures, 52 FR at 32664, Section (c)(20). FAA's benchmarked CE was included in its 2006 NEPA procedures, FAA Order 1050.1E, CHG 1, § 307r, and an earlier set of procedures included similar language, FAA Order 1050.1D, CHG 3, Section 31(a)(5) ("Policy and planning documents not intended for or which do not cause direct implementation of project or system actions."). FMCSA's CE provision below was contained within its original list of CEs, adopted in 2004. *See* FMCSA NEPA Implementing Procedures, 69 FR at 9701.

CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the establishment of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	<p>Issuance of policy and planning documents and legislative proposals not intended for, or that do not cause direct implementation of, project or system actions. FAA Order 1050.1F, 6.1(r) (asterisk omitted)</p> <p>Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administrative or procedural requirements. (Does not include air traffic procedures; specific air traffic procedures that are categorically excluded are identified under Paragraph 5-6.5 of this Order). FAA Order 1050.1F, 6.6(d)</p>
FHWA	Promulgation of rules, regulations and directives. 23 CFR § 771.117(c)(20)
FMCSA	<p>Preparation of guidance documents that implement decisions authorized by the applicable FMCSA’s Office of Business Operations Directive or other Federal agency regulations, procedures, manuals, internal orders, and other guidance documents not required to be published in the Federal Register under the Administrative Procedure Act, 5 U.S.C. § 552(a)(1). 69 FR 9680, Appendix 2, 1(a)</p> <p>The Following Types of Regulations, and Actions Covered by This Order Taken Pursuant to Those Regulations (footnote omitted)</p> <ul style="list-style-type: none"> a. Regulations concerning Civil Rights procedures and guidance. b. Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations. <p>Regulations concerning internal agency functions or organization or personnel administration, such as, funding or delegating authority. 69 FR 9680, Appendix 2, 6(a)–(c)</p>
FRA	Technical or other minor amendments to existing FRA regulations. 78 FR 2713, 4

DHS	<p>Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature:</p> <ul style="list-style-type: none"> a. Those of a strictly administrative or procedural nature; b. Those that implement, without substantive change, statutory or regulatory requirements; c. Those that implement, without substantive change, procedures, manuals, and other guidance documents; d. Those that interpret or amend an existing regulation without changing its environmental effect; e. Technical guidance on safety and security matters; or f. Guidance for the preparation of security plans. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, A3
DOE	<p>Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings. 10 CFR Part 1021, Subpart D, Appendix A, A4</p> <p>Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR Part 1021, Subpart D, Appendix A, A5</p> <p>Rulemakings that are strictly procedural, including, but not limited to, rulemaking (under 48 CFR chapter 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements. 10 CFR Part 1021, Subpart D, Appendix A, A6</p> <p>Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides. 10 CFR Part 1021, Subpart D, Appendix A, A13</p>
Treasury	<p>Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and other guidance documents of the following nature:</p> <ul style="list-style-type: none"> (a) Those of a strictly administrative or procedural nature. 79 FR 49834, Treasury Directive 75-02, Appendix 1, A(3)

CE # 11: Promulgation, modification, revocation, or interpretation of safety standards, rules, and regulations that do not result in a substantial increase in emissions of air or water pollutants, noise, or traffic congestion, or increase the risk of reportable release of hazardous materials or toxic substances in any mode of transportation.

Rationale and Support for CE # 11

This CE covers safety rules and standards that do not substantially increase pollution or increase the risk of release of hazardous materials. As such, DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the

proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. A number of recent rulemakings associated with the promulgation of safety oriented rules illustrate the precedent supporting this determination, where DOT conducted an EA, and found no significant environmental impacts associated with the proposed rules:

- Hazardous Materials: Reverse Logistics (RRR), 81 FR 18527 (Mar. 31, 2016). This PHMSA final rule amended regulations governing returning shipments of certain hazardous materials by highway transportation from retail stores to a product's manufacturer, supplier, or distribution facility (e.g., reverse logistics shipments), to provide an exception in the Hazardous Materials Regulations (HMR) for the shipment of low hazard items in the reverse logistics supply chain. PHMSA conducted an EA and concluded that this rulemaking would not increase the current risk of release of hazardous materials into the environment, and that, therefore, no significant environmental impacts were associated with the rule.⁴⁴
- Hazardous Materials: Requirements for the Safe Transportation of Bulk Explosives (RRR), 80 FR 79424, 79446 (Dec. 21, 2015). This PHMSA final rule amended the HMR to establish standards for the safe transportation of bulk explosives. It provided wider access to certain regulatory flexibility that had previously only been offered through application for special permits. PHMSA conducted an EA and concluded that because the rulemaking amended the HMR to permit an alternative with equivalent and established safety records, the changes had the potential to increase safety and environmental protections and involved no adverse significant environmental impacts.⁴⁵
- Hazardous Materials: Harmonization with International Standards (RRR), 80 FR 1075, 1109-13 (Jan. 8, 2015). This PHMSA final rule amended the HMR to integrate recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods. The rule incorporated amendments such as changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. PHMSA conducted an EA and concluded the final rule reduced the risks of accidental or intentional release of hazardous materials and consequent environmental damage, and that there were no significant environmental impacts associated with this final rule.⁴⁶
- Hazardous Materials: Transportation of Lithium Batteries, 79 FR 46011, 46031- 33 (Aug. 6, 2014). PHMSA issued this final rule, in consultation with the FAA, to modify the requirements governing the transportation of lithium cells and batteries in order to ensure that lithium batteries are safe for transport and the hazards associated with lithium batteries are properly communicated. The rule revised hazard communication and packaging provisions for lithium batteries and aligned the HMR with applicable provisions of the

⁴⁴ See <https://www.federalregister.gov/articles/2016/03/31/2016-07199/hazardous-materials-reverse-logistics-rrr#h-36>.

⁴⁵ 80 FR at 79448.

⁴⁶ See <https://www.federalregister.gov/articles/2015/01/08/2014-30462/hazardous-materials-harmonization-with-international-standards-rrr#h-134>.

United Nations Model Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Dangerous Goods Code. PHMSA conducted an EA, which focused on the portion of the rule amending the requirements applicable to the transport of transport of lithium batteries for disposal or recycling, and concluded that the rule would not have a significant impact on the human environment.⁴⁷

- **Hazardous Materials: Compatibility With the Regulations of the International Atomic Energy Agency (RRR)**, 79 FR 40589, 40608 (July 11, 2014). This PHMSA final rule, issued in coordination with the Nuclear Regulatory Commission, amended requirements in the HMR governing the transportation of Class 7 (radioactive) materials based on recent changes in the International Atomic Energy Agency publication “Regulations for the Safe Transport of Radioactive Material, 2009 Edition, IAEA Safety Standards Series No. TS-R-1.” This rule aligned requirements of the HMR with international standards for the transportation of Class 7 materials and updated, clarified, corrected, or provided relief from certain regulatory requirements related to the transportation of Class 7 materials. PHMSA conducted an EA and concluded, in consultation with the Nuclear Regulatory Commission, that the amendments in the final rule would not have a significant impact on the environment.⁴⁸
- **Highway-Rail Grade Crossing; Safe Clearance**, 76 FR 5120 (Jan. 28, 2011).⁴⁹ FMCSA and PHMSA issued an NPRM, proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) and HMRs, respectively, to prohibit a driver of a commercial motor vehicle or of a motor vehicle transporting certain hazardous materials or certain agents or toxins from entering onto a highway-rail grade crossing unless there is sufficient space to drive completely through the grade crossing without stopping. FMCSA and PHMSA conducted a joint EA, and concluded the proposed amendments would have little or no impact on the human environment. Highway-Rail Grade Crossing; Safe Clearance, 76 FR 5120, 5128 (Jan. 28, 2011). Likewise, when FMCSA and PHMSA subsequently published the final rule, they determined that the final rule would have no impact on the environment and associated areas that FMCSA analyzes within NEPA documents. Highway-Rail Grade Crossing; Safe Clearance, 78 FR 58915, 58922-24 (Sept. 25, 2013).
- **Hours Service of Drivers; Amendment of the 30-Minute Rest Break Requirement**, 78 FR 64179 (Oct. 28, 2013): FMCSA published a final rule amending its December 27, 2011, final rule entitled “Hours of Service of Drivers” to provide an exception from the 30-minute rest break requirement for short-haul drivers who are not required to prepare records of duty status (RODS), and removed regulatory text made obsolete by the passing of the July 1, 2013, compliance date for the final rule, in order to respond to a decision of the United States Court of Appeals for the District of Columbia Circuit. FMCSA analyzed this rule under its environmental procedures and determined that the results of the analysis, along with the supporting 2011 hours-of-service EA that it had previously conducted,

⁴⁷ See <https://www.federalregister.gov/articles/2014/08/06/2014-18146/hazardous-materials-transportation-of-lithium-batteries#h-62>.

⁴⁸ See <https://www.federalregister.gov/articles/2014/07/11/2014-15514/hazardous-materials-compatibility-with-the-regulations-of-the-international-atomic-energy-agency-rrr>.

⁴⁹ See <https://www.gpo.gov/fdsys/pkg/FR-2011-01-28/pdf/2011-1841.pdf>.

showed that the final rule would have no impact on the environment and associated areas that FMCSA analyzes within NEPA documents. 78 FR at 64180.

Likewise, other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FRA	Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation. 78 FR 2713, 20
FMCSA	<p>Regulations implementing rules of practice for motor carrier, broker, freight forwarder and hazardous materials proceedings before the Assistant Administrator/Chief Safety Officer, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180) to determine whether:</p> <ol style="list-style-type: none"> 1) A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and, 2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found. 69 FR 9680, Appendix 2, 6(u) <p>Regulations concerning vehicle operation safety standards (e.g., regulations requiring: Certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (e.g. fire extinguishers and flares). 69 FR 9680, Appendix 2, 6(bb)</p>
DHS Coast Guard	Regulations concerning vessel operation safety standards (e.g., regulations requiring: certain boaters to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as personal flotation devices (PFDS), and/or stricter blood alcohol concentration (BAC) standards for recreational boaters, etc.), equipment approval, and/or equipment carriage requirements (e.g., personal flotation devices (PFDs) and visual distress signals (VDS's)). DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, L52

DHS	<p>Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature:</p> <ol style="list-style-type: none"> a. Those of a strictly administrative or procedural nature; b. Those that implement, without substantive change, statutory or regulatory requirements; c. Those that implement, without substantive change, procedures, manuals, and other guidance documents; d. Those that interpret or amend an existing regulation without changing its environmental effect; e. Technical guidance on safety and security matters; or f. Guidance for the preparation of security plans. DHS Instruction Manual 023-01-001-01, Rev. 01, Appendix A, A3
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CE # 12: Hearings, meetings and public outreach activities.

Rationale and Support for CE # 12

By their nature, hearings, meetings and public outreach activities have little to no impact on the human environment. FRA has had a comparable CE in its NEPA Procedures for many years, dating back to 1979, and FRA’s experience applying that CE further establishes its propriety.⁵⁰ Additionally, DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from DOT OAs, as well as multiple other Federal agencies, further support the designation of this CE.

List of Benchmarked and Comparable CEs

FMCSA	Hearings, meetings, or public affairs activities held at locations developed for such activities. 69 FR 9680, Appendix 2, 1(h)
FRA	Hearings, meetings, or public affairs activities. 78 FR 2713, 10
MARAD	Internal orders and procedures not required to be published in the Federal Register; promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 of Executive Order 12291 or do not have a potential to cause a significant effect on the environment; routine enforcement of statutes, rules, and safety and environmental standards and requirements, e.g., enforcement of statutes and rules regarding transfer of certain U.S.-flag vessels to any person not a citizen of the United States (sections 9, 37, when operative, and 41, Shipping Act, 1916, as amended) and enforcement of requirements for admission to the United States Merchant Marine Academy (section 1303,

⁵⁰ That CE is identical to the benchmarked one. Procedures for Considering Environmental Impacts, 44 FR at 16066, Section 4(c)(12). MARAD’s CE provisions below were contained within its original list of CEs, adopted in 1985. See Final Procedures for Considering Environmental Impacts, 50 FR at 30902. FMCSA’s CE provision below was contained within its original list of CEs, adopted in 2004. See National Environmental Policy Act Implementing Procedures, 69 FR at 9701.

	Merchant Marine Act, 1936, as amended and 46 CFR Part 310, Subpart C); and hearings, meetings, and public affairs activities. MAO 600-1, Procedures for Considering Environmental Impacts, Appendix 1, CE 3
DOI	Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public. 43 CFR § 46.210(j)
Navy	Hosting or participating in public events (e.g., air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking and sanitation systems) are required to accommodate all aspects of the event. 32 CFR § 775.6(f)(24)
USDA	Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation. 7 CFR § 1b.3(a)(6)
USDA (ARS)	Activities which are advisory and consultative to other agencies, public and private entities. 7 CFR § 520.5(a)(5)
EPA	Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities. 40 CFR § 6.204(a)(2)(vii)

CE # 13: Administrative actions and proceedings, such as rendering decisions on petitions for rulemaking and petitions for reconsideration.

Rationale and Support for CE #13

This proposed CE encompasses administrative actions and proceedings such as rendering decisions on petitions for rulemaking and petitions for reconsideration. By their nature, such administrative actions inherently have no potential for significant impact on the human environment. FAA has had a comparable CE in its NEPA Procedures for many years, and its experience applying that CE further establishes its propriety.⁵¹ Additionally, DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by the proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment. Existing comparable CEs from other Federal agencies further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
FAA	Denials of routine petitions for: (1) exemption; (2) reconsideration of a denial of exemption; (3) rulemaking; (4) reconsideration of a denial of a petition for rulemaking; and (5) exemptions to technical standard orders (TSOs). FAA Order 1050.1F, 6.6(c)

⁵¹ The FAA CE identified in the benchmarking chart below was adopted in 2006 and has not been changed. FAA Order 1050.1E, § 312c. FMCSA's CE provision below was contained within its original list of CEs, adopted in 2004. See National Environmental Policy Act Implementing Procedures, 69 FR at 9702.

FMCSA	Regulations which are editorial or procedural, such as, those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations. 69 FR 9680, Appendix 2, 6(b)
DOE	Adjustments, exceptions, exemptions, appeals, and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals. 10 CFR Part 1021, Subpart D, Appendix A, A3
DOL (OSHA/ MSHA)	Approval of petitions for variances from MSHA/OSHA safety standards or OSHA health standards. 29 CFR § 11.10(a)(1)(ii)

CE # 14: Financial assistance to an applicant solely for the purpose of refinancing outstanding debt, where the debt funds an action that is already completed.

Rationale and Support for CE # 14

This proposed CE involves the provision of financial assistance to refinance an outstanding debt, where the action funded has already been completed. If the action was previously federally funded, then its environmental impacts would have already been considered under NEPA, and no benefit arises from conducting additional environmental review associated with the refinancing of outstanding debt, because the underlying action is complete. By their nature, such actions are reasonably expected to have little or no impact on the human environment. Additionally, DOT has determined through the professional knowledge and experience of its staff familiar with the types of activities contemplated by this proposed CE that these types of activities do not typically result, either individually or cumulatively, in a significant impact on the human environment.

Other existing comparable CEs from other Federal agencies further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
HUD	<p>Refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §50.4(b)(1) is required. 24 CFR § 50.19(b)(21)</p> <p>HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §§ 50.4(b)(1) and (c)(1) and 51.303(a) is required. 24 CFR § 50.19(b)(24)</p>

USDA (RUS)	<p>A guarantee provided to a guaranteed lender for the sole purpose of refinancing outstanding bonds or notes or a guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the purpose of:</p> <ul style="list-style-type: none"> i. Refinancing existing debt instruments of a lender organized on a not-for-profit basis; or ii. Prepaying outstanding notes or bonds made to or guaranteed by the Agency. 7 CFR § 1970.53(a)(7)
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CE # 16: The following actions relating to economic regulation of airlines:

- (d) Making a determination on the reasonableness of a fee imposed by an airport proprietor on a U.S. or foreign air carrier;

Rationale and Support for CE # 16

This new subpart (d) relates to the fee that airport owners or operators may charge to air carriers or foreign air carriers for the use of airport property and services, such as the rent for terminal space, ground handling services, and landing fees. These rates and charges must be “reasonable.” 49 U.S.C. § 40116(e)(2). Under 49 U.S.C. § 47129, an airport owner or operator, or an air carrier or foreign air carrier, may request that the Secretary of Transportation determine whether a fee imposed on an air carrier or foreign air carrier by the airport owner or operator for use of airport property is unreasonable and request the Secretary’s determination about the reasonableness of the fee. DOT has concluded through the professional knowledge and experience of its staff familiar with the type of activity contemplated by this proposed CE that determining the reasonableness of these fees does not typically result, either individually or cumulatively, in a significant impact on the human environment. Other existing comparable CEs from other Federal agencies further support the designation of this CE.

List of Benchmarked and Comparable CEs

Agency	Language & Citation
DOE	<p>Changing rates for services or prices for products marketed by parts of DOE other than Power Marketing Administrations, and approval of rate or price changes for non-DOE entities, that are consistent with the change in the implicit price deflator for the Gross Domestic Product published by the Department of Commerce, during the period since the last rate or price change. 10 CFR Part 1021, Subpart D, Appendix B, B1.1</p> <p>Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits. 10 CFR Part 1021, Subpart D, Appendix B, B4.3</p>
STB	Rate, fare, and tariff actions. 49 CFR § 1105.6(c)(2)

VI. Rationale and Support for Retaining Original CEs

With respect to the CEs retained, as noted above, in conjunction with updating its list of CEs, DOT has reviewed its original list of CEs, and confirmed, with respect to the long-established subparts of original CE # 6, that now appear in the NPRM as CE # 16 (c), (e) through (h), and (j), that these types of activities continue to not typically result, either individually or cumulatively, in a significant impact on the human environment. DOT confirmed this based upon the professional knowledge and experience of its staff who are familiar with the long-standing application of these subparts. These subparts of this CE have not been impacted by changed circumstances since their establishment.

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APPENDIX A

UPDATED CE LIST & NUMBER COMPARISON CHART

Original CE #	Updated CE #	Updated CE Text	
1	1	Routine procedural, administrative, financial, and management actions necessary to support the normal conduct of DOT business. Routine procurements and contract actions for goods and services including general supplies, equipment, utility services, contractor services, and personal services.	<i>Modified</i>
2	2	Personnel actions including recruiting, hiring, promotions, processing, paying, and recordkeeping.	<i>Modified</i>
NA	3	Training, technical assistance, and educational and informational programs and activities.	<i>New</i>
4, 6(a)	4	Operating or maintenance subsidies or agreements, such as operating subsidies to transit agencies or air carriers under the Essential Air Service program, when the subsidy or agreement will not result in a change in the effect on the environment.	<i>Modified</i>
5	5	Actions categorically excluded in OA Procedures where the action is administered by another OA. The OA with the CE must provide a written determination that the CE applies to the action proposed by the other OA and provide expertise in reviewing the action being categorically excluded. The extraordinary circumstances provided in the OA Procedures where the CE is listed should be considered in lieu of the extraordinary circumstances provided in § 13.17(b). This CE is not applicable to actions that meet the definition of multimodal project in 23 U.S.C. 139(a); instead, an OA may follow the process in § 13.17(c).	<i>Modified</i>
NA	6	Leasing of space in existing buildings or facilities.	<i>New</i>
NA	7	Remodeling existing buildings or facilities including maintenance, reconstruction, rehabilitation, retrofit, or upgrades of existing buildings, facilities, or systems, such as electrical and plumbing systems, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas.	<i>New</i>
NA	8	Gardening, landscaping, and maintenance of existing landscaping that does not cause or promote the introduction or spread of invasive species that would harm the native ecosystem.	<i>New</i>

NA	9	Investigations, research activities, and studies including data collection and analysis, information gathering, document preparation, and information dissemination.	<i>New</i>
NA	10	Promulgation, modification, or revocation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents that are administrative, organizational, or procedural in nature, or are corrective, technical, or minor.	<i>New</i>
NA	11	Promulgation, modification, revocation, or interpretation of safety standards, rules, and regulations that do not result in a substantial increase in emissions of air or water pollutants, noise, or traffic congestion, or increase the risk of reportable release of hazardous materials or toxic substances in any mode of transportation.	<i>New</i>
NA	12	Hearings, meetings and public outreach activities.	<i>New</i>
NA	13	Administrative actions and proceedings, such as rendering decisions on petitions for rulemaking and petitions for reconsideration.	<i>New</i>
NA	14	Financial assistance to an applicant solely for the purpose of refinancing outstanding debt, where the debt funds an action that is already completed.	<i>New</i>
6(l)	15	Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments or agencies calling for cooperative activities or the provision of technical assistance, advice, equipment, funds, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral safety relationships with foreign governments and the implementation of such agreements.	<i>Modified</i>
6	16	The following actions relating to OST economic regulation of airlines:	
6(c)	16(a)	Actions approving an agreement between an air carrier and a foreign air carrier; acquisition of control, merger, consolidation, or interlocking relationship;	<i>Modified</i>
6(d)	16(b)	Finding a U.S. or foreign air carrier fit under 49 U.S.C. chapters 411 or 413;	<i>Modified</i>
6(e)	16(c)	Approving or setting carrier fares or rates;	<i>Unchanged</i>

NA	16(d)	Making a determination on the reasonableness of a fee imposed by an airport proprietor on a U.S. or foreign air carrier;	<i>New</i>
6(f)	16(e)	Route awards involving turboprop aircraft having a capacity of 60 seats or less and a maximum payload capacity of 18,000 pounds or less;	<i>Unchanged</i>
6(g)	16(f)	Route awards that do not involve supersonic service and will not result in an increase in commercial aircraft operations of one or more percent.	<i>Unchanged</i>
6(h)	16(g)	Determinations on termination of airline employees;	<i>Unchanged</i>
6(i)	16(h)	Actions relating to consumer protection, including regulations;	<i>Unchanged</i>
6(j)	16(i)	Authorizing carriers to serve airports already receiving the type of service authorized, which does not result in significant air quality, noise or other adverse environmental consequences;	<i>Modified</i>
6(k)	16(j)	Granting temporary or emergency authority;	<i>Unchanged</i>
6(m)	16(k)	Registration of an air taxi operator pursuant to 14 CFR part 298; and	<i>Modified</i>
6(n)	16(l)	Granting of charter authority to a U.S. or foreign air carrier under 49 U.S.C chapters 411 or 413.	<i>Modified</i>

APPENDIX B

LIST OF OTHER AGENCIES AND DOT OPERATING ADMINISTRATIONS USED FOR BENCHMARKING, AGENCY ABBREVIATIONS AND CE CITATIONS

Agency Abbreviation	Agency Full Name	Citation	Document Date
Air Force	U.S. Air Force	32 CFR Part 989, Appendix B, <i>Categorical Exclusions</i>	
Army	U.S. Army	32 CFR Part 651, Appendix B, <i>Categorical Exclusions</i>	
DOE	U.S. Department of Energy	10 CFR Part 1021, Subpart D, <i>Typical Classes of Actions</i> , Appendix A: <i>Categorical Exclusions Applicable to General Agency Actions</i> , and Appendix B: <i>Categorical Exclusions Applicable to Specific Agency Actions</i>	Nov. 14, 2011
DOI	U.S. Department of the Interior	43 CFR § 46.210, <i>Listing of Departmental categorical exclusions</i>	Nov. 14, 2008
DOL (OSHA/MSHA)	U.S. Department of Labor (Occupational Safety and Health Administration/Mine Safety and Health Administration)	29 CFR § 11.10, Section (a)(1), <i>Categorically excluded actions</i>	July 9, 2007
DOT	Department of Transportation	DOT Order 5610.1C	Oct. 1, 1979, as amended on July 13, 1982 and July 30, 1985
DHS	U.S. Department of Homeland Security	DHS Instruction Manual 023-01-001-01, Rev. 01, <i>Implementation of the National Environmental Policy Act (NEPA)</i> , Appendix A, <i>DHS List of Categorical Exclusions</i>	Nov. 6, 2014

Coast Guard	U.S. Coast Guard		
EPA	U.S. Environmental Protection Agency	40 CFR 6.204, <i>Categorical exclusions and extraordinary circumstances</i>	April 6, 2009
FAA	Federal Aviation Administration	FAA Order 1050.1F, <i>Environmental Impacts: Policies and Procedures</i> , Chapter 5: Categorical Exclusions	July 16, 2015
FHWA	Federal Highway Administration	23 CFR § 771.117, <i>FHWA categorical exclusions</i>	November 5, 2014
FMCSA	Federal Motor Carrier Safety Administration	69 FR 9680, <i>National Environmental Policy Act Implementing Procedure</i> , Appendix 2, <i>FMCSA Categorical Exclusions</i>	March 1, 2004
Forest Service	U.S. Forest Service	36 CFR § 220.6, <i>Categorical exclusions</i>	September 12, 2013
FRA	Federal Railroad Administration	78 FR 2713, <i>Update to NEPA Implementing Procedures</i>	January 14, 2013
FTA	Federal Transit Administration	23 CFR § 771.118, <i>FTA categorical exclusions</i>	November 5, 2014
FWS	U.S. Fish and Wildlife Service	Department of the Interior Departmental Manual, Part 516, Chapter 8, Section 5, <i>Categorical Exclusions</i>	May 27, 2004
HUD	U.S. Department of Housing and Urban Development	24 CFR § 58.35, <i>Categorical exclusions</i> 24 CFR § 50.19, <i>Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4</i>	December 16, 2013
MARAD	Maritime Administration	MAO 600-1, <i>Procedures for Considering Environmental Impacts</i> , Appendix 1, <i>Maritime Administration Actions Which Are Not Normally Major Actions Significantly Affecting the Environment (i.e., Categorical Exclusions</i> , (July 23, 1985), <i>Final Procedures for Considering Environmental Impacts</i> , 50 FR 30900-03 (July 30, 1985)	July 23, 1985
Navy	U.S. Navy	32 CFR § 775.6, <i>Planning considerations</i> , Section(f), <i>Categorical exclusions</i>	
NIH	National	65 FR 2977, <i>Establishment by the</i>	Jan. 19,

	Institutes of Health	<i>National Institutes of Health of Categorical Exclusions Under the National Environmental Policy Act</i>	2000
STB	Surface Transportation Board	49 CFR § 1105.6, <i>Classification of actions</i>	March 25, 2016
Treasury	U.S. Department of the Treasury	79 FR 49834, Treasury Directive 75-02, <i>Department of the Treasury National Environmental Policy Act (NEPA) Program, Appendix 1, Categorical Exclusions</i>	May 6, 2015
USAID	United States Agency for International Development	22 CFR § 216.2, Section (c), <i>Categorical exclusions</i>	
USDA	U.S. Department of Agriculture	7 CFR § 1b.3, <i>Categorical exclusions</i>	
USDA (APHIS)	Animal and Plant Health Inspection Service (agency of the U.S. Department of Agriculture)	7 CFR § 372.5, Section (c): <i>Categorically excluded actions</i>	
USDA (ARS)	Agricultural Research Service (Agency of the U.S. Department of Agriculture)	7 CFR § 520.5, <i>Categorical exclusions</i>	
USDA (RUS)	Rural Utilities Service (agency of the U.S. Department of Agriculture)	7 CFR § 1970.53, <i>CEs involving no or minimal disturbance without an environmental report</i>	April 1, 2016

APPENDIX C

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⁵² This list includes positions for individuals during the time they contributed to NEPA Working Group.

⁵³ The following staff of the Office of the Secretary verified and updated this Administrative Record in Spring 2020: April Marchese, Director, Infrastructure Permitting Improvement Center; Gerald Solomon, Senior Adviser to the Assistant Secretary for Transportation Policy; Rhonda Solomon, Environmental Protection Specialist; Kelsey Owens, Environmental Protection Specialist; and Krystyna Bednarczyk, Senior Attorney.

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