

Guidance on the Application of Categorical Exclusions for Multimodal Projects under 49 U.S.C. 304

The U.S. Department of Transportation (DOT) is issuing this revised guidance to address the application of categorical exclusions (CE) for multimodal projects under 49 U.S.C. 304. Under certain conditions, 49 U.S.C. 304 allows one DOT Operating Administration or Secretarial office (collectively referred to as “OA”) to apply the CE of another OA for multimodal projects. DOT is updating this guidance because section 1310 of the Fixing America’s Surface Transportation Act (FAST Act) amended 49 U.S.C. 304. This guidance is effective immediately. DOT expects this multimodal CE process to be used primarily for individual projects, although the statute provides the flexibility to apply it to a group or a program of multimodal projects.

1. How did the FAST Act modify 49 U.S.C. 304?

The FAST Act made four key changes to the application of CEs for multimodal projects created by section 1314 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). First, the FAST Act clarified the terms “operating authority” and “lead authority.” Second, the FAST Act redefined the term “multimodal project” (see question 2). Third, the FAST Act changed the process for applying CEs to multimodal projects (see question 9). Fourth, the FAST Act eliminated the requirement that the multimodal project be funded in a single grant agreement.

2. What is a multimodal project under 49 U.S.C. 304?

The term “multimodal project” has the same meaning given to the term in 23 U.S.C. 139(a). 49 U.S.C. 304(a)(3). A “multimodal project” means a project that requires the approval of more than one DOT operating administration or secretarial office (again, collectively referred to as “OA”).

3. What are some types of projects or situations where one OA can use another OA’s CE under 49 U.S.C. 304?

Provided the requirements of 49 U.S.C. 304 are met, a lead authority may apply a cooperating authority’s CE to a single Federal project or, in certain circumstances, to an element or elements of a single Federal project. As described further below, in order for a lead authority to apply a cooperating authority’s CE, the project or an element of the project must meet the definition of a multimodal project in 23 U.S.C. 139, and the cooperating authority must concur with the lead agency’s determination that the CE is applicable, and that it satisfies the conditions for a categorical exclusion under NEPA and 49 U.S.C. 304.

4. If a project is not eligible to use the 49 U.S.C. 304 process, what other processes are available for the environmental review of multimodal projects?

For multimodal projects that do not qualify to use the 49 U.S.C. 304 process outlined here, such as a project that would not meet the statute’s definition of “multimodal” because it requires the approval of only one OA, the OA may apply its own CE, as appropriate. In the absence of an applicable CE, an OA should prepare the appropriate NEPA document, either an environmental assessment (EA) or environmental impact statement (EIS).

5. Who is the lead authority?

The lead authority is the OA that has the lead responsibility for compliance with NEPA for a proposed multimodal project. 49 U.S.C. 304(a)(2). This means the lead authority is responsible for coordinating and completing the environmental review and permitting process for the project.

6. Who is the cooperating authority?

The cooperating authority is the OA whose CE the lead authority is applying and that has expertise in the application of its CE to the project.

7. How does a lead authority apply a cooperating authority's CE to a proposed multimodal project?

When the lead authority identifies an eligible multimodal project, the lead authority is responsible for evaluating whether a cooperating authority's CE is applicable. As part of the evaluation, the lead authority should consult with the cooperating authority. The lead authority must obtain the cooperating authority's concurrence in writing that its CE is applicable to the proposed multimodal project, and that the project satisfies the conditions for a CE under NEPA and 49 U.S.C. 304.

The lead authority must follow the cooperating authority's NEPA implementing procedures to determine whether extraordinary circumstances¹ are present that merit additional analysis to determine whether an EA or EIS should be prepared. The lead authority also must determine that the proposed multimodal project does not individually or cumulatively have a significant effect on the environment, which would require preparation of an EIS. Finally, the lead authority should document that it has followed these steps, such as a memo in the project file or administrative record.

8. What are a cooperating authority's responsibilities when a lead authority proposes to apply the cooperating authority's CE?

At the request of the lead authority, the cooperating authority must provide assistance with those aspects of the multimodal project on which the cooperating authority has expertise. This includes technical assistance on modal-specific issues, as well as its views on the appropriateness of applying one of its CEs to the proposed project.

When a cooperating authority receives notice that a lead authority intends to apply the cooperating authority's CE, it should endeavor to provide a written response within 30 days. In response to the notice, the cooperating authority must either concur with the lead authority's determination that the cooperating authority's CE is applicable, and the project satisfies the conditions for a CE under NEPA and 49 U.S.C. 304; or the cooperating authority may non-concur. The cooperating authority also may request additional information in order to make its determination.

¹ The term "unusual circumstances," as used in the FHWA/FTA NEPA implementing procedures (23 CFR part 771), has the same meaning as "extraordinary circumstances."

9. Whom should the lead authority contact at each cooperating authority when seeking concurrence on the applicability of a CE?

Typically, the lead authority should contact the appropriate State or regional office of the cooperating authority. For FAA, the lead authority should contact the Office of Environment and Energy. For FHWA, the lead authority should contact the Division Office of the State in which the project is located. For FRA, the lead authority should contact the Chief of Environment and Corridor Planning. For FTA, the lead authority should contact the Regional Office where the project is located. For MARAD, the lead authority should contact the Director of the Office of Environment.

10. Can States act as lead authorities?

Yes, under 23 U.S.C. 326, States may assume responsibility for applying CEs to proposed actions. In addition, 23 U.S.C. 327 allows FHWA, FRA, and FTA to assign and for States to assume responsibilities under NEPA, including the authority to make CE determinations for multimodal projects. If a State has first entered into a section 326 or section 327 agreement, and that agreement explicitly assigns NEPA responsibilities for multimodal projects, the State could act as a lead authority under 49 U.S.C. 304.

11. Are multimodal projects funded with multiple grant agreements eligible to use the 49 U.S.C. 304 process?

Yes. Multimodal projects do not need to be funded in a single grant agreement to use the 49 U.S.C. 304 process.