4.1.1.11 Appendix G. Federal Environmental Approvals Worksheet

For all FHWA federally-funded NEPA Class II (CE) projects, Steps 1, 2 and 3 of the FEAWS should be preliminarily filled in at the start of Design Phase 1 and completed and signed (Step 4) prior to CE/environmental determination at the end of Phase 1. Chapter 4 of the PDM contains specific timing information based on project category. The correspondence distributing the FEAWS (using the FEAWS Shells) must be prepared and filed (or sent) prior to, or at the time of, the CE/environmental determination. The FEAWS is a tool to 1) communicate the project’s National Environmental Policy Act (NEPA) classification, 2) communicate the entity (NYSDOT or FHWA) making the NEPA Categorical Exclusion determination and, 3) to document the status of other Federal environmental approvals of interest to FHWA that must be completed prior to making the NEPA determination.

FEDERAL ENVIRONMENTAL APPROVAL WORKSHEET MATERIALS:

- Federal Environmental Approval Worksheet (FEAW) – Version 3
- FEAWS Thresholds
- FEAWS Instructions
- FEAWS Shells (1-4)
- FEAWS Flowchart

The above documents are all located at the following link: https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm/repository/FEAW1.zip.

The modified Project Approval Sheets for the Report Shells can be accessed within the Project Development Manual (PDM) at: https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm/shells.

TECHNICAL INFORMATION:

Issued FEAWS guidance is compiled here in reverse chronological order. Older guidance may still be applicable.

**EB 17-043 and EB 18-015**

EB 18-015 issues FEAWS – Version 3 and supporting materials and guidance, which have been revised to reflect the Programmatic Agreement Between the Federal Highway Administration, New York Division, and the New York State Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects (PARCE), executed September 28, 2017 and found within TEM § 4.1.1 NEPA, Appendix H.

- The PARCE replaces the Federal Highway Administration (FHWA) New York Division’s Programmatic Categorical Exclusion signed July 15, 1996, as found in Environmental Procedures Manual (EPM) Chapter 2 Attachment 2.2.C.
There is a certification/signature line for use with projects where the NYSDOT makes the determination that a project qualifies as a CE on the Project Approval Sheets of the four DAD shells (IPP/FDR, PSR/FDR, BRR and DDR) in the PDM, Appendix 7. As noted in the guidance provided in the shells, the certification must be removed for projects where FHWA makes the CE determination. The DAD shells can be accessed from: https://www.dot.ny.gov/divisions/engineering/design/dqab/pdm/shells. For information on the DAD shells contact Mary Ricard in the Design Quality Assurance Bureau at (518) 485-2216 (e-mail: mary.ricard@dot.ny.gov).

Changes in terminology and processing of CEs are reflected in the FEAW - Version 3:

- Thresholds for the topics identified in the PARCE, §IV.A.1.b (PARCE thresholds) are included in FEAW Thresholds - Version 3.
  - When the PARCE thresholds for the project are not exceeded, and all required FHWA independent environmental determinations have been made, the NYSDOT has been delegated the authority to make the CE determination and Shells 1 & 2 are applicable.
  - When the PARCE thresholds are exceeded or all required FHWA independent environmental determinations have not been made, the NYSDOT may not make the CE determination. The NYSDOT will recommend and request that the FHWA make the CE determination using Shells 3 & 4.

In addition to identifying which party makes the CE determination, the FEAW - Version 3 still documents the status of other FHWA environmental actions that are required to be completed prior to making the CE NEPA determination. Thresholds for determining other FHWA environmental actions are still contained within the FEAW Thresholds document.

For projects meeting the Projects of Division Interest (PoDI) programmatic screening criteria, delegated Categorical Exclusion determinations are reviewed by FHWA and affirmed prior to granting Design Approval.

The process to implement the PARCE is the same for all actions covered by 23 CFR 771.117(c) and 23 CFR 771.117(d) (i.e., ‘c list’ and ‘d list’).

While the federal approvals identified in the FEAW may be applicable to projects that have other federal lead agencies and other NEPA classes, the FEAW was created specifically with the FHWA procedures and the CE (NEPA Class II) projects in mind.

IMPLEMENTATION:

- The FEAW - Version 3 and supporting materials and guidance are applicable for all FHWA federally-funded projects that are NEPA Class II (CE) and receive CE/environmental determination on or after the effective date of this EB; and for appropriate Real Property transactions that require FHWA approval on or after the effective date of this EB.
- For all FHWA federally-funded NEPA Class II (CE) projects, Steps 1, 2 and 3 of the FEAW should be preliminarily filled in at the start of Design Phase 1.
and completed and signed (Step 4) prior to CE/environmental determination at the end of Phase 1. Chapter 4 of the PDM contains specific timing information based on project category. The correspondence distributing the FEA (using the FEA Shells) must be prepared and filed (or sent) prior to, or at the time of, the CE/environmental determination. The FEA should be completed by the appropriate staff or designee, as identified in the certification section of the FEA.

- For Real Property transactions that require an approval by the FHWA, the FEA should be completed and signed prior to the request for FHWA approval.
- The FEA and the appropriate FEA Shell (used to transmit the FEA) must be included in the Record Retention folder under each PIN folder in the ProjectWise folder/directory structure, in keeping with Engineering Instruction (EI) 17-005 (Design Related Record Retention). The signed FEA and appropriate FEA memo/transmittal letter is to be included in the approved DAD. Any changes to the FEA made after DAD approval must be saved within the Record Retention folder.

EB 16-001

Issuance of EB 16-001 updated the previously-issued FEA materials to reflect changes in the Categorical Exclusion lists found at 23 CFR 771.117(c)-(d). Pursuant to a Final Rule published in the Federal Register (Vol. 79, No. 193, October 6, 2014), 23 CFR Part 771 was amended to allow FHWA to process Categorical Exclusions in 771.117(d)(1)-(3) as (c)-list Categorical Exclusions when the action meets specified constraints. EB 16-001 provided the following guidance:

- Former Categorical Exclusions in 771.117(d)(1)-(3) that are re-listed as 23 CFR 771.117(c)-(d), (26), (27), or (28) are as follows:
  - (26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of 771.117.
  - (27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of 771.117.
  - (28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of 771.117.

- Per paragraph (e) of 771.117, the above Categorical Exclusions may now be processed as 23 CFR 771.117(c) (26), (27), or (28) as long as they do not include:
  - An acquisition of more than a minor amount of right-of-way (less than 10% of a parcel, for parcels under 4 ha/10 acres in size; less than
0.4 ha/1 acre, for parcels 4 to 40.5 ha/10 to 100 acres in size; and less than 1% of a parcel, for parcels greater than 40.5 ha/100 acres in size);

- An acquisition that would result in any residential or non-residential displacements;
- An action that needs a bridge permit from the U.S. Coast Guard;
- An action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
- A finding of “adverse effect” to historic properties under the National Historic Preservation Act;
- A finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;
- Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
- Changes in access control;
- A floodplain encroachment other than functionally dependent uses (functionally dependent uses are actions that must occur in close proximity to water, e.g., bridge projects) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or
- Construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

- Activities that can be categorized under 771.117(c)(26), (27), or (28), but do not meet the above conditions, will be processed as 771.117(d)(13) – “Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.”

EB 14-042

Issuance of EB 14-042 updated the previously-issued worksheet materials to clarify the thresholds associated with:

- Table 2.1, Section 7 of the Endangered Species Act, to reflect the need for USFWS concurrence with the FHWA determination;
- Table 2.1, Section 106 of the National Historic Preservation Act, to reflect scenarios where FHWA must issue a determination on the presence of historic properties; and
- Table 2.2, Executive Order 11988 (Floodplain Management), to eliminate confusion and clarify which scenarios trigger a need for FHWA concurrence.
The update also reflected two new Categorical Exclusions made part of 23 CFR Part 771.117(c), as a result of publication of a Final Rule in the Federal Register on January 13, 2014. These were:

- (22) any project (as defined in 23 U.S.C. 101(a)) that will take place entirely within an existing operational right-of-way; and
- (23) any Federally funded project that receives less than $5,000,000 of Federal funds or with a total estimated cost of not more than $30,000,000 and the Federal funds comprising less than 15 percent of the total estimated project cost, respectively.

Operational right-of-way is defined as “those portions of the right-of-way that have been disturbed for an existing transportation facility or are regularly maintained for transportation purposes. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, substations, etc.) and other areas regularly maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, or park and ride lots with direct access to an existing transit facility. It does not include portions of the existing right-of-way that are not currently being used or not regularly maintained for transportation purposes.”

Finally, this update corrected grammatical inconsistencies throughout the materials.

**EB 14-007**

Issuance of EB 14-007 made the Federal Environmental Approvals Worksheet available as a new tool to communicate the project NEPA classification to FHWA, and to document the status of other Federal environmental approvals of interest to FHWA that must be completed prior to making the NEPA determination. It replaced the NEPA Assessment Checklist for all FHWA, federally-funded NYSDOT-let and locally- administered projects. The FEAW also replaced the NEPA Assessment Checklist for certain real estate transactions as described in the Office of Right Of Way Instruction Manual Instruction: A02-5-28. EB 14-007 provided the following guidance:

- The terms ‘automatic categorical exclusion’ and ‘programmatic categorical exclusion’ will no longer be used. Projects qualifying as categorical exclusions under NEPA will be referred to by their designations in NEPA, as C list categorical exclusions, or D list categorical exclusions. There are no changes to the project process with this issuance. Consistent use of certification statements by those responsible for completing and/or reviewing the FEAW is required. Recertification of the worksheet information is required for projects if significant time elapses (> 3 years) during Design Phase I, from the end of Phase I to Design Approval, or from Design Approval to PS/E, or where other circumstances warrant project reevaluation.
Certification/recertification signatories:
- Project Manager/Designer - The person completing or overseeing completion of the FEAW (e.g., NYSDOT or Responsible Local Official or their Agent).
- Regional Environmental Unit Supervisor (or designee) – The NYSDOT environmental subject matter expert, signing based on their knowledge of the project scope and contributions to the FEAW and/or review of available project documentation.
- Regional Local Project Liaison – A NYSDOT staff person, signing based on their knowledge and review of the project scope and supporting documentation.

BACKGROUND:
Background of FEAW Version 3.
- The 2017 Programmatic Agreement Regarding CEs (Appendix H) sets forth the agreement between the FHWA and NYSDOT on the roles and responsibilities of the FHWA and NYSDOT with respect to processing NEPA CEs.
- In order to incorporate the conditions of the 2017 Programmatic Agreement Regarding CEs within existing NYSDOT procedures, the FEAW was modified to reflect the new terminology and processes included in the 2017 Programmatic Agreement Regarding CEs.

Background of the 2017 Programmatic Agreement Regarding CEs.
- The FHWA's NEPA implementing procedures (23 CFR part 771) list a number of CE for certain actions that the FHWA has determined do not individually or cumulatively have any significant environmental impacts (23 CFR 771.117(c)-(d));
- Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allowed the FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State Department of Transportation to determine that a project qualifies as a CE on behalf of the FHWA; and the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015) further directed FHWA to enter into such agreements.
- The FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014 (23 CFR 771.117(g)), including that the agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance.
- FHWA has information on the authority and purpose of the program at https://www.environment.fhwa.dot.gov/strmlng/programmatic_ce.asp

Background of FEAW Versions 1 & 2.
In July 1996, FHWA NY Division issued their NEPA Programmatic Categorical
Exclusion agreement, NYSDOT issued their NEPA Categorical Exclusion Checklist (the Checklist) and FHWA approved the NYSDOT NEPA Categorical Exclusion Checklist process. Over the subsequent 15 years, use of the Checklist identified the need to provide additional guidance and in September 2010, as an interim step to revising or replacing the Checklist, EB 10-043 issued “Interpretive Guidance for the NEPA Assessment Checklist”.

The Checklist still required an update to address several federal environmental regulatory changes that had been enacted since 1996. Adding these new requirements identified the need to address the status of those federal environmental approvals where FHWA has an action that must be completed prior to the categorical exclusion determination. This revision process also identified the need to provide a clearer definition of its purpose, to provide clear instructions and improve consistency with how it is completed, and to improve record-keeping aspects. To address these issues, the decision was made to replace the Checklist with a different document that re-packaged the existing environmental requirements in a process that better met those needs.

The proposed new “Federal Environmental Approvals Worksheet” had a narrower scope and focused on communicating to FHWA the project’s NEPA class and the status of those federal environmental approvals where FHWA has an action that must be completed prior to the categorical exclusion determination. All other environmental, social and economic factors that affect the project’s NEPA classification, as per 23 CFR 771.117 and the July 1996 FHWA NY Division NEPA Programmatic Categorical Exclusion memo must still be addressed, e.g. property acquisition, change in travel patterns, access control, other environmental regulations, etc.

To address the identified needs, the FEAW differs from the NEPA Checklist as follows:
1. The purpose is clearly stated at the outset;
2. The federal environmental approvals that must be completed prior to the categorical exclusion determination are clearly identified;
3. The thresholds for decision-making are well-defined;
4. The instructions are clear; and
5. The roles and responsibilities for completing and certifying the FEAW are identified.

The FEAW requires a clear statement that no “unusual circumstances” exist for an activity that would normally qualify as a categorical exclusion and includes the status of those federal environmental approvals where FHWA has an action that must be completed prior to the categorical exclusion determination. These changes provide a narrower focus for the FEAW, and it is important to note that although
some other federal approvals and environmental regulations are not included, they still need to be addressed and documented in the project design approval document.

The FEAW process is also designed to help accommodate the categorical exclusion changes resulting from the Federal Authorization Bill “Moving Ahead for Progress in the Twenty-first Century” (MAP-21) by establishing a consistent approach for documenting coordination of those federal environmental approvals where FHWA has an action that must be completed prior to the categorical exclusion determination. The FEAW proposed no new or additional environmental requirements and it was anticipated that it would not result in an increase in the number of reports being sent to FHWA.