

CHAPTER 10

THE CATEGORICAL EXCLUSION



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THE CATEGORICAL EXCLUSION

This section describes the format and content of a Categorical Exclusion (CE, also known as a Cat Ex). CEs are Class II actions or activities that meet the definition in 23 Code of Federal Regulations (CFR) 771.117(a) and, based on the experience of the Federal Highway Administration (FHWA), do not have significant environmental effects. The CEs are divided into two groups, standard and documented, based on the action's potential for impacts. The level of documentation necessary for a particular CE depends on the group the action falls under. Because the level of CE documentation varies, it is important to understand the relationship between the various actions and the required documentation.

10.1 Summary of Key Legislation, Regulations, and Guidance

The key legislation, regulations, and guidance for CEs are the same as those presented for Environmental Assessments (EAs) and Environmental Impact Statements (EISs).

Internet links for online references to these regulations and guidance documents are located at the end of this chapter.

- 40 CFR Parts 1500–1508, Regulations for Implementing NEPA: The Council on Environmental Quality (CEQ) issued the regulations in this section of the CFR in 1978, and amended them once in 1986. This section sets forth requirements for the implementation of the National Environmental Policy Act of 1969 (NEPA), with the directive that individual federal agencies must develop regulations for implementing NEPA that are specific to the mission of the particular agency.
- 23 CFR Part 771, FHWA Environmental Impact and Related Procedures: As noted above, individual federal agencies were directed to develop regulations to implement NEPA within the context of the agency's mission. This section of Title 23 establishes the requirements for FHWA projects.

- CEQ’s Forty Most Asked Questions Concerning CEQ’s NEPA Regulations (40 Questions): While 40 Questions does not have the same legal standing as CEQ’s NEPA regulations, this document is perhaps the next best source of information regarding NEPA implementation. The CEQ issued 40 Questions as a means to addressing the most frequently asked questions regarding 40 CFR 1500–1508.

10.2 General Methodology Analysis or Evaluation

CEs do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historical, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts. Neither an EA nor an EIS is required for these types of projects. As noted, CEs are divided into two groups: standard and documented. Each type requires differing levels of documentation and is discussed below

The actions below meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Section 771.117(a) of 23 CFR 771, and typically do not require any further NEPA documentation or approvals by FHWA. However, other environmental laws may still apply. For example, installation of traffic signals in a historic district may require compliance with Section 106, or a proposed noise barrier that would use land protected by Section 4(f) would require preparation of a Section 4(f) evaluation (23 CFR 771.135(i)). In most cases, information is available from planning and programming documents for the FHWA Division Office to determine the applicability

of other environmental laws. However, any necessary documentation should be discussed and developed cooperatively by the District of Columbia Department of Transportation (DDOT) and FHWA.

- Activities that 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 USC 307; approval of a unified work program and any findings required in the planning process pursuant to 23 USC 134; approval of statewide programs under 23 CFR 630; approval of project concepts under 23 CFR 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 that establish classes of highways on the federal aid highway system
- Approval of utility installations along or across a transportation facility
- Construction of bicycle and pedestrian lanes, paths, and facilities
- Activities included in the State’s “highway safety plan” under 23 USC 402
- Transfer of federal lands pursuant to 23 USC 317 when the subsequent action is not an FHWA action
- The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction
- Landscaping
- Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur

- Emergency repairs under 23 USC 125
- Acquisition of scenic easements
- Determination of payback under 23 CFR 480 for property previously acquired with federal aid participation
- Improvements to existing rest areas and truck weigh stations
- Ridesharing activities
- Bus and rail car rehabilitation
- Alterations to facilities or vehicles to make them accessible for elderly and disabled persons
- Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand
- The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE
- Track and railbed maintenance and improvements when carried out within the existing right-of-way
- Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site
- Promulgation of rules, regulations, and directives

Typically, resurfacing and street maintenance projects, sidewalk repair, traffic signal replacement, striping of pavements, tree planting and replacement, bridge deck replacements, and bridge painting-type projects qualify as CEs. However, if these projects are within historic districts,

the District of Columbia Historic Preservation Office (DCHPO) should review the plans.

Before placing these projects in the federal Financial Management Information System (FMIS) for FHWA approval, the environmental coordinator in the Project Development and Environment (PDE) Division must verify the Level I CE classification.

Additional actions that satisfy the criteria for a CE in the CEQ regulations (40 CFR 1508.4) may be designated as CEs only after Administration approval. The applicant shall submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

- Modernization of highways by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (such as parking, weaving, turning, and climbing).
- Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
- Bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings.
- Development of transportation corridor fringe parking facilities.
- Construction of new truck weigh stations or rest areas.

Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

- Approvals for changes in access control.

- Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
- Acquisition of land for hardship or protective purposes, and advance land acquisition loans under Section 3(b) of the Urban Mass Transportation (UMT) Act of 1964. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisitions qualify for a CE only where the acquisition

will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

10.2.1 Consideration of Unusual Circumstances

Section 771.117(b) lists those unusual circumstances when further environmental studies will be necessary to determine the appropriateness of a CE classification. The unusual circumstances include:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Significant impact on properties protected by Section 4(f) of the United States Department of Transportation (USDOT) Act or Section 106 of the National Historic Preservation Act (NHPA)
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action

Unusual circumstances can arise on any project normally advanced with a CE; however, the type and depth of additional studies will vary with the type of CE and the facts and circumstances of each situation. For those actions on the fixed list (standard CE group) of CEs, unusual circumstances should rarely, if ever, occur due to the limited scope of work. Unless unusual circumstances come to the attention of DDOT or FHWA, they need not be given further consideration. For actions in the second group of CEs (documented CE group), unusual circumstances should be addressed in the information provided to the FHWA with the request for CE approval.

The level of consideration, analysis, and documentation should be commensurate with the action's potential for significant impacts, controversy, or inconsistency with other agencies' environmental requirements.

10.3 CE Approval Process and Documents

FHWA and DDOT have signed a Programmatic Agreement regarding the review and approval process of Categorical Exclusions (CE) in accordance with NEPA regarding the implementation of the federal aid highway program. The FHWA – DDOT CE Programmatic Agreement (CE PA) establishes the following process for approval and review of CEs.

- Project Development & Environmental Review Form (Form I) must be prepared and submitted to DDOT PDE Division for all projects and actions under the Federal Aid Program by the respective project managers. This includes actions taken when any project progresses from one phase to the next (e.g., from planning to design or from design to construction), as well as change orders.
- Based on the information submitted in Form I, the DDOT Environmental Division will determine which level of NEPA action the project qualifies for.
- All actions that qualify as CEs identified in 23 CFR 771.117(c) and which meet all the requirements listed in Section III.A of the CE PA will be classified as Level 1 CE (“CE-1”) Actions. For such actions, Project Development & Environment Form (Form I) will be only document needed. The DDOT Environmental Division will make this determination based on Form I. The final step in this level of CE will be the approval of the DDOT Environment Division Chief or his/her designee. Projects that do not meet the criteria of CE-1 Actions shall be processed at the next appropriate higher level.
- All actions that qualify as CEs identified in 23 CFR 771.117(c) and (d) and which meet all the requirements listed in Section III.B of the CE PA will be classified as Level 2 CE (“CE-2”) Actions. The DDOT Environmental Division will make this determination based on the Form I submitted. After the determination made by the DDOT Environmental Division that the project is CE-2, the project manager shall prepare and submit a CE-2 Form (Form II). The DDOT Environmental Division shall confirm that these actions meet the criteria of CE-2 projects and no significant impact exists. The final step in this level of CE will be the approval of the DDOT Environment Division Chief or his/her designee. Projects that do not meet the criteria of CE-2 Actions shall be processed at the next appropriate higher level.
- All actions that qualify as CEs identified in 23 CFR 771.117(c) & (d) which do not meet the requirements listed in Section III.A and III.B of the CE PA, will be classified as Level 3 CE (“CE-3”) Actions. The DDOT Environmental Division will make this determination based on the Form I submitted. After the determination made by the DDOT Environmental Division that the project is CE-3, the project manager shall prepare and submit the CE-3 document. The format of the CE-3 document is provided in the appendices of this manual. The DDOT Environmental Division shall confirm that these actions meet the criteria of CE-3 projects and no significant impact exists. The DDOT Environment Division Chief or his/her designee will approve this document as CE-3, and then this document will be submitted to FHWA for final approval. The final step for this level of CE will be the signature of the FHWA Division Administrator or his/her designee. Projects that do not meet the criteria

of any level of CE shall be processed as an EA or EIS pursuant to 40 CFR 1500 and 23 CFR 771.

- DDOT will prepare an annual report for submittal to FHWA that covers the current fiscal year. The report will include summary information on projects processed as CEs and will include all forms and documents prepared for all NEPA actions for the Federal Aid Program. The report will be provided to the FHWA annually. FHWA shall monitor activities to ensure compliance with its responsibilities under NEPA. FHWA will make periodic reviews of DDOT procedures and documentation to ensure that all potential environmental impacts are being considered and compliance with all applicable laws, regulations, executive orders, etc., is being properly documented.

CE-1 and CE-2 forms and CE-3 documents are provided in Appendices A, B, and C, respectively, of this manual. For CE projects/documents, public involvement is required even though a public meeting is not required. Public involvement may be carried out by various methods, such as ANC meetings, public notices, websites, DDOT website postings,

press releases, flyers, and handouts, depending upon the complexity of the project.

10.4 Additional Information

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500-1508), CEQ, 1978: http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm

Environmental Impact and Related Procedures (23 CFR 771), FHWA: <http://www.environment.fhwa.dot.gov/projdev/index.asp>

FHWA Environmental Review Toolkit, NEPA Documentation: <http://www.environment.fhwa.dot.gov/projdev/docuce.asp>

Environmental Handbook, Volume I: Guidance for Compliance, Caltrans: <http://www.dot.ca.gov/ser/vol1/sec4/ch30ce/chap30ce.htm>