

3. Categorical Exclusion

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Chapter Abbreviations/Acronyms

CE – Categorical Exclusion
CFR – Code of Federal Regulations
CEQ – Council on Environmental Quality
COA – Class of Action
DOT&PF – Alaska Department of Transportation & Public Facilities
EA – Environmental Assessment

EIS – Environmental Impact Statement
FHWA – Federal Highway Administration
MOU – Memorandum of Understanding
NEPA – National Environmental Policy Act
QA/QC – Quality Assurances/Quality Control
REM – Regional Environmental Manager
USC – United States Code

3.1. Overview

This chapter provides an overview of actions classified as categorical exclusions (CEs) assigned under the 6004 Program and explains the documentation process required by the Alaska Department of Transportation and Public Facilities (DOT&PF). Additional information is also presented to provide a more in-depth of the CE process.

Note: This chapter applies only to projects assigned to the 6004 Program.

Chapter 2 explains the class of action determination and 6004 assignment process. To process non-assigned environmental documents, refer to the *Alaska Highways Environmental Procedures Manual*.

3.2. CE Definition

The Council on Environmental Quality (CEQ) defines a categorical exclusion in [40 CFR 1508.4](#) as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.”

The Federal Highway Administration (FHWA) describes CEs as actions that meet the CEQ definition of a CE and, based on past experience with similar actions, do not involve significant environmental impacts.

To meet the standard for a CE set out in [23 CFR 771.117\(a\)](#), an action does not:

- Induce significant impacts to planned growth or land use for the area
- Require the relocation of significant numbers of people
- Have a significant impact on any natural, cultural, recreational, historic or other resource
- Involve significant air, noise or water impacts
- Have significant impacts on travel patterns
- Individually or cumulatively have any significant environmental impacts

A categorical exclusion is not a waiver of National Environmental Policy Act (NEPA) review, but instead is one type of NEPA review.

3.3. Processing a CE

A number of different factors should be considered before processing a CE. The following factors will affect how a CE is processed:

- The type of action involved
- The potential for impacts (see Section 3.1)
- Whether the type of action falls under the [6004 Memorandum of Understanding](#) (MOU) (see Chapter 2)
- Whether the action qualifies under a Programmatic Approval (see Section 3.4)

The CE approval process is outlined in Section 3.5. To accurately and efficiently process CE actions make sure that you have a thorough understanding of all these considerations.

3.3.1. The “c” and “d” Lists

Within the CE regulations in [23 CFR 771.117](#) are two lists of actions that can be anticipated to have little or no environmental impacts, and do not involve significant environmental impacts or unusual circumstances. As a result, these actions are expected to typically meet the criteria for a CE. The actions, found in 23 CFR 771.117 (c) and (d), are referred to as “c” list and “d” list actions, respectively.

“c” list actions

Typical “c” list actions are either non-construction in nature (e.g., planning, grants for training, research programs) or involve minor construction activities. Table 3-1 presents the “c” list actions identified in [23 CFR 771.117\(c\)](#).

“d” list actions

These example actions may involve a greater likelihood for adverse environmental effects than “c” list actions and, therefore, require additional documentation that demonstrates that significant environmental effects will not result. Prepare a CE Documentation Form to verify compliance with local, State or federal requirements and to ensure the project does not involve unusual circumstances that require an EA or EIS. Table 3-2 provides the examples of “d” list actions as identified in [23 CFR 771.117\(d\)](#).

The 6004 MOU allows for only the activities specifically listed on the “c” or “d” lists to be processed as 6004 assigned projects.

3.4. Programmatic Approvals

The approval of certain types of CEs are delegated to the REMs under a November 6, 2012 [Chief Engineer’s Directive](#). These three Programmatic Approvals were given to REMs to make processing CE actions more efficient and minimize delays in delivering critical projects.

The directive allows the REM to certify that applicable projects meet the terms of a Programmatic Approval and determine the appropriate documentation necessary.

CEs that do not meet the requirements of a specific Programmatic Approval require the Statewide NEPA Manager’s approval.

The directive creates three Programmatic Approvals that apply to different actions. Each has different processing requirements.

Approval 1 – Certain projects processed under 23 CFR 771.117(c)

Some “c” list projects may fall under Programmatic Approval 1, and thus, do not require a CE Documentation Form. The conditions listed in the Chief Engineer’s Directive must be satisfied in order to approve a project under Programmatic Approval 1. The summary of applicable “c” list actions and exceptions are included in Programmatic Approval 1 and are listed in Table 3-1 as the actions without an asterisk (*).

Approval 2 – Certain projects processed under 23 CFR 771.117(c) & (d)

This Programmatic Approval applies to “c” and “d” list actions that require a CE Documentation Form. The conditions listed in the Chief Engineer’s Directive must be satisfied in order to approve a project under Programmatic Approval 2. The “c” list actions identified in Table 3-1 with an asterisk (*) and “d” list actions may be processed under Programmatic Approval 2.

Approval 3 – Certain Right-of-Way Actions Approved Under 23 CFR 771.117(d) (6)

Some actions to dispose of excess right-of-way or for joint or limited use of right-of-way do not require the completion of a CE Documentation Form, provided the project meets several conditions that are listed in the Chief Engineer’s Directive.

The REM must certify on Right-of-Way Form 25A-R968 (Encroachment/Beautification Permit Comment Sheet) that the action falls within the bounds of the Programmatic Approval 3.

3.5. CE Approval Process

All FHWA funded projects must go through the 6004 assignment and class of action determination process described in Chapter 2.

For projects determined to be CEs assigned under the 6004 MOU, the documentation and approval process will vary depending on the activities proposed in the project and whether a Programmatic Approval applies.

3.5.2. Expedited CE Approval

When Programmatic Approval 1 applies, no CE Documentation Form is required and the REM has approval authority for the project.

The REM’s approval of a project under Programmatic Approval 1 occurs on the Expedited CE Approval Form. The REM must ensure that the conditions of Programmatic Approval 1 are met prior to approving the form.

The Expedited [CE Approval Form](#) can be downloaded from the DOT&PF Environmental website. The REM includes a copy of the approved form in the project file and gives a copy to the Statewide NEPA Manager.

3.5.3. CE Documentation Form Approval Process

The CE Documentation Form documents the proposed project’s environmental consequences and summarizes public and agency coordination activities. Prepare a CE Documentation Form for the following types of actions:

- “c” list actions identified in Table 3-1 with an asterisk (*)
- those “c” list actions that have the potential to result in environmental consequences
- “d” list actions, except actions approved under Programmatic Approval 3

The [CE Documentation Form](#) can be downloaded from the DOT&PF Environmental website.

The CE Documentation Form is prepared by the Environmental Impact Analyst. It is reviewed and signed by the Engineering Manager and the REM.

By signing the CE Documentation Form, the Engineering Manager and the REM certify that each has reviewed the contents and approves the CE Documentation Form.

Note: Before submitting the CE Documentation Form to the REM, it is helpful to have a peer review the work to reduce errors and increase efficiency.

Approval Under Programmatic Approval 2

When Programmatic Approval 2 applies, a CE Documentation Form is required and the REM has approval authority for the project.

The REM ensures that the CE Documentation Form complies with the following:

- The conditions of Programmatic Approval 2
- The 6004 MOU
- NEPA regulations, [40 CFR 1508.4](#) and [23 CFR 771.117](#)
- All applicable laws, regulations, agency agreements, and this Manual

The REM includes a copy of the approved document in the project file and gives a copy to the Statewide NEPA Manager.

Statewide Environmental Office Approval Process

When no Programmatic Approval applies, a CE Documentation Form is required and the Statewide NEPA Manager has approval authority for the project.

The REM reviews the form for content accuracy, signs it and forwards it to the Statewide NEPA Manager for approval.

It is the Statewide NEPA Manager's responsibility to ensure the CE Documentation Form complies with the following:

- The 6004 MOU
- NEPA regulations, [40 CFR 1508.4](#) and [23 CFR 771.117](#) (a) and (b)
- All applicable laws, regulations, agency agreements, and this Manual

The Statewide NEPA Manager provides a copy of the approved CE Documentation Form to the REM to include in the project file.

3.5.4. Quality Assurance/Quality Control (QA/QC) CE Documentation Form Reviews

The Statewide NEPA Manager conducts a QA/QC review of each submitted CE Documentation Form. They ensure that the document meets the obligations assigned to DOT&PF under the 6004 MOU and is consistent with the current 6004 MOU Monitoring Plan.

The QA/QC review ensures that:

1. The document meets the conditions of the appropriate Programmatic Approval, if applicable.
2. The action does not have significant environmental impacts as described in [23 CFR 771.117 \(a\)](#).
3. The action does not involve unusual circumstances as defined in 23 CFR 771.117 (b).
4. The project actions are consistent with the 6004 MOU.

The Statewide NEPA Manager will work with the REM to resolve any concerns identified in the QA/QC review. Concerns identified during the QA/QC review may be resolved by modifying the environmental document content, by including adding additional information and memo(s) to the project file, or by other means agreed to by the REM and the Statewide NEPA Manager.

3.6. Additional Resources

[DOT&PF Statewide Environmental Office](#)

Contains links to DOT&PF environmental policies, procedures, forms, templates and information on the environmental process.

[Statewide Environmental Office Document Preparation Website](#)

The DOT&PF environmental document preparation webpage contains a link to the current CE Documentation Form and the Expedited CE Approval Form.

[CEQ Guidance on Categorical Exclusions](#)

The guidance recommends best practices for appropriate use of categorical exclusions.

**Table 3-1
“c” List CE Actions [23 CFR 771.117(c)]**

Number	
1	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.
2	Approval of utility installations along or across a transportation facility.
3*	Construction of bicycle and pedestrian lanes, paths, and facilities.
4	Activities included in the State's <i>highway safety plan</i> under 23 U.S.C. 402. (<i>Programmatic Approval 1 does not apply to construction projects.</i>)
5	Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
6	The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
7*	Landscaping.
8	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.
9*	Emergency repairs under 23 U.S.C. 125.
10*	Acquisition of scenic easements.
11	Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.
12*	Improvements to existing rest areas and truck weigh stations.
13	Ridesharing activities.
14	Bus and rail car rehabilitation.
15	Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
16	Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
17	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.
18*	Track and railbed maintenance and improvements when carried out within the existing right-of-way.
19	Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
20	Promulgation of rules, regulations, and directives.
21	Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses. (<i>Programmatic Approval 1 does not apply if there is any new ground disturbance</i>)

*Actions that require completion of the CE Documentation Form. See Section 3.5.

If an exception in italics applies, then a CE Documentation Form is required. See Section 3.5.

**Table 3-2
“d” List CE Actions [23 CFR 771.117(d)]**

Number	<u>Examples* include but are not limited to:</u>
1	Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
2	Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
3	Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
4	Transportation corridor fringe parking facilities.
5	Construction of new truck weigh-stations or rest areas.
6	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.
7	Approvals for changes in access control.
8	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.
9	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.
10	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.
11	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.
12	<p>Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition 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.</p> <p>(i) 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.</p> <p>(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.</p>
13	Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

**Only the examples specifically listed in 23 CFR 771.117(d) can be assigned to the DOT&PF for processing under the 6004 MOU.*