

3. Categorical Exclusion

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3.1. Introduction

This chapter provides an overview of actions classified as categorical exclusions (CEs) and describes the CE documentation and approval process required by the Alaska Department of Transportation and Public Facilities (DOT&PF).

3.2. CE Definition

The Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations define a CE 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” ([40 Code of Federal Regulations \[CFR\] 1508.4](#)).

The Federal Highway Administration (FHWA) NEPA regulations (23 CFR 771.117(a)) define 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. They are actions which do 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 quality impacts
- Have significant impacts on travel patterns
- Otherwise, either individually or cumulatively, have any significant environmental impacts

An action that qualifies for a CE is excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). A CE

is not a waiver of NEPA review, but is instead one type of NEPA review.

3.2.1. Unusual Circumstances ([23 CFR 771.117\(b\)](#))

Any action which would normally be classified as a CE, but could involve *unusual circumstances*, will require appropriate environmental studies to determine if the CE classification is proper.

“Unusual circumstances” include:

- Significant environmental impacts
- Substantial controversy on environmental grounds
- Significant impacts on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act

Inconsistencies with any federal, state or local law, requirement, or administrative determination relating to the environmental aspects of the action. Should any unusual circumstances be identified for a project, consult the NEPA Program Manager for assistance in determining whether the CE classification remains appropriate.

3.2.2. The “c” and “d” Lists ([23 CFR 771.117\(c\) and \(d\)](#))

FHWA’s CE regulations ([23 CFR 771.117](#)) contain two lists of actions that, based on past experience, do not normally involve significant environmental impacts. These actions are expected to normally meet the criteria for a CE. See 23 CFR 771.117(c) for “c” list actions, and 23 CFR 771.117 (d) for “d” list actions.

3.2.3. The “d” non-listed actions ([23 CFR 771.117\(d\)](#))

If an action does not fit within a “c” or “d” list category, the action may still satisfy the criteria of “a” (23 CFR 771.117(a)) and may be processed as a non-listed CE. These actions are known to have no significant environmental impacts based upon past experiences with similar actions.

3.3. Processing a CE

A number of different factors need to be considered before determining that a project qualifies as a CE. The following factors will affect how a CE is processed:

- The type of action involved
- The potential level of impacts
- Whether the action qualifies under a Programmatic Approval (see Environmental Procedures Manual [EPM] Section 3.3.1., Programmatic Approvals)

The *Expedited CE Approval Form* and the *CE Documentation Form* can be downloaded from Statewide Environmental Office's webpage of manuals and forms.

“c” List Actions

These actions require the completion of either an *Expedited CE Approval Form* or a *CE Documentation Form*. Actions classified under (c)(26), (c)(27), and (c)(28) must meet the conditions listed in [23 CFR 771.117\(c\)](#) to be processed as a “c” list CE. The [optional 23 CFR 771.117\(e\) Form](#) or text within the environmental document may be used to demonstrate each of the conditions are met.

“d” List Actions

With the exception of actions approved under 23 CFR 771.117(d)(6), these actions require the completion of a *CE Documentation Form* to verify compliance with local, state, and federal requirements and to ensure the project does not involve unusual circumstances that require an EA or EIS. Actions approved under 23 CFR 771.117(d)(6) require the completion of an Expedited CE Approval Form.

The CE approval process is described in Section 3.3.2., DOT&PF Review and Approval Process, below.

The “d” Non-listed Actions

These actions require the completion of a *CE Documentation Form*. These actions must be of a category of similar actions, with specific examples of projects in the category that caused no significant impacts. If a project relied upon for comparison obtained a mitigated Finding of No Significant Impact ([mitigated FONSI](#)), additional explanation may be required to demonstrate that the proposed non-listed CE action will not require similar mitigation of impacts. These non-listed CE actions also cannot be expected to cause significant impacts directly, indirectly or cumulatively.

3.3.1. Programmatic Approvals ([Programmatic CEs](#))

Approval authority for certain CEs has been delegated to the Regional Environmental Managers (REMs) under a [Chief Engineer’s Directive](#) for [Programmatic CEs \(PCEs\)](#). A project must meet all of the General Programmatic Approval Conditions to qualify for any Programmatic Approval. Under this directive, the REM certifies that applicable actions meet the terms of a Programmatic Approval and determines the documentation requirements. The REM may delegate approval authority to a senior environmental analyst. If the senior environmental analyst is unable to perform the delegated duties, approval authority would transfer to a NEPA Manager. There are three types of Programmatic Approvals, which apply to different types of projects. Each has different processing requirements.

Approval 1 – Certain projects processed under [23 CFR 771.117\(c\)](#)

This Programmatic Approval applies to “c” list actions that meet the Programmatic Approval 1 conditions listed in the Chief Engineer’s Directive for Programmatic CEs. While projects approved under Programmatic Approval 1 require an [Expedited CE Approval Form](#), a [CE Documentation Form](#) may be completed at the discretion of the REM.

Approval 2 – Certain projects processed under [23 CFR 771.117\(c\) and \(d\)](#)

This Programmatic Approval applies to “c” and “d” list actions that meet the Programmatic Approval 2 conditions listed in the Chief Engineer’s Directive for Programmatic CEs. Projects approved under Programmatic Approval 2 require a *CE Documentation Form*.

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

This Programmatic Approval applies to certain right-of-way (ROW) actions under (d)(6) to dispose of excess ROW or for joint or limited use of ROW, where the proposed use does not have significant adverse impacts that meet the Programmatic Approval 3 conditions listed in the Chief Engineer’s Directive for Programmatic CEs. Projects approved under Programmatic Approval 3 require an *Expedited CE Approval Form*.

Projects that qualify as PCEs are approved by the REM (see EPM Section 3.3.2.), whereas CEs that do

not meet the requirements of a Programmatic Approval require approval by the NEPA Program Manager.

3.3.2. DOT&PF Review and Approval Process

Quality Assurance (QA)

The project development team, as established by the region, performs QA during development of the CE through collaboration, project meetings, reports and environmental document development.

Documentation of the QA process (e.g., emails, meeting notes, phone logs) is included in the region project file.

Expedited CE Approval Form

The [*Expedited CE Approval Form*](#) documents the purpose and need, description, and scope for the proposed project, and provides a brief discussion of probable impacts. An *Expedited CE Approval Form* is only used when Programmatic Approval 1 or 3 applies. The REM has approval authority for these CEs.

The REM must verify that the conditions of the Programmatic Approval are met and documented in the *Expedited CE Approval Form* prior to approval.

The REM reviews the form for content accuracy, signs, and provides a copy to the NEPA Program Manager and includes a copy of the approved form in the project file. No *CE Documentation Form* is required.

CE Documentation Form

The [*CE Documentation Form*](#) documents the purpose and need and description for the proposed project, identifies the project's environmental consequences, and summarizes public and agency coordination activities.

The *CE Documentation Form* is prepared and signed 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 form contents. The REM's signature verifies that the CE complies with:

- CEQ and FHWA NEPA regulations ([40 CFR 1508.4; 23 CFR 771.117](#))
- All applicable environmental laws, regulations, agency agreements, and this manual

- Consistency within and between the PCE, supporting appendices, and technical reports
- Conformance to all NEPA requirements and applicable guidance, policies, and procedures

PCE Approval Process

When a Programmatic Approval applies, the REM has approval authority for the project CE documentation and also verifies the *CE Documentation Form* complies with the conditions of Programmatic Approval.

The REM includes a copy of the approved form in the project file and provides a copy to the NEPA Program Manager.

Non-Programmatic CE Approval Process

When no Programmatic Approval applies, the NEPA Program Manager has approval authority for the project CE documentation.

Quality Control (QC)

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

It is the NEPA Program Manager's responsibility to verify the *CE Documentation Form* complies with the following:

- CEQ and FHWA NEPA regulations ([40 CFR 1508.4; 23 CFR 771.117](#))
- All applicable environmental laws, regulations, agency agreements, and this manual
- Consistency within and between the PCE, supporting appendices, and technical reports
- Conformance to all NEPA requirements and applicable guidance, policies, and procedures

The NEPA Program Manager will work with the REM to resolve any concerns identified in the QC review. NEPA Program Manager QC review comments and REM responses will be placed in the region project file.

The NEPA Program Manager signs the *CE Documentation Form* and provides a copy of the approved form to the REM to include in the region project file.

Technical Appendix

[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 links 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.

[FHWA Guidance on Categorical Exclusions](#) can be found here.

[Chief Engineer's Directive on Programmatic CEs \(November 13, 2017\)](#) and attachment [PROGRAMMATIC CATEGORICAL EXCLUSIONS For Use on Federal Aid Highway Program Projects Authorized Under 23 U.S.C. 327, November 2017](#)