

Chapter 4

Categorical Exclusion



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Chapter 4 Categorical Exclusion

NEPA ASSIGNMENT

The Nebraska Department of Transportation (NDOT) entered CE Assignment pursuant to [23 USC 326](#). Under CE Assignment, NDOT assumed FHWA responsibilities for determining whether specific projects are categorically excluded from the requirement to prepare an EA or EIS. NDOT, rather than FHWA, now makes CE determinations for most projects (for exceptions, see Chapter 1, Overview, Section 1.5). All EAs and EISs, as well as CE determinations not assignable to NDOT under [23 USC 326](#), continue to be formally approved by FHWA.

This chapter provides an overview of actions classified as categorical exclusions (CE) and explains the documentation required by the Nebraska Department of Transportation (NDOT). [Chapter 2, Class of Action](#), explains the process used to determine the class of action for a given project.

4.1 Definition of a Categorical Exclusion

The Federal Highway Administration (FHWA) describes CEs as actions that, based on past experience with similar actions, do not involve significant environmental impacts. The FHWA CE definition in [23 CFR 771.117\(a\)](#) states that CE actions do not:

- Induce significant impacts on 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
- Individually or cumulatively have any significant environmental impacts

Additionally, if an action involves unusual circumstances, it may not meet the requirements of a CE and may instead require the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) ([23 CFR 771.117\(b\)](#)). See [Chapter 2, Class of Action](#), Section 2.4, for more information.

A CE is not a waiver of National Environmental Policy Act (NEPA) review. Rather, it is one type of NEPA review that is applied to actions that meet the above criteria. It is the least intensive procedural review and is applied to the majority of NDOT-administered projects in Nebraska.

4.1.1 The (c) and (d) Lists

Within the FHWA CE regulations ([23 CFR 771.117](#)) are two lists of actions that are anticipated to have little or no environmental impact and that do not usually involve unusual circumstances. As a result, these actions 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.

The (c) list includes actions that meet FHWA's CE regulatory definition in [23 CFR 771.117\(a\)](#). Common (c) list actions include construction of bicycle and pedestrian lanes, paths, and facilities; projects that take place entirely within the existing operational right-of-way (ROW); projects that receive less than

\$5,000,000 in federal funds¹; resurfacing, restoration, and rehabilitation (3R) projects; highway safety or traffic operations improvement projects; and bridge rehabilitation, reconstruction, or replacement projects. Projects that meet the criteria of a c-listed CE should not have any residential or non-residential relocations.

The (d) list includes examples of additional actions that meet FHWA criteria for a CE but require additional documentation to support the CE determination. Common (d) list actions include 3R projects; highway safety or traffic operations improvement projects; and bridge rehabilitation, reconstruction, or replacement projects that are precluded from the (c) list due to one or more of the following ([23 CFR 771.117\(e\)](#)):

- Acquisition of more than a minor amount of ROW, or any residential or non-residential displacement
- Need for a U.S. Coast Guard bridge permit or a Clean Water Act Section 404 or Rivers and Harbors Act Section 10 Individual Permit
- An adverse effect on a historic property, a use of a Section 4(f) property that is not *de minimis*, or the likelihood to adversely affect threatened or endangered species or critical habitat
- Major traffic disruptions
- Changes in access control
- Floodplain encroachment (other than functionally dependent uses); actions that facilitate open space use; or construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National Wild and Scenic Rivers System

NDOT assumed FHWA's responsibilities for CE determination through a Memorandum of Understanding (MOU) with the Nebraska Division of FHWA, renewed September 12, 2024.
Exclusions.

"New and reconstructed" highway projects (as defined by NDOT) may be consistent with (d) list actions, depending on project scope.

With respect to 23 CFR 771.117(d)(12), hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. As a result, projects utilizing (d)(12) should only result in a limited number of relocations and must comply with the specific criteria listed in [23 CFR 710.503](#).

Based on project scope, the document author initially identifies and documents the appropriate (c) or (d) list action. The document approver is ultimately responsible for ensuring that the appropriate action is assigned.

4.2 CE Assignment

NDOT has assumed FHWA's responsibilities for making CE determinations. CE Assignment only applies to the following:

- Activities listed in [23 CFR 771.117\(c\)](#)
- Example activities listed in [23 CFR 771.117\(d\)](#)
- Any activities added to the (c) or (d) list through FHWA rulemaking (CE Assignment MOU, Stipulation 1B)

¹ Actual allowable federal funding is adjusted annually and is identified on the [FHWA Environmental Toolkit](#)

CEs not assigned to NDOT under the CE Assignment MOU continue to be processed in accordance with the processes contained in this *Environmental Procedures Manual* (Manual), with the exception that review and approval are retained by FHWA (see [Chapter 1, Overview](#), Section 1.5.3).

4.3 Public and Agency Coordination

Coordination with the public and pertinent resource agencies is essential in the NEPA decision-making process. Such coordination can help determine the appropriate NEPA class of action (see [Chapter 2](#)), the particular CE level (as warranted), and the environmental resources and project considerations important to the local community. As further detailed in [Chapter 9, Public Involvement Procedures](#), [NDOT's Limited English Proficiency Plan](#), and [NDOT's Title VI Implementation Plan](#), NDOT performs coordination activities that are commensurate with project scope and that comply with applicable regulations and agreements.

4.4 Preparing the Categorical Exclusion

In preparing CEs, document authors work with NDOT Professionally Qualified Staff (PQS) and other technical resource specialists to analyze direct, indirect, and construction-related project effects on the human, physical, and natural environment. NDOT staff prepare technical reports and technical report summaries (often referred to as "PQS memos") to document the technical resource analysis performed during NEPA coordination. These reports and summaries, along with additional supporting information, are attached to the CE or retained in the project file as required. In addition to these reports and summaries, CE attachments may include maps, figures, permits, and agency correspondence.

Document authors also identify and prescribe appropriate mitigation measures, document findings, and obtain CE approval as well as other appropriate approvals or confirm reasonable assurance that such approvals are obtainable. The documentation is prepared to demonstrate that the project meets the criteria for a CE (see Section 4.1). Documentation, review, and approval requirements vary depending on the level of CE (Disposal of Excess Land, Minor CE, and CE Level 1, 2, and 3), as described in the following sections.

4.4.1 Disposal of Excess Land

NEPA documentation requirements for the disposal of excess land are satisfied utilizing the NDOT Form 53: Probable Class of NEPA Action (NDOT-53), with additional documentation as described in the [Instructions to Complete Categorical Exclusions for the Disposal of Excess Land](#). The use of this process may only be utilized for projects where the Probable Class of NEPA action is a Categorical Exclusion. In the case where the disposal of excess land has the potential for unusual circumstances or the potential to be a higher class of action (EA or EIS), NDOT will submit the NDOT-53 to FHWA to determine the appropriate class of action. Information and guidance on completing a NDOT-53 can be found in the Chapter 2, Class of Action and [The Instructions for Completing the NDOT Form 53: Probable Class of NEPA Action](#).

4.4.2 Minor Categorical Exclusions

NDOT has determined that the following eight (c) list activity types are categorically excluded and do not require documentation other than a memorandum documenting that the project meets the requirements for that activity type:

- Statewide bridge inspections
- At-grade railroad crossing improvement activities

- Sign installation and replacement activities
- Lighting and signal repair and replacement activities
- Activities identified by [23 CFR 771.117\(c\)\(1\)](#) that do not involve or lead directly to construction
- Activities identified by 23 CFR 771.117(c)(9) as emergency repair projects
- Pavement repair and marking activities
- Electric Vehicle (EV) charging stations

Some of these Minor CEs have stipulations as to when they apply (for example, not all sign installation or signal replacement activities qualify), and most include standard conditions or mitigation measures that must be included to qualify as a Minor CE.

For these project types, a document author completes the applicable memorandum. While a consultant is qualified to prepare a Minor CE memorandum, as a matter of practicality this memorandum is typically prepared by NDOT staff. An NDOT NEPA Specialist reviews the completed memorandum to verify that the project fits the activity type and does not exceed any NDOT CE policy thresholds. A Minor CE determination can be approved by an NDOT NEPA Specialist not involved in preparation of the Minor CE, an NDOT Environmental Project Manager, the NEPA Team Lead, the NDOT EDU Supervisor, or the NDOT Environmental Section Manager.

4.4.3 Categorical Exclusion Level 1, 2, and 3

For projects that do not qualify for a Minor CE but do qualify as a CE (see Chapter 2: Class of Action) NDOT uses three levels of CE (Level 1, 2, and 3) which is determined by project activity type and project impact criteria. The level of analysis, documentation, and review increases with CE level, which correlates with the complexity of the project and the context and intensity of potential impacts. Impact criteria for CE Levels 1, 2, and 3, documentation requirements, as well as quality control and approval requirements are presented in the [Nebraska Categorical Exclusion Guidance](#). NDOT CE Level 1, 2 and 3 may be prepared using the Nebraska Environmental Documentation System (NEDS). See the NEDS User Guide.

4.5 Local Public Agency (LPA) Projects

NDOT acts as the responsible charge (RC) and administers most LPA projects in Nebraska. In association with RC duties, the EDU either completes environmental analysis in-house or contracts a qualified consultant to do so. When NDOT leads an LPA project, environmental procedures are identical with those of state-administered projects.

Procedures differ when an LPA serves as its own RC. Under this scenario, the LPA is responsible for completing necessary analysis, documentation, review, and project sponsor signature.² During development of NEPA documentation, LPAs coordinate and exchange information with the NDOT Environmental Section. Upon completing and signing a CE, the LPA submits the CE to the NDOT Local Projects Section. The Local Projects Section completes an initial review, which is mainly focused on the accuracy of the project description and scope of work. After this review, the Local Projects Section forwards the CE to the EDU. From this point, the review, revision, and approval process is followed as described by this guidance and CE specific guidance.

² In special circumstances, an assigned NDOT NEPA Specialist may assist a Metropolitan Planning Organization (MPO) in completing technical studies supporting CEs. In any circumstance, an MPO can hire a qualified consultant to help complete technical studies and the CE.

4.6 Laws, Regulations, and Guidance

The following regulations and guidance documents pertain to CEs:

- [23 CFR 771, Environmental Impact and Related Procedures](#)
 - [23 CFR 771.117, FHWA Categorical Exclusions](#)
- [23 USC 326, State Assumption of Responsibility for Categorical Exclusions](#)
- [FHWA, October 30, 1987, Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#)
- [FHWA, March 30, 1989, Memorandum regarding Categorical Exclusion \(CE\) Documentation and Approval](#)
- [FHWA, May 22, 2017, Memorandum regarding Additional Flexibilities in Categorical Exclusions](#)
- [NDOT, September 2024, Nebraska Categorical Exclusion Guidance](#)
- [NDOT, August 2020, NEPA Documentation Quality Assurance/Quality Control Manual](#)
- [NDOT and FHWA, 2024, State Assumption of Responsibility for Categorical Exclusions, Second Renewed Memorandum of Understanding](#)