Chapter 4

Categorical Exclusion

Contents

Chapter 4 Categorical Exclusion 4-1
4.1 Definition of a Categorical Exclusion 4-1
4.1.1 The (c) and (d) Lists 4-1
4.1.2 Unlisted CEs 4-2
4.2 Public and Agency Coordination 4-2
4.3 Preparing the Categorical Exclusion 4-2
4.3.1 Minor Categorical Exclusions 4-3
4.3.2 Categorical Exclusion Level 1, 2, and 3 4-3
4.4 Local Public Agency (LPA) Projects 4-3
4.5 Laws, Regulations, and Guidance 4-3

Chapter 4 Categorical Exclusion

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
- Otherwise 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, 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 $7,000,000 in federal funds[1]; 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) list 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 activities that could normally be classified as (c)(26), (c)(27), or (c)(28) but do not meet one of the following constraints (23 CFR 771.117(e)):

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

- 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

"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 result only in a limited number of relocations and must comply with the specific criteria listed in 23 CFR 710.503.

Based on the 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 identified. NDOT has been assigned the authority to approve (c) and (d) list CEs under 23 U.S.C. 326 and a Second Renewed Memorandum of Understanding executed by FHWA and NDOT.

4.1.2 Unlisted CEs

A project whose scope does not match the defined (c) and (d) list activities may still be documented as a CE if it does not involve significant environmental impacts and NDOT determines that potential unusual circumstances as defined by 23 CFR 771.117(b) do not require further study. NDOT has been assigned the authority to approve most unlisted CEs under 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and NDOT.

4.2 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. Coordination with pertinent resource agencies is conducted on a resource-specific basis.

4.3 Preparing the Categorical Exclusion

In preparing CEs, document authors work with NDOT Professionally Qualified Staff (PQS) and other technical resource specialists to analyze reasonably foreseeable project effects on the human, physical, and natural environment. NDOT staff prepare technical reports and technical report summaries 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. Documentation, review, and approval requirements vary depending on the level of CE (Minor CE, CE Level 1, 2, or 3), as described in the following sections.

4.3.1 Minor Categorical Exclusions

NDOT has determined that some (c) list activity types require less environmental analysis and documentation than a typical CE. Examples include activities that do not involve or lead directly to construction and bridge inspections. The NEPA document used for these types of projects is called a Minor CE (MCE). MCE forms stipulate activities to which they apply, and most include standard commitments. An MCE for a (c) list activity can be approved by an NDOT NEPA Specialist, an NDOT Environmental Project Manager, the NEPA Team Lead, the NDOT Environmental Documents Unit (EDU) Supervisor, or the NDOT Environmental Section Manager.

In addition to certain (c) list activities, NEPA documentation requirements for the disposal of excess land are also satisfied using an MCE. Disposal of excess land is a (d) list activity (23 CFR 771.117), and the form must be signed by either the Environmental Section Manager, the Environmental Documents Unit Supervisor, or the NEPA Team Lead. A complete list of project types that qualify for an MCE is included on the NDOT Environmental Guidance Library webpage.

While a consultant is qualified to prepare an MCE, as a matter of practicality, this documentation is typically prepared by NDOT staff. An NDOT NEPA Specialist reviews the completed documentation to verify that the project fits the activity type and does not exceed any MCE stipulations.

4.3.2 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 are 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 documentation may be prepared using the Nebraska Environmental Documentation System (NEDS). See the NEDS User Guide.

4.4 Local Public Agency (LPA) Projects

Consultants typically complete the necessary analysis and documentation for LPA projects, and the responsible charge will sign the CE as the Project Sponsor. NDOT EDU staff typically review NEPA documentation as it is completed and provide final approval of CEs assigned to NDOT under 23 U.S.C. 326 and 23 U.S.C. 327.

4.5 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 U.S.C. 326, State Assumption of Responsibility for Categorical Exclusions
- 23 U.S.C. 327, Surface Transportation Project Delivery Program
- 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, July 2025, *Nebraska Categorical Exclusion Guidance*
- NDOT, October 2025, *NEPA Quality Assurance/Quality Control and Performance Measures Guidance*
- NDOT and FHWA, 2024, Second Renewed Memorandum of Understanding for State Assumption of Responsibility for Categorical Exclusions Pursuant to 23 U.S.C. 326
- NDOT and FHWA, 2026, Memorandum of Understanding Concerning the State of Nebraska's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327