

Chapter Twenty-three
CATEGORICAL EXCLUSIONS

BUREAU OF DESIGN AND ENVIRONMENT MANUAL

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CATEGORICAL EXCLUSIONS

Chapter 23 discusses IDOT procedures for those projects classified as Categorical Exclusions. IDOT and FHWA are both committed to addressing environmental requirements under the *National Environmental Policy Act* (NEPA) and doing so in a streamlined and efficient manner.

23-1 GENERAL

23-1.01 Definition

FHWA environmental regulations (23 CFR 771.115) define Categorical Exclusions (CEs) as “Class II” actions that meet the definition as described in 40 CFR 1508.4, and based on past experience with similar actions are actions that:

- do not induce significant impacts to planned growth or land use for the area;
- do not require the relocation of significant numbers of people or businesses;
- do not have a significant impact on any natural, cultural, recreational, historic, 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.

Therefore, these actions are excluded from the requirement to prepare an Environmental Assessment (EA) (see Chapter 24) or Environmental Impact Statement (EIS) (see Chapter 25). The FHWA has listed examples of Class II actions in 23 CFR 771.117. Most projects developed by IDOT do not have significant environmental impacts and therefore qualify as CEs.

Per 23 CFR 771.117, FHWA and IDOT have approved a Programmatic Agreement between Federal Highway Administration and the Illinois Department of Transportation regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects (See Appendix A).

The Programmatic Agreement, herein referred to as “CE Agreement,” has been developed to address the development and approval of CEs in a streamlined and efficient manner.

References:

40 CFR 1508.4 - Categorical Exclusion
Subsection 23 CFR 771.115(b) of 23 CFR 771.115 - Classes of Actions
Section I of FHWA Technical Advisory T6640.8A - Categorical Exclusion (CE)

23-1.02 Applicability to Federal Actions

These procedures apply to any Federal “action”, defined in 23 CFR 771.107(b) as follows:

A highway or transit project proposed for FHWA or FTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

For example, a project may require an Interstate access justification approval by FHWA, and the entire project would therefore be subject to all Federal requirements regardless if Federal funding was involved or not.

References:

Subsection 23 CFR 771.117(a) of 23 CFR 771.117 - FHWA categorical exclusions
Subsection 23 CFR 771.107(b) of 23 CFR 771.107 - Definitions
Paragraph I.A. of FHWA Technical Advisory T6640.8A - Documentation of Applicability

23-1.03 Applicability to Non Federal Actions

Although Categorical Exclusion (CE) is a Federal concept, these procedures are also generally applied to State-only or State/locally funded projects that are not otherwise considered a Federal “action” (see definition of Federal “action” above) to: 1) provide a consistent method of documenting the lack of any significant environmental impacts of CE-type projects; and 2) ensure compliance with State environmental laws and regulations.

23-1.04 CE Classifications

The CE Agreement establishes two categories of CEs, those that may be approved by IDOT on behalf of FHWA (State Approved CEs) and those that require FHWA approval (Federal Approved CEs).

23-1.04(a) State Approved Categorical Exclusions (formerly CE I)

Actions qualifying as a CE, as listed in Appendix A and Appendix B of the CE Agreement; and that do not involve the potential for unusual circumstances (see Section 23-1.04(b) or Section V of the CE Agreement), may be approved by IDOT on behalf of the FHWA. No separate review or approval of such “State Approved CEs” by FHWA is required.

Actions qualifying as a State Approved CE are not required to be discussed at district coordination meetings (see Section 22-5.03) unless there are issues related to the project's scope, design exceptions, or meeting ADA standards to the maximum extent practicable.

The district will use Chapter 26 for any special environmental analyses needed.

References:

Subsections (c) and (d) of 23 CFR 771.117 - FHWA Categorical Exclusions
Paragraph I.A. of FHWA Technical Advisory T6640.8A - Documentation of Applicability
for CE projects

23-1.04(b) Federal Approved Categorical Exclusions (formerly CE II)

Actions qualifying as a CE, as listed in Appendix A and Appendix B of the CE Agreement; but that do exceed one or more of the impact thresholds, results, or requirements as discussed in the potential for unusual circumstances listed below (also listed in Section V of the CE Agreement), must be approved by FHWA. The list of potential for unusual circumstances is as follows:

- 1) Requires one or more residential or business relocations and/or the acquisition of more than 10 acres (4 ha) total for a non-linear improvement (spot improvement, e.g. bridge, intersection) or the acquisition of more than 3 acres per mile (0.75 ha per kilometer); or
- 2) The project is defined as a "Type I project" per 23 CFR 772.5 and therefore requires a noise analysis; or
- 3) Results in an "adverse effect" finding to a historic property, as defined in 36 CFR 800.16(l); or
- 4) Requires the use of properties as defined and protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with either an FHWA de minimis determination or a programmatic Section 4(f) evaluation; or
- 5) Involves impacts that would require an Individual Section 404 Permit from the U.S. Army Corps of Engineers or involve stream channelization or stream relocations; or
- 6) Through Section 7 of the Endangered Species Act consultation, results in a finding of "may affect, likely to adversely affect" a federally listed or candidate species, or proposed or designated critical habitat; or
- 7) Through consultation with the Illinois Department of Natural Resources (IDNR) under the Illinois Endangered Species Act, requires an Incidental Take Authorization; or
- 8) Requires substantial changes in access, access control, or travel patterns. IDOT will present such information to FHWA to determine if changes are substantial; or

- 9) Requires the use of a temporary road, detour or ramp closure, unless the use of such facilities satisfies the following conditions:
 - a) Provisions are made for access by local traffic and so posted,
 - b) Businesses dependent on through-traffic will not be adversely affected,
 - c) To the extent possible, there is no interference with any local special event or festival,
 - d) There is no substantial change to the environmental consequences of the action, and
 - e) There is no substantial controversy associated with such facilities.
- 10) Involves State designated Nature Preserves, areas listed on the Illinois Natural Area Inventory, Land and Water Reserves; or
- 11) Exceeds the IDNR threshold for an increase in 100-year flood water surface elevations, or has potential for a "significant encroachment" to floodplains, as defined in Executive Order 11988; or
- 12) Requires a permit from U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899; or
- 13) Requires an individual Water Quality Certification from the Illinois Environmental Protection Agency; or
- 14) Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property; or
- 15) Involves impacts to a stream listed on the National Park Service's National Rivers Inventory; or
- 16) Has potential for controversy on environmental grounds as determined by FHWA, or Inconsistency with Federal, State, or local requirements relating to the environment or planning.

Through the planning, screening, and coordination process, the district will determine if the potential for unusual circumstances result from the project. Further studies may be warranted and the type and depth of additional studies will vary with the facts and circumstances of each situation and will help determine if the CE classification is appropriate.

The district will use Chapter 26 for any special environmental analyses needed.

Actions qualifying as a Federal Approved CE must be discussed at a District Coordination Meeting.

References:

Subsections (c) and (d) of 23 CFR 771.117 - FHWA Categorical Exclusions
Paragraph I.B. of FHWA Technical Advisory T6640.8A - Consideration
of Unusual Circumstances

23-1.05 Compliance with Other Requirements

CEs still require compliance with other applicable State and Federal environmental requirements (e.g., Section 4(f), Section 106, *Endangered Species Act*, Executive Order 11990 - Wetlands, Executive Order 11988 - Floodplain Management, *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA)). CE approval may only be granted after all applicable requirements are satisfied.

References:

Chapter 26 Special Environmental Analyses

23-1.06 Validity and Reevaluation of CE Designation

After approval of a CE and prior to requesting subsequent Federal approvals (e.g., authorization of Federal funding), IDOT will ensure that the CE designation remains valid for the requested action, regardless of time between CE approval and subsequent Federal approval. IDOT will consult with FHWA if there is a change in the field conditions or proposed scope of a proposed action, or if there is new information or circumstances relevant to environmental concerns that could affect the potential for either unusual circumstances or significant impacts since the original CE approval.

For State Approved CEs, IDOT will evaluate any project changes to determine if the CE designation is valid. If none of the potential for unusual circumstances thresholds are exceeded, the district does not need to involve FHWA. If any of the thresholds are exceeded, the district will discuss appropriate processing with FHWA at a Coordination Meeting (Federal Approved CE, EA or EIS). FHWA may request that additional studies be done to support a CE determination prior to approval. FHWA will determine what documentation needs to be submitted, considering the context and intensity of the project changes, and will either determine that the CE designation is still valid, or that an EA or EIS is required.

For Federal Approved CEs, IDOT will discuss with FHWA at a coordination meeting to determine if any additional studies need to be done to determine validity of the CE. FHWA will determine what documentation needs to be submitted, considering the context and intensity of the project changes, and will either determine that the CE designation is still valid, or that an EA or EIS is required.

Documentation of a CE reevaluation normally will be in the form of a letter from IDOT to FHWA, which will include an explanation of relevant project changes, any changes in impacts, evaluation if the changes in impacts are potentially significant, supporting studies, and if applicable, a request for FHWA's determination of the validity of the CE designation (or recommendation to complete an EA or EIS). This documentation will be retained in the project report or project file.

References:

Section 22-3.14 - Ensuring Validity of Environmental and Design Documents

23-2 THE CE PROCESS

This section discusses and describes each step in the CE process. During each step, the following should also be considered:

- Lines of Communication. The rigid application of the process would lead to predetermined, precise points and is neither realistic nor desirable. Communication between units must be continuous. This will result in fewer problems and fewer “surprises” in the process.
- Lead Agency. It is assumed that the Federal Highway Administration is the lead agency for FHWA-funded projects. If another Federal agency is the lead agency, other procedures may be required.
- Application. This section applies to all CE projects involving State highway projects regardless of the source of funding.

23-2.01 Initiate CE Process

For actions that will be processed as a CE, this is often known at the time of project initiation. The district will initiate the CE by assigning a team and assemble project information which may include:

- planning reports or studies,
- record plans (as-builts),
- letters/correspondence on the project,
- traffic data,
- documentation on any public or private meetings,
- original surveys,
- aerial photos,
- statistical data documenting need for improvement,
- scoping data providing recommended improvement,
- Maintenance Management Information System (MMIS) data,
- appropriate information from engineering and Department databases,
- verification that the project is included in the applicable Transportation Improvement Program/State Transportation Improvement Program,
- existing right-of-way,
- information and decisions from the programming process, and
- results of the preliminary field check of project location.

The district can, if necessary, conduct an on-site field review early in the project development to identify current environmental or engineering factors that the project may involve. For Federal Approved CEs, the district will notify FHWA of any scheduled field reviews so FHWA can attend, if appropriate.

If the district intends to use the Professional Transportation Bulletin to hire a consultant, the district must determine what level of environmental prequalification will be required for the project based on anticipated impacts.

References:

Subsection 40 CFR 1500.1(b) of 40 CFR 1500.1 - Purpose

40 CFR 1501.2 - Early Application of NEPA

Subsection 23 CFR 771.115 of 23 CFR 771.115(b) - Definition of Class II (CE) Action

Section 22-3.06 Proposed Action

23-2.02 Inventory Project Area

Based on the project scope, the district office with technical assistance from BDE will inventory the affected environment. The district should identify the full range of the environmental resources by evaluating environmental databases, and, if required, submit an Environmental Survey Request (ESR) (See Section 27-1).

Resources involved may include:

- Section 4(f) and/or 6(f) properties;
- archaeological and historical properties;
- floodplains;
- sensitive noise receptors;
- prime farmland;
- wetlands;
- threatened or endangered species habitat, nature preserves, and natural areas;
- wild and scenic rivers;
- status of air quality attainment;
- water quality of streams and lakes;
- special waste;
- social/economic characteristics of the population;
- visual quality factors;
- wellhead protection areas;
- groundwater recharge areas; and
- other biological resources (biodiversity, riparian habitat, etc.).

References:

FHWA Technical Advisory T6640.8A - Background

Chapter 27 Environmental Surveys

23-2.03 Initiate Early Coordination

The ESR process involves coordination with State and Federal agencies and the public (see Chapter 19), as appropriate, and the level of coordination is generally dependent on the complexity of the project. Potential reasons for public coordination by the district could include road closures, Section 4(f) impacts (*de minimis* impacts), Section 106, historic bridge advertisements, and addressing controversy. The district will coordinate with the IDNR if the project involves property purchased with LAWCON or OSLAD funds (see Chapter 26).

If the district conducts public involvement, it should occur before requesting CE determination so that the results of public involvement activities can be considered in determining the

appropriateness of the CE classification. Minutes of the meeting or a memorandum to the file, as appropriate, shall document the discussions. Public Involvement activity should also be documented on BDE Form 1201 Phase I Approval and included in the Project Report.

References:

23 CFR 771.111 - Early Coordination, Public Involvement and Project Development

Subsection 40 CFR 1500.2(d) of 40 CFR 1550.2 - Policy

40 CFR 1500.5(b) of 40 CFR 1500.5 - Reducing Delay

40 CFR 1501.1(b) of 40 CFR 1501.1 - Purpose

40 CFR 1501.6 - Cooperating Agencies

Forty Most Common Questions concerning CEQ's NEPA Regulations Memorandum -
Question 9. "Approvals from Other Agencies"

Chapter 19 Public Involvement Guidelines

Section 22-5 Coordination

Chapter 26 Special Environmental Analysis

Chapter 27 Environmental Surveys

23-2.04 Evaluate Project Alternatives and Project's Potential for Unusual Circumstance

The district should develop alternatives based on the purpose and need for the project and be sensitive to environmental resources for which avoidance and minimization of adverse impacts is necessary (e.g., wetlands, floodplains, Section 4(f) properties/historic sites, threatened and endangered species). In addition, the district should recognize that avoidance of protected environmental resources (some of which are potentials for unusual circumstances) through project design will help shorten project development time by eliminating the need for the reporting and coordination necessary for compliance.

Once avoidance and minimization of adverse impacts has been completed, the district shall review the project for the potential for unusual circumstances. The list of unusual circumstances is in Section 23-1.04(b) and also in Section V of the CE Agreement. If the project has one or more potential for unusual circumstances, then the project must be discussed with FHWA at a district coordination meeting to determine if the project may proceed as a Federal Approved CE or if an EA or EIS is required.

References:

Subsection 23 CFR 771.113(a) of 23 CFR 771.113 -Timing of Administration Activities

23-2.05 CE Determination

Once the above steps have been completed, a determination that the project qualifies as a CE; as well as the appropriate classification (State Approved or Federal Approved) under which it should be processed, can be made.

Projects which are determined to qualify as a State Approved CE do not need concurrence by the FHWA and are not required to be discussed at a coordination meeting unless there are issues related to the project's scope, design exceptions, or meeting ADA standards to the maximum extent practicable.

Projects which are determined to qualify as a Federal Approved CE must be presented at a coordination meeting. During the meeting, the district will present its recommendation for a Federal Approved CE determination, explain the basis for the recommendation, and discuss any potential for unusual circumstances. The FHWA may then concur in the determination, request additional information for review (e.g. written reports or technical documents), or request additional studies, analyses, and coordination activities regarding the project's environmental impacts. As the district completes additional studies, analyses, and coordination activities regarding the project's environmental impacts, these results should be discussed with FHWA at subsequent coordination meetings. The district may discuss these results as each study is completed, or wait to consolidate the discussion of several studies. Once FHWA concurrence is given, it should be documented in the minutes of the coordination meeting.

Note: A CE determination, or concurrence thereof by the FHWA, is a preliminary step which helps to ensure a project is being processed appropriately and it should not be confused with CE Approval.

References:

Subsection 23 CFR 771.117(b) of 23 CFR 771.117 - Categorical Exclusions
23 CFR 774 - Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
(Section 4(f)) Section 22-5 Coordination

23-2.06 CE Approval

Once a CE determination has been made, and once all environmental clearances have been obtained, the CE can be approved.

State Approved CEs are approved by the Regional Engineer.

Federal Approved CEs are approved by the FHWA. This approval is typically obtained at a coordination meeting or via emailed correspondence.

23-2.07 Documentation of Environmental Commitments

If there are commitments made during the CE process, they should be documented in the Phase I report and the district commitment file.

References:

D&E-19 Follow-through on Project Commitments

23-2.08 Documentation of the CE Determination and Approval

The level of documentation required is dependent upon whether the project is a Federal action or not (see Section 23-1.02).

23-2.08(a) Documentation for Federal Actions

For Federal actions, the following items are to be included in the Phase I Engineering report when a report is required or otherwise in the project files:

1. Environmental Surveys and Special Reports. The environmental surveys and special reports required to support a CE determination must summarize the results of any necessary environmental screening, surveys, coordination, and special reports for natural resources, cultural resources, air, noise, and special waste.
2. Coordination. Coordination required to support a CE determination must be summarized in the Phase I Engineering Report. For example, where coordination with the Natural Resources Conservation Service and/or the Illinois Department of Agriculture is required, the Phase I Engineering Report should include a brief summary of the results of the coordination (a copy of Form NRCS-CPA-106, when required, and/ or a synopsis of comments received and the related responses).
3. Permits. The report must indicate those permits (e.g., Section 404, Section 402 National Pollutant Discharge Elimination System (NPDES), Section 10, IDNR Office of Water Resources) that will be required for the project.
4. CE Certification Paragraph. The purpose of the certification paragraph is to document that the project scope and impacts fall within the thresholds of a CE.

For State Approved CEs, the certification paragraph reads as follows:

IDOT has addressed all environmental requirements for this project and determined that it has met the following requirements for a State Approved CE in the CE Programmatic Agreement (approved 10/14/15): (1) the scope is consistent with the project scope listed in [[Appendix (A or B), Item (include number)]] and (2) none of the circumstances in Section V exist. Therefore, on behalf of FHWA, IDOT hereby approves this project as a State Approved CE.

For Federal Approved CEs, the certification paragraph reads as follows:

After reviewing the project information provided, FHWA has determined that this project will not have any significant impacts on the human environment and approves its designation as a Federal Approved CE.

Each of the above paragraphs is contained on form BDE 2301 (Categorical Exclusion Determination and Approval) which shall be completed, signed as appropriate, and included in the project report or project file.

5. Wetland Finding. If the CE involves wetland impacts, the report shall also include the following paragraph:

The FHWA issued a programmatic Wetland Finding for CEs on October 14, 2015 in compliance with Executive Order 11990, Protection of Wetlands. The Programmatic Wetland Finding is contained in the CE Agreement, available online in the BDE Manual (Appendix A).

This paragraph is also contained on form BDE 2301 (Categorical Exclusion Determination and Approval) and the “yes” or “no” box must be checked as appropriate to document the involvement of wetland impacts.

23-2.08(b) Documentation for Non-Federal Actions

For non-Federal actions, the following items are to be including in the Phase I Engineering report, when a report is required, or otherwise in the project files:

1. Environmental Surveys and Special Reports. The environmental surveys and special reports must summarize the results of any necessary environmental screening, surveys, coordination, and special reports for natural resources, cultural resources, air, noise, and special waste.
2. Coordination. Coordination must be summarized in the Phase I Engineering Report.
3. Permits. The Phase I Engineering Report must indicate any state-issued permits needed for the project.

23-2.09 Staff Qualifications

Per the CE Agreement, at a minimum, all individuals and their designees who make CE approvals and determinations will:

- Have completed the web based course FHWA-NHI-142052, “Introduction to NEPA and Transportation Decision making” or equivalent; and
- Have experience addressing NEPA compliance for transportation projects; or
- Have their work reviewed by staff who have met items 1 and 2.