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Environment

NEPA Regulatory Framework and Process

Categorical Exclusion

www.fhwa.dot.gov/federal-aidessentials



An overview of an agency's responsibilities for the 95% of Federal-aid projects that have no significant environmental impacts

The National Environmental Policy Act, known as NEPA, requires the analysis of environmental impacts for all federally funded projects. Impact significance, not size or cost, dictates the class of action, and thereby, the NEPA process and requirements for documentation and public involvement.

A vast majority of Federal-aid projects are found to have no significant impacts that allow a determination as a categorical exclusion, or CE. This means that the project does not require preparation of an environmental assessment or environmental impact statement.



The Federal Highway Administration, the FHWA, uses past experience in designing and constructing transportation projects to aid in the CE determination. Generally, project types that have proven over the years to have no significant impact have been placed in categories, through FHWA regulation, on either a C-list or D-list. Projects that can be matched to either of those lists are classified as CE. Some State departments of transportation, or DOTs, have programmatic agreements with FHWA that establish procedures for additional CEs that may be available for use.



Projects that are normally processed as a CE but are determined to have unusual circumstances, as defined in the regulations, will require further review and in some cases, an environmental assessment or environmental impact statement.

Every project processed with a CE requires a statement of purpose and need along with documentation that the project meets the criteria of one of the CE lists. Your State DOT can often assist you to include other requirements that are needed to comply with NEPA.



For example, depending on your project's potential impacts, this may include,

- Technical studies, such as for impacts to endangered species, wetlands or historic properties
- The coordination with any U.S. government agencies that may have an interest in your project
- Efforts to involve the public
- follow-through on commitments made to avoid or minimize impacts



As an example, let's consider the proposed construction of a bike path within the existing State highway right-of-way.

The local long-range plan includes the addition of a network of bike paths to improve mobility and enhance recreation. The construction of a new 3-mile segment in a particular location is currently under consideration.

In a meeting with the State DOT, the project is matched to a category C-List in the regulation and found to have no potential for significant impacts or unusual circumstances. The documentation in the project file indicates that the project is clearly a CE. The activities that were considered, but determined not required for this project, included,

- Technical studies
- Coordination with U.S. Government agencies
- Efforts to involve the public through workshops or hearing



Now let's look at a second project where the widening of the road requires additional right-of-way from a public park.

To decrease crashes on an existing roadway, shoulders will be added. In a site visit with the State DOT, it was determined that the CE is likely appropriate under the D-list in the regulation. But because of the need for right-of-way and potential impacts to public land, the local public agency (LPA) is asked to:

- Conduct several studies related to the presence of endangered species and archeological sites
- Coordinate with FHWA to address resources and potential use of the public park

- Follow the State DOT's public involvement procedures for formal public input

The studies confirmed that there were no significant environmental impacts. The taking of public property, however, couldn't be avoided. So the LPA committed to taking a minimum amount of property by steepening the slope of the embankment and constructing a retaining wall.

As you can see, when the potential for impacts exist, additional analysis and actions are required to properly assess them and then either avoid or minimize the impacts.



Your State DOT has extensive knowledge and expertise in all areas of NEPA compliance. It can help you prepare the NEPA documentation for your project and may even have programmatic agreements in place to expedite the process.

For CE determinations, you need to submit documentation to the State DOT for FHWA approval. The FHWA partners with the State DOT to make Federal-aid project decisions and also provides technical assistance and coordination with other agencies. Therefore, it's essential that you engage the State DOT and, when appropriate, the FHWA early and throughout your project's entire process.

Additional Resources

- Link to FHWA's Office of Planning, Environment & Realty Web site
<http://www.fhwa.dot.gov/environment/index.htm>
- FHWA's Environmental Review Toolkit includes guidance on the essential elements of the NEPA process
<http://environment.fhwa.dot.gov/projdev/pd3tdm.asp>
- Federal regulations on categorical exclusion (class II) class of action
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr;sid=fa2fd458da42bf23b96cfaf538243294;rgn=div5;view=text;node=23%3A1.0.1.8.43;idno=23;cc=ecfr#23:1.0.1.8.43.0.1.9>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00024 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.