SHORT GUIDE TO USING CATEGORICAL EXCLUSIONS

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This brief guidance was developed to assist NRCS' Responsible Federal Officials (RFOs) to correctly apply Categorical Exclusions (CEs) to document the Agency's compliance with the National Environmental Policy Act (NEPA.) Complete guidance can be found in the National Environmental Compliance Handbook (NECH) Part 610.46.

Things to Know

- CEs only apply to NEPA.
- The NRCS-CPA-52 form documents the Environmental Evaluation (EE) required as part of conservation planning.
- NRCS must also document compliance with all other applicable environmental laws and policies and the NRCS-CPA-52 form is where NRCS does that.
- In other words, the NRCS-CPA-52 form provides concise, comprehensive documentation of NRCS compliance with NEPA and all other environmental laws, regulations, Executive Orders, and planning policies in a single location!
- Projects funded under Watershed Program authorities must meet additional documentation requirements.
- Review for extraordinary circumstances in Section P of the NRCS-CPA-52 is required whether using a CE or tiering to an existing NEPA document.

CEs are categories of actions that do not individually or cumulatively have a significant effect on the human environment, have been found to have no such effect in Federal agency NEPA procedures, and for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

40 CFR 1508.4

Riparian buffer along Bear Creek, Story County, IA. Photo by Lynn Betts, NRCS.

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Cattle graze on well-managed rangeland near Tucson, AZ. By Tim McCabe, NRCS

Using CEs

CEs may be used for any NRCS program activities to which they apply as long as all the connected actions—

- meet the applicable overarching criteria, as well as CE-specific criteria

and

- have no "extraordinary circumstances" (see sidebar, page 3) that could result in significant adverse impacts (short- or long-term or cumulative) that cannot be mitigated.

Overarching criteria, also known as "sideboards," are listed in the sidebar at right and in the comment box in Section R.2 of the NRCS-CPA-52.

Only applicable sideboards need be met. For example, if no conservation practices are planned to be installed in streams, Criterion #3 does not apply and is not required to use the CE.

When Not to Use CEs

Mixing Actions — If the proposed plan involves actions listed as CEs along with other actions that do not have CEs, NRCS may not categorically exclude the entire action. Tiering to a national programmatic EA or other existing NEPA document should be considered.

Segmenting — NRCS may not look at actions individually if they are interdependent parts of the plan. If part of the action has no purpose independent from another part (e.g., an irrigation system with no well or diversion to provide water), the two actions are interdependent.

Adverse Impacts —When a project could result in significant adverse impacts and measures cannot be implemented to mitigate the impact below a level of significance, CEs should not be used, even if the impacts are short-term or are offset by beneficial impacts. This includes any potentially significant adverse impacts to soil, water, and related resources and those on special environmental concerns such as threatened and endangered species, floodplain management, wetlands, etc. ***NOTE: Tiering to NRCS' national programmatic EAs is also not acceptable because those EAs all led to Findings of No Significant Impact (FNSI.) A site-specific EA or EIS would be needed.***

Overarching Criteria

1. Conservation practices are designed to mitigate soil erosion, sedimentation, and downstream flooding.

2. Disturbed areas will be vegetated with adapted species that are neither invasive nor noxious.

3. Conservation practices installed in streams are based on current Federal principles of natural stream dynamics and processes, such as those presented in the Federal Interagency Stream Corridor Restoration Working Group document, "Stream Corridor Restoration, Principles, Processes, and Practices."

4. Applicable NRCS conservation practice standards as found in the Field Office Technical Guide (FOTG) are used during planning, design, and implementation.

5. Substantial dredging, excavation, or placement of fill is not planned.

6. There will be no significant risk of exposure to toxic or hazardous substances.

Longleaf pine seedling near Grand Bay, AL. Photo by Stephen Kirkpatrick, NRCS.

Extraordinary Circumstances

Answers to all questions below must be "no" to use a CE or tier to national programmatic EA

Will the proposed action...

cause significant effects on public health or safety?

significantly affect unique characteristics of the geographic area? Examples: historic properties or cultural resources, park lands, prime farmlands, floodplains, wetlands, wild and scenic rivers, or ecologically critical areas.

have effects on the quality of the human environment that are highly controversial?

have highly uncertain effects or unique or unknown risks on the human environment?

establish a precedent for future actions with significant impacts or represent a decision in principle about a future consideration?

have potentially significant impacts to the quality of the human environment either individually or cumulatively over time?

have a significant adverse effect on any of the special environmental concerns in Section G. of the NRCS-CPA-52?

violate Federal, State, or local law or requirements for the protection of the environment?

What is the Environmental Concern and Context?	Intensity or Severity of Impact ("How Much")	Why is the Impact NOT Significant?
Loss of wetlands (100 acres total wetlands present)	5 acres will be impacted	Compensatory mitigation for lost acres on another unit of similar ecological function and value.
Loss of habitat for endangered turtle (50 acres of habitat present)	Temporary loss of 5 acres of habitat during construction phase of project	Long-term benefits from enhanced habitat are substantial, whereas short-term adverse impacts are discountable because any resident turtles will be temporarily relocated.
Increase PM10 emissions in a nonattainment area	220 Acres of HEL may exceed air quality standards for PM10	Mitigation measures include crop rotation, residue management, and cover crops.

The technique shown in the table above may be used when having difficulty determining whether or not an effect is "significant." Attach the results to the NRCS-CPA-52.

Recommended Protocol for Analysis and Documentation When Using CEs

Step 1. Review the NRCS-CPA-52 for evidence that the proposed action will not have a significant adverse impact (see Extraordinary Circumstances sidebar at left.) Reasons that short-term, long-term, and cumulative impacts are not significant must be provided on the NRCS-CPA-52, attachments, or other documents cited on the NRCS-CPA-52. If adverse impacts cannot be adequately mitigated below a level of significance, it would mean that there are "extraordinary circumstances" and a site-specific EA or EIS may be needed. Adverse impacts to ESA-listed species, historic properties, etc., do not automatically preclude the use of CEs for NEPA compliance, as long as the proper consultations and required mitigation are completed to comply with other environmental laws.

Step 2. Check whether the project fits within applicable overarching and CE-specific criteria. Overarching criteria are listed in the sidebar on page 2. Examples are provided in NECH, Subpart H, Exhibit 610.118.

Step 3. If your action fits within the criteria and there are no extraordinary circumstances (significant adverse impacts that cannot be mitigated), and you can provide a rationale, then you may use CEs. If not, consider tiering to an existing or preparing a site-specific EA or EIS. Contact your State Environmental Compliance liaison for assistance if needed.

USDA Categorical Exclusions [7 CFR Part 1b.3]

(1) Policy development, planning, and implementation that relates to routine activities, such as personnel, organizational changes, or similar administrative functions

(2) Activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity

(4) Educational and informational programs and activities

(5) Civil and criminal law enforcement and investigative activities

(6) Activities that are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation

(7) Activities related to trade representation and market development activities abroad

NRCS Categorical Exclusions [7 CFR Part 650.6]

Data Gathering and Interpretation Programs

(1) Soil Survey (7 CFR Part 611)

(2) Snow Survey and Water Supply Forecasts (7 CFR Part 612)

(3) Plant Materials for Conservation (7 CFR Part 613)

(4) Inventory and Monitoring (Catalog of Federal Domestic Assistance—10.908)

(5) River Basin Studies under section 6 of Public Law 83-566, as amended, 7 CFR Part 621

Restoration and Conservation Actions (continued on page 5)

(1) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services

(2) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances

(3) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to predrainage conditions to the extent practicable

(4) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required

(5) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes

(6) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety

(7) Removing storm debris and sediment following a natural disaster where there

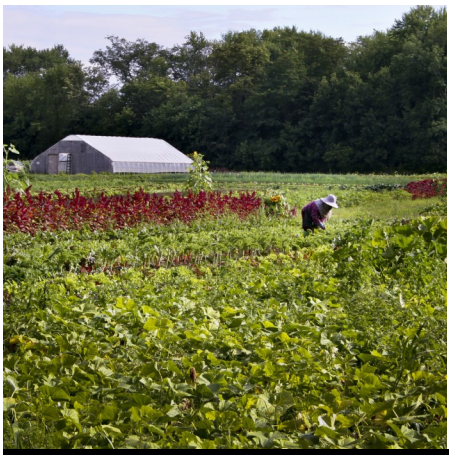
Why Use CEs?

In the event of a legal challenge, use of a CE supported by evidence on the NRCS-CPA-52 will be more defensible than tiering to a national programmatic EA.

References

General Manual, Title 190, Part 410, Subpart A

National Environmental Compliance Handbook, Subpart D



Flats Mentor Farm, MA. Photo by Catherine Ulitsky, NRCS.

is a continuing and imminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to predisaster conditions to the extent practicable (excavation must not exceed the predisaster condition)

(8) Stabilizing stream banks and associated structures to reduce erosion through bioengineering techniques following a natural disaster to restore predisaster conditions to the extent practicable (e.g., utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, and geotextiles for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods))

(9) Repairing or maintaining existing small structures or improvements, including structures and improvements utilized to restore disturbed or altered wetland, riparian, in-stream, or native habitat conditions (e.g., the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances)

(10) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats (e.g., the installation of fences or the construction of small berms, dikes, and associated water control structures)

(11) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable preimpact condition

(12) Repairing or maintenance of existing constructed fish passageways (e.g., fish ladders) or spawning areas impacted by natural disasters or human alteration

(13) Repairing, maintaining, or installing fish screens to existing structures

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards; work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result

(15) Repairing or improving (deepening, widening, or armoring) existing auxiliary or emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards; work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards

- The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped, which could result in a catastrophic failure.

- Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result.

- Examples of work may include the addition of fill material, such as earth or gravel, or placement of parapet walls.

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration (e.g., mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control that are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes)

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices