

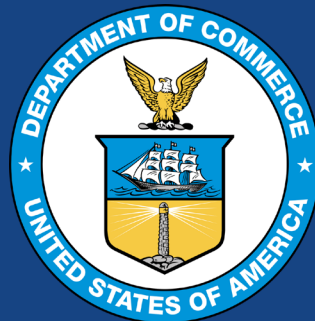


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# NEPA Review: Categorical Exclusions

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February 2023



# NEPA Review: Categorical Exclusions

Environmental reviews under NEPA can involve three different levels of analysis: Categorical Exclusion (CATEX), Environmental Assessment (EA), and Environmental Impact Statement (EIS). This document provides an overview of categorical exclusions, as well as actions currently designated as categorical exclusions for the Department of Commerce.

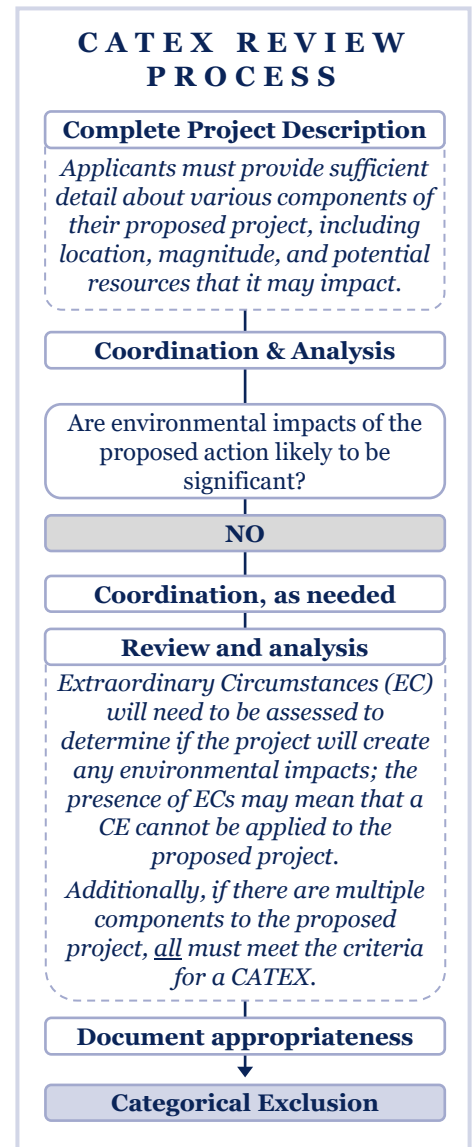
## WHAT IS A CATEGORICAL EXCLUSION?

Defined in 40 CFR § 1508.4, a categorical exclusion is:

“a category of actions which do not individually or cumulatively have a significant effect on the human environment, and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.”

A federal action may be "categorically excluded" from a detailed environmental analysis when the action normally does *not* have a significant effect on the human environment. However, an analysis of any extraordinary circumstances associated with the proposed action must be completed to determine whether a CATEX can apply, and these types of activities still require the federal agency to ensure that there are no “extraordinary circumstances” that would preclude the applicability of a categorical exclusion, such as a reasonable likelihood of significant environmental effects or effects on the environment that involve risks that are highly uncertain, unique, or are scientifically controversial. **The use of a CATEX for a proposed action is a federal decision, and applicants do *not* determine for themselves whether a proposed action qualifies.**

It is important to note that a CATEX is *not* an exemption of NEPA review but rather is simply one type of NEPA review. A proposed action may have multiple CATEXs associated with different components of the project, but applicants should not materially adjust the scope of their proposed action to attempt to qualify for a CATEX and should submit applications that are representative of the intended outcome. In addition to demonstrating that no other circumstances exist that may have a significant impact as a result of the proposed action, i.e., the extraordinary circumstances, applicants must also complete all required consultations and obtain applicable permits to complete the NEPA review process.



## CATEGORICAL EXCLUSION QUALIFICATION

For NTIA to determine if a categorical exclusion can be applied to a proposed activity, sufficient detail about the various components of the project including its location and its magnitude, as well as a good understanding of the surrounding environment, must be included in the project description.

Items to note when trying to qualify for a categorical exclusion include:



Provide **sufficient documentation** so that NTIA can complete an analysis of categorical exclusion applicability



Categorical exclusions can be applied to **routine, minor actions**



A project can have **multiple categorical exclusions associated with different components** of the project



If there are multiple components to a project, they **ALL must meet the criteria for one or more categorical exclusions** or the entire project moves to an EA or an EIS



Projects in **rights-of-way that cross or otherwise impact sensitive or protected resources will not qualify** for a categorical exclusion



Even if a project can be categorically excluded from further NEPA review, **all required consultations and applicable permitting must be completed.** For example, you will need to provide results of your consultations with the State and Tribal Historic Preservation Officers (SHPO/THPO) and U.S. Fish and Wildlife Service (USFWS), if required



**Extraordinary Circumstances (EC) will need to be assessed** to determine if a project will create any environmental impacts; the presence of ECs may mean that a categorical exclusion cannot be applied to the project



Large fiber projects may need to provide so much documentation to justify the application of a categorical exclusion that the effort would be equivalent to that of an environmental assessment

## DOC CATEGORICAL EXCLUSIONS

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The U.S. Department of Commerce (DOC) has published a list of categorical exclusions that the agency determined do not individually or cumulatively have a significant effect on the human environment and should be categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

The application of a categorical exclusion can be limited by extraordinary circumstances, which are factors or circumstances in which a normally excluded action may have a significant environmental effect that requires further analysis in an environmental assessment or environmental impact statement. A description of each proposed activity and supporting documentation developed and provided by the grantee will be carefully reviewed by NTIA to ensure that it fits within the category of actions described in the categorical exclusion and that there are no extraordinary circumstances indicating that the effects of the proposed activity could be significant.

A description of the 11 categorical exclusions currently published by the DOC can be found within the notice issued by the DOC found in 74 Federal Register 3304, published on July 10, 2009 or on the following webpage: [Categorical Exclusions](#).

NTIA is currently using the categorical exclusions published by the DOC, but its own set is forthcoming. This document will be updated upon the publication of those categorical exclusions.

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