

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.116 How to Use NRCS's Categorical Exclusions (CEs)

Q: What is a categorical exclusion?

A: A category of actions NRCS considers do not individually or cumulatively have a significant effect on the human environment.

In 2009, NRCS expanded our list of CEs in conformity with NEPA and the CEQ regulations. A complete list of all USDA and NRCS CEs is included above.

These CEs may be used for all NRCS program activities. Although the 21 new actions on the list, by definition, have been found not to have a significant effect on the human environment and no longer require preparation of an EA or EIS, it is important to note that NRCS will still be required to “show our work” by conducting environmental evaluations for all NRCS assistance. Actions that are CEed still require a review and analysis process to determine whether extraordinary circumstances might apply and to determine that all parts of the action fit the criteria for the CE. In determining whether extraordinary circumstances exist, NRCS will use the same criteria that is used for determining significance when conducting the EE as listed on the NRCS-CPA-52. The list of significance and extraordinary circumstances criteria can be found in Title 190, National Environmental Compliance Handbook, Part 610, Subpart D.

To be applicable, all actions of a conservation plan must—

- 1) Meet the specified purpose of the CE and involve no extraordinary circumstances.**
- 2) Meet the identified overarching sideboards and criteria , as well as each CE-specific sideboard and criteria.**
- 3) Have no adverse (short- or long-term) impacts that cannot be mitigated.**

Also, these new CEs only apply to compliance with the National Environmental Policy Act (NEPA). They do not negate NRCS's responsibility to comply with any other applicable NRCS policy associated with PL-566, Principles & Guidelines (P&G), areas of concern denoted on the EE, or environmental laws, such as the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), Clean Water Act (CWA), Executive orders, etc., included in the NRCS list of special environmental concerns.

What situations preclude the use of CEs?

- **Mixing Actions.**—If a proposed plan involves actions listed as CEs along with other actions that are not included in this list, NRCS may not CE the entire action from review under NEPA.
- **Segmenting.**—NRCS may not look at the actions individually if they are interdependent parts of the plan. This would be construed as segmenting an action into smaller component parts to

avoid the requisite and appropriate level of environmental review under NEPA.

- **Additional Requirements.**—The appropriate NEPA documentation is to be prepared for those plans and activities that, according to other laws, regulations, or NRCS policy, require additional analysis through an EA or EIS (e.g., watershed planning or other conservation and easements program plans).
- **Adverse Impacts.**—When significant adverse impacts are anticipated and measures cannot be implemented to fully mitigate the impact, CEs may not be invoked, even if the impacts are short-term or are offset by beneficial impacts. This includes NRCS policy on rare, threatened, and endangered species of plants and animals; floodplain management; Clean Water Act; etc.

Recommended Protocol for Analysis and Documentation of Project, if Invoking CEs

- 1) The EE (CPA-52) should be as detailed as possible. **You may invoke CEs only if you can make a defensible argument that you will not be having a significant impact on resource concerns. If significant impacts are anticipated, it would mean that there are “extraordinary circumstances” surrounding the action, the term under NEPA that applies to categorical exclusions. The same would apply to any of the special environmental concerns, such as ESA, NHPA, CWA, etc.** Words like “significant” and “substantial” may be difficult to define. There are ways to think about these terms (see item #4, below).
- 2) **Remember to check whether the project fits within the general and CE-specific criteria (see below). The overarching sideboards are listed above on the use of the CEs and then each individual CE has its own specific sideboards and criteria for use.** If your action fits within those sets of criteria and there are no extraordinary circumstances (same thing as significance), and you can provide a rationale, then you may invoke the CE. If not, it’s safest to move towards an EA or EIS. Remember that NEPA is all about accountability and public disclosure, and even though we may not share details of our actions with the general public, we are obliged to explain (if challenged) why what we do is not going to cause significant impact on something else.
 - **Example: The following CE may only be invoked if the proposed action meets its specific sideboards:**

CE #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.”
 - **Example: CE #11 for WRP plan may only be invoked if all actions in the plan fit within the general and CE-specific sideboards – in this example, the question is whether any of the practices will cause “substantial excavation” (sideboard #5 below):**

CE #11: “Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition.”

- The conservation plan includes Wetland Restoration (657); Wetland Wildlife Habitat Management (644); Streambank Stabilization (580); Structure for Water Control (587); Stream Habitat Improvement and Management (395); and Access Road (560).
 - **Installation of some of these practices might end up requiring substantial excavation. You must determine whether these practices meet the criteria applicable to all CE actions that there is no “substantial excavation” (sideboard #5 below).**
 - You must provide rationale that this action meets the overarching criteria and sideboard of “no substantial excavation” and there are no adverse impacts which cannot be mitigated.
- **Important note:** You may find that all the components of the plan meet the CE criteria and sideboards for #11, but there are potentially adverse impacts to a resource, which will preclude the use of the CE.
 - Example: Soils on the property are contaminated with DDT and there is the presence of a threatened bird species. The soil movement may affect and is likely to adversely impact the species, and a formal ESA consultation is required, which would be considered an extraordinary circumstance precluding the use of the CE.
- **Example: CE #5 for a GRP Plan can only be invoked if all actions of the plan meet the purpose of the CE:**

CE #5: “Restoring the *natural topographic features* of agricultural fields altered by farming and ranching activities for the purposes of restoring ecological process.”

- The conservation plan includes **Pond (378)***; Fence (382); Access Control (472); Pipeline (516); Prescribed Grazing (528); Range Planting (550); **Spring Development (574)***; Watering Facility (614); Upland Wildlife Habitat Management (645)
 - **The CE is not applicable** since pond development and spring development do not restore natural “ecological conditions.” The best approach for documenting compliance with NRCS’s NEPA process would be to make a finding on the EE that these actions are covered in one of the national programmatic EAs.
- 3) **If you find that there are no extraordinary circumstances that would preclude the use of the CEs, and all of the actions fit within the CE sideboards** discussed above and within the CE, and there are no other adverse impacts that cannot be mitigated, indicate in the “Findings” section of the CPA-52 that the action will be categorically excluded. So, in the “rationale” section (Q) of the CPA-52, you would indicate how the action meets the specific sideboards for the particular CE being invoked.

- 4) **To defend your finding of no extraordinary circumstances or nonsignificance, use of the three-column table found in section 610.68 that can be attached to your CPA-52 is recommended.** Remember to consider both short and long-term impacts. You'll want to answer the following questions:
 - a) What is the issue?
 - b) What is the intensity (or how much or how extensive is the issue)?
 - c) Why is this not significant? This would include any mitigation being planned that would reduce significance.
 - d) Does the action trigger compliance concerns for any of the other special resource concerns, such as ESA or NHPA, that may require additional mitigation or consultation? If so, it may be difficult to argue insignificance unless consultation has been completed with agreed to terms and conditions, etc.
- 5) **Document your analysis – show your work.** It's helpful for planning and also provides defensible rationale in case of a challenge. The RFO then signs the bottom of the CPA-52 after the "Findings" section.