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Legislative Categorical Exclusions Under the National Environmental Policy Act

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Analyst in Environmental Policy

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SUMMARY

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The National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) establishes procedures for federal agencies to integrate consideration of environmental impacts into federal decisionmaking (i.e., environmental review). Most agency actions are subject to NEPA's environmental review requirements, and the level of review varies on the basis of the expected significance of the environmental impact. Categorical exclusions (CEs) are used when agency actions are expected to have little or no significant environmental impact. Thus, CEs allow agencies to bypass preparation of the more detailed analyses of an environmental assessment (EA) or an environmental impact statement (EIS). Federal agencies have directly established most CEs by examining their existing activities and determining which ones have consistently shown no significant environmental impact. Congress has also played a role by legislating CEs through two primary approaches—directing agencies to develop a CE for certain categories of action (i.e., "congressionally directed CE") or enacting a CE directly in statute (i.e., "statutory CE"). Whether a CE is congressionally directed or statutorily created affects several elements that shape its development and application.

When Congress directs an agency to develop a CE, NEPA requires that the category of actions "normally does not significantly affect the quality of the human environment." To develop these CEs, agencies have typically followed an administrative process that included public notice and opportunities for the public to comment. Congressionally directed CEs are constrained to categories of actions that do not significantly affect the quality of the human environment, allow agencies to leverage their technical expertise in project implementation to develop the CE, consider site-specific conditions where the CE may not be applicable, and provide flexibility to modify the CE over time. However, congressionally directed CEs may take years to develop, may require a commitment of agency resources to develop a sufficient administrative record to support the CE, and may be less durable or not implemented in accordance with congressional intent.

When Congress establishes a statutory CE, agencies apply the exclusion as defined in the statutory text. Statutory CEs provide prompt availability of the CE and potentially expedite projects that Congress deems a high priority. When Congress itself develops a CE, there is no requirement that the category of actions "normally does not significantly affect the quality of the human environment." These statutory CEs provide an opportunity for Congress to specify the level of environmental review for specific policy objectives, such as infrastructure development or the need for rapid response to emergencies or natural disasters. However, statutory CEs offer less flexibility in their application and may lack consideration of site-specific elements that result in reasonably foreseeable significant environmental impacts. These CEs are developed through the legislative process, in which Congress determines the extent and manner of opportunities for public comment. The durability of statutory CEs also means they may remain in place even if the action results in significant environmental impacts or if operational practices change.

As environmental and policy contexts evolve, the design of legislative CEs will remain important to weigh alongside policy interests in expedited project approvals with NEPA's underlying commitment to informed environmental decisionmaking. Congressional considerations include balancing interests in expedited project approvals with potentially significant environmental impacts, assessing administrative efficiency, facilitating public involvement, and providing agencies with the ability to modify or adapt a CE.

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Introduction

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§4321 et seq.) establishes a national policy with respect to environmental quality and the basic process for integrating environmental considerations into federal decisionmaking (i.e., "environmental reviews").[1] NEPA is often associated with the more comprehensive analysis required for an *environmental impact statement* (EIS); however, the majority of NEPA reviews do not require this level of analysis.[2] Instead, when agencies determine that a category of actions does not significantly affect the human environment, they may apply a *categorical exclusion* (CE) to allow the actions to proceed with minimal documentation.[3] CEs are not exemptions from the NEPA process; rather, they are typically used for minor actions that an agency does repeatedly and expects will have no or only minor environmental impacts.[4] While most CEs are established through agency procedures, Congress has also enacted legislative CEs to streamline review for specific types of activities.[5]

NEPA also created the Council on Environmental Quality (CEQ) in the Executive Office of the President, to among other duties, provide oversight of NEPA's implementation.[6] In 1978, CEQ issued its first NEPA implementing regulations and also directed each federal agency to establish its own agency-specific procedures consistent with CEQ regulations while reflecting agency-specific statutory requirements, regulations, and guidance.[7] On April 11, 2025, CEQ's NEPA-implementing regulations were rescinded.[8]

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[1] The National Environmental Policy Act (NEPA) was passed by Congress in 1969 and signed into law by President Nixon on January 1, 1970. Codified at 42 U.S.C. §4331, NEPA states "that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

[2] Under 42 U.S.C. §4336(b), an agency is required to issue an environmental impact statement (EIS) for a proposed agency action "that has a reasonably foreseeable significant effect on the quality of the human environment" or an environmental assessment (EA) for a proposed agency action where the effects are unknown or any reasonably foreseeable effects are not significant (unless a categorical exclusion, or CE, applies). Furthermore, on the basis of information provided by federal agencies, the Council on Environmental Quality (CEQ) estimates that each year agencies apply CEs account for over 95% of all NEPA analyses.

[3] 42 U.S.C. §4336(a)(2). Further, 42 U.S.C. §4336e(1) defines a CE as a "category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment."

[4] CEQ, *Memorandum for Heads of Federal Departments and Agencies: Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act*, November 23, 2010, pp. 2-3, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf. CEQ asserts that CEs are intended to reduce delays and paperwork, which in turn allows agencies to focus resources toward evaluating actions that have more potential to cause environmental impacts.

[5] See the **Appendix** for an inventory of CEs established by Congress.

[6] 42 U.S.C. §4344(3) states that "it shall be the duty and function of the [CEQ] ... to review and appraise the various programs and activities of the Federal Government in the light of the policy set for in subchapter I of [NEPA] for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto." Further, authority to promulgate regulations to implement NEPA's provisions was not expressly included among the duties and responsibilities given to CEQ under NEPA. However, shortly after signing NEPA, President Nixon issued Executive Order 11514, "Protection and Enhancement of Environmental Quality," authorizing CEQ to issue guidelines for the implementation of the act. In 1977, President Carter issued Executive Order 11991, "Relating to Protection and Enhancement of Environmental Quality," which directed CEQ to issue regulations for implementation of the procedural provisions of NEPA.

[7] CEQ, "National Environmental Policy Act—Regulations," 43 *Federal Register* 55978, November 29, 1978, p. 56003.

[8] CEQ, "Removal of NEPA Implementing Regulations," 90 *Federal Register* 10610, February 25, 2025 (amending Subchapter A of Chapter V in Title 40 of the *Code of Federal Regulations* by removing and reserving Parts 1500, 1501, (continued...)

Unless certain conditions are met, NEPA requires that federal agencies conduct an environmental review to consider the significance of the environmental impacts of "major federal actions."[9] NEPA's environmental review procedures do not typically apply to actions that are exempted by statute, conflict with another provision of federal law, or involve nondiscretionary agency functions.[10] Agencies can comply with the environmental review requirements for NEPA by preparing an EIS or an *environmental assessment* (EA).[11] An agency is not required to prepare an EIS or EA if the major federal action is excluded pursuant to one of the agency's CEs or if they can apply another agency's CE consistent with statute.[12] When an agency applies a CE to a proposed action, an agency does not prepare an EA or an EIS.[13]

Federal agencies typically establish CEs when they determine that a category of actions "normally does not significantly affect the quality of the human environment."[14] Most CEs have historically been established directly by federal agencies pursuant to CEQ regulations, which have since been rescinded.[15] CEs typically include defined conditions or limitations that identify the types of actions covered and the circumstances under which the exclusion applies. They may also incorporate conditions that preclude the use of the CE when significant environmental impacts may be anticipated (i.e., extraordinary circumstances).[16] Under the process established by CEQ, agencies examined their existing actions to determine which ones did not consistently result in significant environmental impacts. Agencies have typically identified actions that may be eligible for CEs through review of existing NEPA documentation, studies, and assessments conducted for similar actions in the past, relying on historical data and the outcomes of previous EAs or EISs.[17] In certain instances, however, Congress has passed legislation that either directs a federal agency to establish a CE or expressly establishes a CE through statute.

1502, 1503, 1504, 1505, 1506, 1507, and 1508). See also CRS In Focus IF12960, *Council on Environmental Quality Rescinds NEPA Regulations: Legal and Policy Considerations*, by Heather McPherron and Kristen Hite.

[9] 42 U.S.C. §4336e(10)(A) defines a *major federal action* as an action that is "subject to substantial Federal control and responsibility." Congress may also exempt specific agency actions from NEPA via statute. See, for example, in the Building Chips in America Act of 2023 (P.L. 118-105), where Congress exempted certain types of microchip manufacturing activities from NEPA by clarifying that certain CHIPS Act projects commenced before 2025 are not major federal actions and therefore not subject to NEPA review.

[10] 42 U.S.C. §4336(a). A *discretionary action* refers to an action where a federal agency has the authority to choose among different courses of action or decide whether or not to take the action at all, as opposed to an action where the agency's decisions are guided by a statutory or regulatory mandate. CEQ, *A Citizen's Guide to NEPA: Having Your Voice Heard*, 2021, p. 4, https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf. See 42 U.S.C. §4336e(10)(B) for a full list of categories of actions that are excluded from the requirements of NEPA.

[11] See footnote 2.

[12] 42 U.S.C. §4336(a)(2). Further, 42 U.S.C. §4336c allows for an agency to adopt a CE listed in another agency's NEPA procedures.

[13] 42 U.S.C. §4336(a)(2).

[14] 42 U.S.C. §4336e(1). Such CEs are typically established through an agency's prior experience in assessing the significance of impacts associated with similar types of actions. Congress also may choose to enact CEs legislatively. Congress may enact a CE legislatively regardless of the environmental impact of the applicable action.

[15] CEs were not expressly referenced in the NEPA statute until it was amended by the Fiscal Responsibility Act of 2023 (P.L. 118-5). Prior to that, their use was established through CEQ's NEPA implementing regulations (40 C.F.R. Parts 1500-1508) and CEQ guidance.

[16] CEQ defines *extraordinary circumstances* as factors that specify situations or site-specific conditions that are more likely to result in significant impacts to the human environment and therefore may require an otherwise categorically excludable action to be further analyzed in an EA or an EIS. See the "Extraordinary Circumstances" section of this report for more information.

[17] CEQ, *Memorandum for Heads of Federal Departments and Agencies: Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act*, November 23, 2010, pp. 6-10, https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.

This report provides an overview and analysis of legislative approaches to establishing CEs. It begins by describing the two primary methods Congress has used to create CEs—directing agencies to develop CEs and establishing CEs directly by statute. The report then examines how CEs are established under each approach, including the potential implications of the significance of the environmental impacts, public engagement, and flexibility. It concludes with issues for Congress to consider when legislating CEs. An inventory of legislative CEs is included in the **Appendix**.

Development of Legislative CEs

Congress has generally legislated CEs (i.e., "legislative CEs") through two primary approaches. In some cases, Congress directs a federal agency or department to establish a CE through the agency's administrative processes (i.e., "congressionally directed CE"). This gives the agency some flexibility in how to structure the CE within statutory parameters. In other cases, Congress establishes a CE directly in law, prescribing the terms and scope (i.e., "statutory CE"). This provides Congress with greater control over the CE's availability and applicability. Congressionally directed CEs and statutory CEs differ in a number of ways. The following sections provide an overview of each approach, focusing on their general establishment process and institutional roles associated with congressionally directed and statutory CEs.

Congressionally Directed CEs

A congressionally directed CE arises when Congress instructs a federal agency or department to categorically exclude a specific type of action from requirements to prepare an EA or an EIS through its regulatory processes. In this approach, Congress generally defines the overall scope of the CE and delegates to the agency the responsibility to formally establish the exclusion. "Scope" refers to the specific types of actions, project, or activities covered by the CE, as well as any conditions or limitations that define when and how it may be applied. The CE then becomes part of the agency's NEPA implementing procedures and determines how the agency conducts environmental reviews for applicable, categorically excluded actions.

When Congress legislatively directs an agency to develop a CE, the agency generally undertakes an administrative process that includes public review and opportunities to comment as part of the CE development process. In many cases, agencies have created CEs by issuing regulations, often through publication in the *Federal Register* with an opportunity for public comment. Prior to the rescission of CEQ's NEPA implementing regulations on April 11, 2025, CEQ required agencies to "substantiate the proposed new or revised categorical exclusion with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, on the human environment and provide this substantiation in a written record that is made publicly available as part of the notice and comment process."[18] As a part of that process, the agency made any additional determinations needed to supplement the legislative directive and specified the category of actions to be excluded and any conditions or limitations therein. The agency then made the determination publicly available through the notice-and-comment process, defining the CE's applicability, conditions, and procedure for addressing extraordinary

[18] CEQ, "National Environmental Policy Act Implementing Regulations Revisions Phase 2," 89 *Federal Register* 35442, May 1, 2024, p. 35574.

circumstances. For decades, agencies have commonly published proposed CEs in the *Federal Register* for public comment prior to finalization, allowing stakeholders to submit feedback.[19]

As an example of this process, **Table 1** describes the development of a congressionally directed CE under Section 11503(a) of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94), highlighting the sequence of agency actions taken by the Federal Railroad Administration to implement the legislative directive through rulemaking.

Table 1. Selected Example of a Rulemaking in Response to a Congressionally Directed Categorical Exclusion (CE) Within P.L. 114-94

Action Taken by Congress or Agency	Description of Action
Congressional direction in the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94)	Section 11503(a) directed the Secretary of Transportation to, among other things, publish a notice of proposed rulemaking to propose new and existing CEs for railroad projects within one year.
Notice by the Federal Railroad Administration (FRA), Department of Transportation (DOT)[a]	The FRA solicited public comment on, among other things, two proposed CEs: • "localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes; and • "refinancing assistance where the project sponsor has already completed project-related construction activities."
Supplemental notice of proposed rulemaking (SNPRM) by the FRA, DOT[b]	DOT proposed a rule to, among other things, add FRA CEs to DOT's National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) implementing procedures at 23 C.F.R. §771.116. The CE language reflected changes based on prior public input and interagency consultation: • 23 C.F.R. §771.116(c)(4): "Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys." • 23 C.F.R. §771.116(c)(7): "Financial assistance to an applicant where the financial assistance funds an activity already completed, such as refinancing outstanding debt."
Final rule by the FRA, DOT[c]	DOT finalized the rule to, among other things, add the two new CEs, as described in the SNPRM, thereby incorporating the congressionally directed CEs into 23 C.F.R. Part 771—Environmental Impact and Related Procedures (i.e., DOT's NEPA implementing procedures).

Source: CRS.

Notes: Section 11503(a) of the FAST Act directed the Secretary of Transportation to propose new CEs under NEPA for FRA. FRA, acting under delegations from the Secretary of Transportation, implemented this directive through a multistep rulemaking process. The process included an initial notice-and-comment period, an SNPRM to refine the proposal on the basis of comments received, and a final rule establishing two new CEs in 23 C.F.R. §771.117(c).

a. FRA, "Categorical Exclusion Survey Review," 81 *Federal Register* 35437, June 2, 2016, https://www.federalregister.gov/documents/2016/06/02/2016-12884/categorical-exclusion-survey-review.

b. Federal Highway Administration, FRA, and Federal Transit Administration, "Environmental Impacts and Related Procedures," 82 *Federal Register* 45530, September 9, 2017,

[19] NEPA's statutory text does not explicitly reference the process by which agencies create a CE. It remains uncertain how agencies will proceed when statute does not mandate a specific process. Future CEQ guidance or agency-specific developments could result in changes to this process.

https://www.federalregister.gov/documents/2017/09/29/2017-20565/environmental-impacts-and-related-procedures.

c. Federal Highway Administration, FRA, and Federal Transit Administration, "Environmental Impacts and Related Procedures," 83 *Federal Register* 54480, October 29, 2018, https://www.federalregister.gov/documents/2018/10/29/2018-23286/environmental-impacts-and-related-procedures.

The notice includes a description of the types of actions covered by the CE, the environmental analyses conducted, public comments received, and any modifications made in response to those comments. The notice also outlines the conditions and limitations of the CE, specifying any extraordinary circumstances under which a CE cannot be applied or requires additional environmental analyses. Agencies often include criteria or thresholds for when a CE can or cannot be applied, providing a structured approach to determining whether an action qualifies. Once finalized, the CE is incorporated into the agency's NEPA procedures. See **Table A-1** for an inventory of congressionally directed CEs.

Statutory CEs

A statutory CE is created when Congress enacts a CE directly into law, specifying the CE's language within legislation. Unlike congressionally directed CEs, statutory CEs do not require agencies to conduct separate environmental significance evaluations before applying the exclusion. The statute itself defines the actions covered, the conditions (if any) for their applicability, and any procedural or substantive limitations. Once enacted, a statutory CE carries the full force of law, binding agencies to its terms.

As an example of this process, **Table 2** describes the development of a statutory CE within the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) and corresponding action by the Department of the Interior to incorporate the CE into the Bureau of Land Management's NEPA procedures.

Table 2. Selected Example of a Statutory Categorical Exclusion (CE) Within P.L. 113-291 and Corresponding Agency Action to Incorporate the CE into Agency National Environmental Policy Act (NEPA) Procedures

Action Taken by Congress or Agency	Description of Action
Congressional direction in the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291)	Enacted on December 19, 2014, Section 3023 of P.L. 113-291 amended Section 402 of the Federal Land Policy and Management Act to categorically exclude specific grazing permit renewals and the trailing and crossing of livestock across public land.
Notice of revisions by the Department of the Interior (DOI)[a]	DOI issued a notice revising the Bureau of Land Management's (BLM's) NEPA implementing procedures (516 Departmental Manual 11) to, among other things, incorporate the two statutory CEs enacted in P.L. 113-291.
DOI published updated BLM NEPA procedures	On December 12, 2020, BLM updated 516 DM 11 to, among other things, incorporate the two statutory CEs into their NEPA procedures.[b]

Source: CRS.

Notes: Section 3023 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 enacted two statutory CEs for specific grazing permit renewals and the trailing and crossing of livestock across public land. The statutory CEs were available for BLM to apply to eligible projects at the time of enactment. DOI amended BLM's agency NEPA procedures five years later to create a new section, entitled, "11.10 CEs Established or Directed by Statute."

a. BLM, "National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11)," 85 *Federal Register* 25472, May 1, 2020, https://www.federalregister.gov/documents/2020/05/01/2020-09301/national-environmental-policy-act-implementing-procedures-for-the-bureau-of-land-management-516-dm.

b. DOI, "Managing the NEPA Process—Bureau of Land Management," in *Department of the Interior Departmental Manual*, December 10, 2020, pp. 20-21, https://www.doi.gov/document-library/departmental-manual/516-dm-11-managing-nepa-process-bureau-land-management.

Statutory CEs are developed through the legislative process. Congress drafts language establishing the CE, typically as part of bills that contain additional provisions designed to meet broader policy objectives.[20] During legislative development, opportunities for public engagement depend on the legislative process itself—such as committee hearings, stakeholder advocacy, and amendments—or through other constituent engagement forums, in contrast to the public comment procedures associated with agency administrative processes.

Once enacted, agencies may issue internal guidance or operating procedures to apply the CE or interpret ambiguous terms, but they generally lack authority to alter the CE's scope or to condition its application with extraordinary circumstances or other measures, absent statutory authorization. If judicial review occurs upon the application of the CE, it typically focuses on statutory interpretation rather than administrative compliance.[21] See **Table A-2** for an inventory of statutory CEs.

Key Elements in the Development and Application of Legislative CEs

Whether a CE is congressionally directed or statutorily created affects several elements that shape its development and application. These elements include the threshold of significant impacts, incorporation of extraordinary circumstances, types of opportunities for public input during CE development, and the flexibility and adaptability of a CE. The following sections examine each of these key elements in greater detail, focusing on how they are addressed in the development and application of congressionally directed and statutory CEs. Understanding these dimensions may assist Congress in evaluating the effectiveness of existing CEs and in shaping future legislative approaches to NEPA compliance.

Threshold of Significant Impacts

Under NEPA, the core legal requirement for establishing a CE is that the agency must determine that the category of actions "normally does not significantly affect the quality of the human environment."[22] This determination reflects what is often referred to as the *significance threshold*, or the level or intensity of potential environmental effects at which impacts are considered

[20] For example, several statutory CEs have been enacted in surface transportation reauthorization acts, such as the Fixing America's Surface Transportation Act (P.L. 114-94) and the Infrastructure Investments and Jobs Act (P.L. 117-58), or as part of appropriations acts, such as the Consolidated Appropriations Act, 2005 (P.L. 108-447); Omnibus Appropriations Act, 2009 (P.L. 111-8); and Consolidated Appropriations Act, 2018 (P.L. 115-141).

[21] See, for example, U.S. Forest Service, "Chapter 30 – Categorical Exclusion from Documentation," in *Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook*, March 3, 2023, pp. 29-30, https://www.fs.usda.gov/about-agency/regulations-policies/handbook/190915-30-categorical-exclusion-documentation. The Forest Service lists both CEs as they were enacted in P.L. 113-291 and provides additional guidance, including that the CE is subject to extraordinary-circumstances review and that documentation within a decision memo is required for the application.

[22] 42 U.S.C. §4336e(1).

significant under NEPA. If the impacts of an action are expected to remain below this threshold under normal circumstances, the action may be categorically excluded from further NEPA analysis.

For congressionally directed CEs whereby Congress leaves the discretion to the agencies to establish the CE, the agency must meet NEPA's significance threshold, demonstrating this through record evidence or a reasoned basis.[23] In contrast, statutory CEs generally bypass the agency's evaluation of significance. While some statutory CEs are predicated on an assumption that certain actions do not have significant impacts, others may not be predicated on this assumption in order to account for additional policy considerations, such as speeding up environmental review, responding to national emergencies, or promoting economic development.[24] Congress's decision to categorically exclude certain actions is treated as dispositive and may supersede NEPA's general definition limiting a CE to a type of action that an agency has determined does not result in a significant impact. In other words, a statutory CE could include actions that exceed the threshold of significant impacts.[25]

Extraordinary Circumstances

Extraordinary circumstances are situations or site-specific conditions that are more likely than typical circumstances to result in significant impacts to the human environment and therefore may require an otherwise categorically excludable action to be further analyzed in an EA or an EIS.[26] The presence of extraordinary circumstances indicates that, despite the typical lack of significant environmental impact associated with the action, the specific context or nature of the proposal may lead to potentially significant impacts.[27]

Unless consideration of extraordinary circumstances is exempted by Congress, if extraordinary circumstances are present for a particular action and if the effects of those actions cannot be avoided or mitigated, the agency may need to prepare an EA or an EIS. Conversely, if the agency conducts an analysis and determines that it can modify the proposed action to mitigate the

[23] CEQ, "Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act," 75 *Federal Register* 75628, December 6, 2010, p. 75633 (hereinafter CEQ, "Final Guidance on Establishing, Applying, and Revising CEs Under NEPA"). This analysis often involves a review of existing NEPA documentation, studies, and assessments conducted for similar actions in the past, relying on historical data and previous EAs or EISs to demonstrate that these types of actions do not have individually or cumulatively significant environmental effects.

[24] See, for example, the Building Chips in America Act of 2023 (P.L. 118-105), in which Congress established new CEs for the National Institute of Standards and Technology to expedite financial assistance for semiconductor manufacturing. In a press release, Sen. Mark Kelly, a sponsor of the bill, stated that NEPA reviews "threaten to delay semiconductor manufacturing projects already under construction and discourage future investments in domestic semiconductor manufacturing, without meaningfully improving environmental protections"; Sen. Mark Kelly, "Building Chips in America Act," press release, July 2023, https://www.kelly.senate.gov/wp-content/uploads/2023/07/Building-Chips-in-America-Act-Summary.pdf.

[25] Mark K. Capone and John C. Ruple, "NEPA and the Energy Policy Act of 2005 Statutory CEs: What Are the Environmental Costs of Expedited Oil and Gas Development?," *Vermont Journal of Environmental Law*, vol. 18, no. 3 (Spring 2017), pp. 371-399. Capone and Ruple found that the use of the Energy Policy Act of 2005 (P.L. 109-58) CE resulted in projects with greater surface area disturbance per well than projects that had prepared an EA or EIS.

[26] CEQ, "Final Guidance on Establishing, Applying, and Revising CEs Under NEPA."

[27] Extraordinary circumstances are often related to protections enshrined by other environmental statutes (e.g., species or habitats protected under the Endangered Species Act, historic properties protected by the National Historic Preservation Act). However, concurrence that a CE is applicable to a certain action is specific to NEPA's environmental review requirements and does not waive or diminish an agency's obligation to comply with any other applicable environmental statutes.

potential significant effects, it may still apply the CE.[28] When Congress directs an agency to develop a CE through its own administrative processes, the agency generally has discretion in establishing the criteria for applying the CE, including whether there are any extraordinary circumstances that would require preparation of an EIS or an EA.[29] When CEs are created via statute, they may or may not result in the same consideration of extraordinary circumstances.[30] Congress has the discretion to specify whether extraordinary circumstances should apply to a given CE and, if so, to define what those circumstances are. In the absence of direction regarding when or whether to consider extraordinary circumstances, agencies may be required to apply the CE as written. That is, the CE may be applied in situations where significant environmental impacts are reasonably foreseeable. Use of the CE may expedite project delivery, albeit by avoiding additional environmental review.

Stakeholder Engagement Opportunities During CE Development

Opportunities for stakeholder engagement can shape the development of a CE, including what categories of actions are covered, relevant environmental considerations, and how the CE is defined. The nature of stakeholder engagement often depends on how the CE is established.

Agencies directed to develop a CE by Congress have generally used a notice-and-comment approach. CEs developed through this process typically involve public awareness of the agency's intent to create a new CE and opportunities for public input on the substance and scope of the CE. CEQ previously required agencies to give public notice and obtain public comment through publication in the *Federal Register* of the proposed CE language, conditions or limitations on its application, a description of the extraordinary circumstances or other conditions and limitations on its application, and a rationale for why the agency believes that the CE does not result in significant impacts.[31]

In contrast, the development of statutory CEs occurs through the legislative process, which provides different forms and timing of stakeholder engagement. When Congress creates a CE directly through statute, elected officials play a central role in shaping the scope and purpose of the CE, often in response to constituent concerns or broader policy priorities. Opportunities for public input come through constituent engagement and the nature of the legislative process, rather than through agency administrative processes. Members of the public may provide input by contacting their elected representatives directly through correspondence, phone calls, in-person meetings, or participation in town halls and other forums. Members of Congress may consider constituent feedback as they evaluate legislative proposals. In addition, stakeholders may engage through formal mechanisms such as congressional hearings where invited witnesses may offer testimony or provide written statements relevant to proposed legislation, including provisions related to CEs. Once enacted, statutory CEs are generally implemented without a subsequent

[28] Historically, CEQ's NEPA regulations required agencies to evaluate each application of a CE for extraordinary circumstances that may make application of the CE inappropriate. NEPA's statutory text does not explicitly reference the process by which agencies apply CEs or evaluate extraordinary circumstances. It remains uncertain how agencies will proceed when statute does not mandate a specific process. Future CEQ guidance or agency-specific developments could result in changes to this process.

[29] Consideration of extraordinary circumstances may not apply when Congress statutorily creates a CE, unless expressly noted. See, for example, Wild Watershed v. Hurlocker, 961 F.3d 1119 (10th Cir. 2020).

[30] See CEQ, "Final Guidance on Establishing, Applying, and Revising CEs Under NEPA," which states, "CEQ encourages agencies to apply their extraordinary circumstances to categorical exclusions established by statute when the statute is silent as to the use and application of extraordinary circumstances" (p. 75631).

[31] CEQ, "Final Guidance on Establishing, Applying, and Revising CEs Under NEPA," p. 75635.

agency-led public development process; instead, interested parties may advocate for or against specific provisions, including CEs, during the legislative process.

Flexibility and Adaptability in Implementation of the CE

The flexibility of a CE and an agency's ability to adapt the CE over time depend, in part, on whether the CE was established by the agency or through statute. This distinction affects the degree of agency discretion in applying the CE and whether the agency can revise the CE over time. These factors may influence how effectively a CE functions as programs evolve or as environmental conditions change but may also introduce uncertainty or variability in how the CE is applied over time.

Congressionally directed CEs may provide greater flexibility, as agencies can define criteria and conditions to the applicability of a CE. Through the development process, agencies may tailor the CE's applicability by setting geographic and resource-specific conditions so that the action does not result in significant environmental impacts.[32] Agencies may also adapt CEs if monitoring data, scientific advancements, policy shifts, or observed impacts suggest that the CE should be updated.

In contrast, statutory CEs may provide greater certainty and consistency if their terms are more prescribed by statute. Once enacted, agencies must apply the statutory CE according to its language and generally cannot narrow, expand, or adjust its scope in response to evolving environmental conditions or operational changes unless expressly authorized by Congress. Modification typically requires new legislation, as agencies cannot substantively alter statutory CEs through interpretive guidance or administrative procedures. As a result, agencies may be required to apply statutory CEs even when project-specific environmental conditions or agency priorities would otherwise warrant additional review. This durability may streamline project delivery and promote the policy objectives intended by Congress. At the same time, it may also constrain an agency's ability to respond to changing conditions or mitigate unintended consequences.

Issues for Congress

As Congress continues to take interest in streamlining the federal permitting process, CEs offer one tool to expedite environmental reviews under NEPA. By allowing agencies to forgo preparation of an EA or an EIS, CEs can reduce documentation requirements and may shorten review timelines. This can be particularly relevant for routine or recurring actions or those with a narrow scope. In the broader context of permitting reform, CEs may help accelerate project delivery and improve agency efficiency while focusing resources on actions with greater potential for significant environmental impacts. Regardless of how they are developed, CEs affect only NEPA compliance; they do not alter an agency's responsibilities under further statutory mandates, such as the Endangered Species Act, National Historic Preservation Act, or other permitting obligations under the Clean Water Act or other federal laws.

When considering whether to categorically exclude certain types of actions, Congress faces a choice between directing an agency to develop a CE through the agency's administrative processes or enacting a CE directly in statute. Each approach presents distinct implications and

[32] 42 U.S.C. §4336e(1) defines a CE as "a category of actions that ... normally does not significantly affect the quality of the human environment." Agencies may also issue interpretive guidance, standard operating procedures, or internal policies to clarify how the CE should be applied in new contexts, provided such guidance is consistent with the original rule.

trade-offs. Understanding these implications and trade-offs may assist Congress in structuring CEs that advance policy goals while balancing environmental considerations, administrative efficiency, mechanisms for stakeholder engagement, and clarity of congressional intent. The sections below describe considerations that may inform Congress's decision on which approach to take and in understanding the resulting implications.

Considerations When Directing Agencies to Develop CEs

Congress may choose to direct an agency to develop a CE, rather than to establish the CE directly through statute, for several reasons. This approach allows Congress to initiate a desired change in an agency's environmental review process while deferring to the agency's expertise to determine the appropriate parameters and implementation. Delegating CE development in this way may result in an administratively tailored exclusion that is aligned with the agency's existing NEPA procedures and that includes an administrative record supporting the determination that the actions do not typically result in significant environmental impacts. However, compared to statutory CEs, this approach offers less certainty regarding timing and implementation. In terms of timing, agencies can take roughly two years, on average, to finalize CEs that are congressionally directed.[33] In terms of implementation, agencies may interpret congressional direction to establish a CE more broadly, establish it more narrowly, or implement it more slowly than anticipated. The final CE may also differ in scope or conditions from what Congress intended.[34] The following considerations may assist Congress in evaluating when and how to pursue this approach.

Unlike statutory CEs, congressionally directed CEs are subject to NEPA's significance threshold, and agencies must demonstrate through an administrative record that supports a determination that the covered actions do not normally result in significant environmental impacts. CEs developed by agencies also typically include provisions allowing the agency to withhold application of the CE in cases involving extraordinary circumstances. Unless otherwise specified in legislation, the agency will determine whether and how extraordinary circumstances apply to the congressionally directed CE. This deliberative process may result in a defined scope and limited applicability of the CE. If Congress intends for these circumstances to be accounted for, it may wish to consider explicitly requiring an agency to include extraordinary circumstances when applying any given CE, which may require agencies to evaluate potentially significant effects through a more detailed NEPA review.

Unlike statutory CEs, which are developed through the legislative process, agency-developed CEs typically include notice-and-comment opportunities for the public. This process may offer an avenue for interested parties—including affected communities, industry representatives, and advocacy groups—to directly contribute technical information or express concerns to the agency. This engagement may incorporate regional considerations or disclose potential unintended

[33] Based on CRS analysis of the inventory of congressionally directed CEs presented in **Table A-1**. This calculation is based on CEs in **Table A-1** for which the agency has completed the CE development process. In some cases, agencies have not developed a CE in response to congressional direction (see, e.g., CE directed by P.L. 117-58 in **Table A-1**).

[34] See, for example, U.S. Government Accountability Office, *Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development Under Section 390 of the Act*, GAO-09-872, September 2009, pp. 29-50, https://www.gao.gov/assets/gao-09-872.pdf. In this report, GAO noted, among other things, that there is disagreement as to whether the Bureau of Land Management (BLM) must screen Section 390 CEs for extraordinary circumstances, whether the use of CEs is mandatory, whether the public can challenge the use of CEs, and that vague or nonexistent definitions of key terms in the law and BLM guidance that describe the conditions to be met when using a Section 390 CE—such as "individual surface disturbances" or "maintenance of a minor activity"—have led to varied interpretations among field offices and concerns about misuse and a lack of transparency.

consequences of the specified category of actions. Congress may consider whether such input is necessary and whether it is likely to improve the CE's function or acceptance.

Unlike statutory CEs, which take effect upon enactment, congressionally directed CEs typically require the agency to initiate a public process to develop the CE. This may include internal review, interagency consultation, and public comment. The time required for these steps may vary considerably. Directing agencies to develop CEs requires agencies to commit resources to a formal administrative process, which may affect the pace of implementation and the administrative burden. This may be particularly challenging for agencies with limited environmental NEPA personnel. Congress could exercise oversight to assess the factors that influence agency timelines in developing congressionally directed CEs, which may help inform the appropriate level of guidance, resources, or statutory clarification.

Unlike statutory CEs, which generally require legislative action to revise or adapt, congressionally directed CEs may be more readily updated to accommodate changing circumstances. Agencies retain the authority to revise or refine congressionally directed CEs as environmental conditions, scientific understanding, or operational practices evolve. This flexibility may allow agencies to respond to emerging information and policy shifts. Congress may wish to consider how flexible its directions should be. Providing more flexibility has the advantage of leveraging the agency's expertise and allowing the CE to be adapted to specific circumstances. Being more prescriptive gives greater confidence that the CE will be implemented in accordance with congressional intent and will be durable.

After directing an agency to establish a CE, Congress may wish to monitor progress and evaluate whether the agency's implementation aligns with congressional expectations. Oversight mechanisms could include requiring implementation updates, specifying a deadline for finalization, or requesting periodic reports on the CE's use and effectiveness. These mechanisms may help ensure timely development and provide Congress with information to evaluate whether additional legislative action is warranted.

Considerations When Establishing Statutory CEs

Congress may opt to establish a CE directly. Statutory CEs carry the full force of law and are binding on agencies, providing greater certainty and potentially expediting project implementation. Compared to congressionally directed CEs, a statutory CE may offer Congress greater control over the scope and applicability of the exclusion and limit the agency's discretion to alter the CE. It may also avoid the delays and uncertainties associated with agency administrative processes to establish a CE. Statutory CEs may reduce ambiguity by providing agencies with direction to exclude specified actions from the requirements to prepare an EA or an EIS. Thus, they may be particularly appealing when Congress identifies urgent policy priorities, such as responding to natural disasters or facilitating infrastructure development. However, this approach may also result in CEs being applied to projects where significant environmental effects are reasonably foreseeable, limit opportunities for agency technical input, and constrain future refinements. Congress may weigh these trade-offs when considering whether to statutorily enact a CE. The following considerations may assist Congress in evaluating when and how to pursue this approach.

A statutory CE becomes effective upon enactment, which can expedite environmental review for eligible projects. By eliminating the need for agency CE development, statutory CEs may accelerate project implementation timelines. However, this approach may forgo opportunities to test the CE's practical application or refine its terms on the basis of administrative experience. Congress may consider whether the benefits of immediate applicability outweigh the

uncertainties of establishing a CE without agency-developed justification or a supporting administrative record.

Unlike congressionally directed CEs, which typically include an administrative record and extraordinary-circumstances provisions, statutory CEs do not need to be accompanied by an administrative record demonstrating that the covered actions are not likely to result in significant environmental effects. As a result, some statutory CEs could be applied to actions resulting in significant environmental impacts. If Congress wishes the CE not to be applied when significant environmental impacts are reasonably foreseeable, it would need to include statutory language requiring agencies to consider whether extraordinary circumstances are present, such as impacts to endangered species, historic resources, or sensitive habitats, among other environmental concerns. If Congress wishes to ensure that a CE is applied in all circumstances, whether or not significant environmental impacts are reasonably foreseeable, it would not need to require application of extraordinary-circumstances provisions in the statute itself.

Unlike agency administrative processes, which typically include notice and public comment, the legislative process does not include a standardized mechanism for technical or public comment. Opportunities for engagement within the legislative process may include consulting with affected agencies, stakeholders, and technical experts or including provisions that promote subsequent review or oversight. Public input may provide information such as the feasibility of the CE's implementation or awareness of potentially unintended consequences, among other things. Congress may consider the type and extent of engagement that would be most appropriate for developing a particular CE.

Unlike congressionally directed CEs, which are developed and maintained through agency administrative processes, statutory CEs generally cannot be modified, narrowed, or adapted by an agency without further legislative action. While this may limit the ability of agencies to respond to new information, changes in environmental conditions, or evolving policy priorities, it may also provide greater stability and predictability in how the CE is implemented over time. If Congress wishes to allow CEs to be modified over time while preserving congressional intent, it may wish to consider including mechanisms within the statutory text, such as built-in sunset provisions and periodic review requirements.

Appendix. Inventory of Legislative Categorical Exclusions (CEs)

The following tables provide an inventory of CEs legislatively established by Congress. CRS searched the *Statutes at Large* and *Public Laws* on Congress.gov using a range of search terms related to CEs.[35] The *Statutes at Large* are behind in publication on Congress.gov and are available only through the 115th Congress. Thus, CRS searched the *Statutes at Large* for the 115th Congress and earlier, and searched *Public Laws* for the 116th Congress to the present.

CRS made every effort to locate all such provisions; however, the inventory in this appendix may not be an exhaustive list of every potentially relevant CE. Together, the tables highlight the diversity of legislative approaches to CEs and illustrate how Congress has directed federal agencies to develop CEs (i.e., "congressionally directed CEs") and established CEs directly through statute (i.e., "statutory CEs") as mechanisms to streamline compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) for certain categories of federal actions.

Table A-1 presents specific instances where Congress directed federal agencies to develop CEs. For each congressionally directed CE identified, CRS includes the statutory language, relevant information related to the agency's administrative process, and the established CE located in the agency's NEPA procedures. For each provision that directed an agency to establish a CE, CRS searched the *Federal Register* to locate agency actions issued in response to the congressional direction or related to the context in which the CE was established. **Table A-2** lists specific instances of statutory CEs that Congress directly established in law. For each statutory CE, CRS includes the statutory language and the applicable agency or department. For both tables, entries are organized chronologically by the enactment date of the relevant public law, and sections of the statute containing text that is not directly relevant to CE direction have been omitted as noted.

[35] CRS searched Congress.gov using the following terms and phrases: "categorical exclusion," "categorically excluded," "categorically excluded from the requirement," "category of actions," "excluded," "preparation of an environmental assessment," "preparation of an environmental impact statement," "preparation of an environmental document," and "national environmental policy act." CRS searched variations of these terms and phrases and searched them in proximity to one another.

Table A-1. Inventory of Congressionally Directed Categorical Exclusions (CEs) and the Agency's Action

Entries are based on a search conducted on April 8, 2025

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
P.L. 104-59, §316 (repealed by P.L. 112-141, §1108(d)); 109 Stat. 568, 588	SEC. 316. STREAMLINING FOR TRANSPORTATION ENHANCEMENT PROJECTS. Section 133(e) of title 23, United States Code, is amended— [omitted sections irrelevant to CE direction] (C) by adding at the end the following: "(5) TRANSPORTATION ENHANCEMENT ACTIVITIES.— "(A) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement activities funded from the allocation required by subsection (d)(2)."	To implement Section 316 of P.L. 104-59, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) published a notice of proposed rulemaking (NPRM) on May 5, 2000 (65 *Federal Register* 33960), to update and revise their National Environmental Policy Act (NEPA) implementing regulations for projects funded or approved by FHWA and FTA and to seek public comment on the proposal. Among other things, the NPRM proposed to modify one CE and add three new CEs to incorporate transportation enhancement activities. On September 20, 2002, FHWA and FTA withdrew the proposed rulemaking (67 *Federal Register* 59225), stating that "the proposed changes generated such a diversity and disparity of comments that substantial further work is necessary to develop new proposals to accommodate these comments."	Rulemaking was withdrawn. No new CEs were established. In 2012, Section 1108(d) of P.L. 112-141 struck the CE language from 23 U.S.C. §133(e).
P.L. 109-59, §6010; 119 Stat. 1144, 1877	SEC. 6010. ENVIRONMENTAL REVIEW OF ACTIVITIES THAT SUPPORT DEPLOYMENT OF INTELLIGENT TRANSPORTATION SYSTEMS. (a) CATEGORICAL EXCLUSIONS.—Not later than one year after the date of enactment of	To implement Section 6010 of P.L. 109-59, FHWA published an NPRM on August 7, 2007 (72 *Federal Register* 44038), to, among other things, propose adding a new CE to its NEPA	23 C.F.R. §771.117(c)(21) "Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	this Act, the Secretary shall initiate a rulemaking process to establish, to the extent appropriate, categorical exclusions for activities that support the deployment of intelligent transportation infrastructure and systems from the requirement that an environmental assessment or an environmental impact statement be prepared under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in compliance with the standards for categorical exclusions established by that Act.	regulations at 23 C.F.R. §771.117 and to seek comments on the proposal. On March 24, 2009, FHWA published a final rule (74 *Federal Register* 12518) to, among other things, revise certain aspects of the CE based on public comment and to incorporate the new CE into its NEPA regulations at 23 C.F.R. §771.117(c)(21).	limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses."
P.L. 112-141, §1315; 126 Stat. 405, 549	SEC. 1315. CATEGORICAL EXCLUSIONS IN EMERGENCIES. (a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, for the repair or reconstruction of any road, highway, or bridge that is in operation or under construction when damaged by an emergency declared by the Governor of the State and concurred in by the Secretary, or for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall publish a notice of proposed rulemaking to treat any such repair or reconstruction activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act) if such repair or reconstruction activity is— (1) in the same location with the same capacity, dimensions, and design as the original road,	To implement Section 1315 of P.L. 112-141, FHWA and FTA published an NPRM on October 1, 2012 (77 *Federal Register* 59875), to modify an existing CE for emergency repair projects to conform to the descriptions in P.L. 112-141 and to seek comments on the proposal. On February 19, 2013, FHWA and FTA published a final rule (78 *Federal Register* 11593) revising the CE language based on public comment and incorporating the new CE into its NEPA regulations at 23 C.F.R. §771.117(c)(9) and §771.118(c)(11).	23 C.F.R. 771.117(c)(9) "The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121): "(i) Emergency repairs under 23 U.S.C. 125; and "(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action: "(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and "(B) Is commenced within a 2-year period beginning on the date of the declaration." 23 C.F.R. 771.118(c)11) "The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	highway, or bridge as before the declaration described in this section; and (2) commenced within a 2-year period beginning on the date of a declaration described in this section. (b) RULEMAKING.— (1) IN GENERAL.—The Secretary shall ensure that the rulemaking helps to conserve Federal resources and protects public safety and health by providing for periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities. (2) REASONABLE ALTERNATIVES.—The reasonable alternatives described in paragraph (1) include actions that could reduce the need for Federal funds to be expended on such repair and reconstruction activities, better protect public safety and health and the environment, and meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans.		concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121): "(i) Emergency repairs under 49 U.S.C. 5324; and "(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action: "(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and "(B) Is commenced within a 2-year period beginning on the date of the declaration."
P.L. 112-141, §1316-§1317; 126 Stat. 405, 549	SEC. 1316. CATEGORICAL EXCLUSIONS FOR PROJECTS WITHIN THE RIGHT-OF-WAY. (a) IN GENERAL.—The Secretary shall— (1) not later than 180 days after the date of enactment of this Act, designate any project (as defined in section 101(a) of title 23, United States Code) within an existing operational right-of-way as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section	To implement Section 1316 and 1317 of P.L. 112-141, FHWA and FTA published an NPRM on February 28, 2013 (78 *Federal Register* 13609), to propose adding new CEs to its NEPA regulations at 23 C.F.R. §771.117 and §771.118 and to seek comments on the proposal. On January 13, 2014, FHWA and FTA published a final rule (79 *Federal Register* 2107) to revise the CE language based on public comment and to incorporate the new CE into	23 C.F.R. §771.117(c)(22) "Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	771.117(c) of title 23, Code of Federal Regulations; and (2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1). SEC. 1317. CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE. Not later than 180 days after the date of enactment of this Act, the Secretary shall— (1) designate as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations, any project— (A) that receives less than $5,000,000 of Federal funds; or (B) with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost; and (2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).	its NEPA regulations at 23 C.F.R. Part 771.	facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way." 23 C.F.R. §771.117(c)(23) "Federally funded projects: "(i) That receive less than $5,000,000 of Federal funds; or "(ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost."[a] 23 C.F.R. §771.118(c)(12) "Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way." 23 C.F.R. §771.118(c)(13) "Federally funded projects: "(i) That receive less than $5,000,000 of Federal funds; or "(ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost."[a]

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
P.L. 112-141, §1318; 26 Stat. 405, 550	SEC. 1318. PROGRAMMATIC AGREEMENTS AND ADDITIONAL CATEGORICAL EXCLUSIONS. (a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall— (1) survey the use by the Department of categorical exclusions in transportation projects since 2005; (2) publish a review of the survey that includes a description of— (A) the types of actions categorically excluded; and (B) any requests previously received by the Secretary for new categorical exclusions; and (3) solicit requests from State departments of transportation, transit authorities, metropolitan planning organizations, or other government agencies for new categorical exclusions. (b) NEW CATEGORICAL EXCLUSIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to propose new categorical exclusions received by the Secretary under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(a) of title 23, Code of Federal Regulations (as those regulations are in effect on the date of the notice). (c) ADDITIONAL ACTIONS.—The Secretary shall issue a proposed rulemaking to move the following types of actions from subsection (d) of section 771.117 of title 23, Code of Federal	To implement Section 1318(a) of P.L. 112-141, FHWA and FTA published a notice of availability on December 13, 2012 (77 *Federal Register* 74266) of the results of the congressionally directed survey to identify CEs used in transportation projects since 2005 and the solicitation of requests for new CEs from state departments of transportation, transit authorities, metropolitan planning organizations, and other government agencies. To implement Section 1318(b) of P.L. 112-141, FHWA and FTA published an NPRM on September 19, 2013 (78 *Federal Register* 57587), to, among other things, propose adding four new CEs to FHWA's list at 23 C.F.R. §771.117(c) and three new CEs to FTA's list at 23 C.F.R. §771.118(c). To implement Section 1813(c) of P.L. 112-141, FHWA and FTA's NPRM also proposed moving three CEs from 23 C.F.R. §771.117(d) to §771.117(c).[b] The proposed rule sought public comments on the proposed changes. On October 6, 2014, FHWA and FTA published a final rule (79 *Federal Register* 60100) to, among other things, revise certain aspects of the CEs based on public comment, incorporate the new CEs into its NEPA regulations at 23 C.F.R. §771.117(c) and §771.118(c), and make conforming amendments to 23 C.F.R. §771.117(d).	New CEs added to 23 C.F.R. §771.117(c) include the following: "(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys. "(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation. "(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE. "(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals." New CEs added to 23 C.F.R. §771.118(c) include the following: "(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	Regulations (as in effect on the date of enactment of this Act), to subsection (c) of that section, to the extent that such movement complies with the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act): (1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing). (2) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting. (3) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings.		"(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts and drainage pipes. "(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys."
P.L. 113-121, §1005; 128 Stat. 1193, 1211	SEC. 1005. PROJECT ACCELERATION. (a) PROJECT ACCELERATION.— (1) AMENDMENT.—Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) is amended to read as follows: [omitted sections irrelevant to CE direction] "(l) CATEGORICAL EXCLUSIONS.— "(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Water Resources Reform and Development Act of 2014, the Secretary shall— "(A) survey the use by the Corps of Engineers of categorical exclusions in projects since 2005; "(B) publish a review of the survey that includes a description of—	According to the July 2024 U.S. Government Accountability Office (GAO) report entitled, *Army Corps of Engineers: Additional Steps Needed to Implement Acceleration Reforms*, the Corps has not fully addressed these provisions, which relate to the agency's civil works project studies (e.g., its water resources studies).[c] Specifically, the GAO report states, "[a]ccording to Corps officials, the Corps intends to submit new categorical exclusions to the Council [on] Environmental Quality (CEQ) when it submits its revised NEPA procedures in July or August 2024 for	The Corps had not established new CEs following the congressional direction in P.L. 113-121.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	"(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and "(ii) any requests previously received by the Secretary for new categorical exclusions; and "(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions. "(2) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of the Water Resources Reform and Development Act of 2014, if the Secretary has identified a category of activities that merit establishing a categorical exclusion that did not exist on the day before the date of enactment of the Water Resources Reform and Development Act of 2014 based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation)."	CEQ approval as a part of its required revisions of its NEPA procedures."[d]	
P.L. 114-94, §11503; 129 Stat. 1312, 1691	SEC. 11503. EFFICIENT ENVIRONMENTAL REVIEWS. (a) AMENDMENT.—Title 49, United States Code, is amended by inserting after chapter 241 the following new chapter: "CHAPTER 242—PROJECT DELIVERY [omitted sections irrelevant to CE direction] "(b) ADDITIONAL CATEGORICAL EXCLUSIONS.—Not later than 6 months after the date of enactment of the Passenger Rail	To implement Section 11503(a) of P.L. 114-94, the Federal Railroad Administration (FRA) published a notice on June 2, 2016 (81 *Federal Register* 35437), of the results of the survey to identify CEs used in transportation projects since 2005 and a solicitation for public comment of new CEs for the FRA to consider. On September 29, 2017, FHWA, FTA, and FRA published a supplemental NPRM (82 *Federal Register* 45530) to,	FRA added 22 new CEs for the FRA. Types of action covered by new CEs included • administrative actions (e.g., administrative procurement; personnel actions; planning or design activities; establishing internal policies and procedures; certain rulemakings, hearings, meetings, or public affairs); • "planning or design activities that do not commit to a particular course of action"; • financial assistance for already completed actions (e.g., refinancing outstanding debt);

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	Reform and Investment Act of 2015, the Secretary shall— "(1) survey the use by the Federal Railroad Administration of categorical exclusions in transportation projects since 2005; and "(2) publish in the Federal Register for notice and public comment a review of the survey that includes a description of— "(A) the types of actions categorically excluded; and "(B) any actions the Secretary is considering for new categorical exclusions, including those that would conform to those of other modal administrations. "(c) NEW CATEGORICAL EXCLUSIONS.—Not later than 1 year after the date of enactment of the Passenger Rail Reform and Investment Act of 2015, the Secretary shall publish a notice of proposed rulemaking to propose new and existing categorical exclusions for railroad projects that require the approval of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including those identified under subsection (b), and develop a process for considering new categorical exclusions to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations."	among other things, establish NEPA implementing procedures, which included 22 new CEs for FRA at 23 C.F.R. §771.116. On October 29, 2019, FHWA, FTA, and FRA published a final rule (83 *Federal Register* 54480) to, among other things, add the FRA to existing FHWA and FTA NEPA implementing regulations, establish CEs for the FRA, revise certain aspects of the CEs based on public comment, and incorporate the new CEs into its NEPA regulations at 23 C.F.R. §771.116(c).	• maintenance, repair, or operating assistance for certain existing railroad facilities; • emergency repair or replacement of certain existing rail facilities damaged by natural disaster or catastrophic failure; • certain activities within existing rail rights-of-way (e.g., research and development, minor rail line additions, accessibility modifications, upgrades for safety); • "acquisition or transfer of real property or existing railroad facilities"; • environmental restoration, remediation, and other mitigation activities; and • other activities that "do not result in a major change in traffic density" or result in "less than ten acres of surface disturbance" (e.g., storage and maintenance facilities, freight or passenger loading, parking facilities). For the full list, see 23 C.F.R. §771.116(c).
P.L. 115-254, §1220; 132 Stat. 3186, 3453	SEC. 1220. UNIFIED FEDERAL ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEW. (a) REVIEW AND ANALYSIS.—Not later than 180 days after the date of enactment of this Act, the Administrator shall review the Unified Federal Environmental and Historic	On July 2, 2024, the Department of Homeland Security (DHS) published a notice (89 *Federal Register* 54850) adopting 18 CEs established by the Department of Energy.[e]	DHS and the Federal Emergency Management Agency (FEMA) NEPA procedures are contained in Instruction Manual 023-01-001-01, Revision 01, Implementation of NEPA. DHS's NEPA procedures were last updated in 2014, prior to enactment of P.L. 115-254. Publication of the *Federal Register* notice makes the CEs available for DHS and FEMA.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	Preservation review process established pursuant to section 429 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5189g), and submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate that includes the following: (1) An analysis of whether and how the unified process has expedited the interagency review process to ensure compliance with the environmental and historic requirements under Federal law relating to disaster recovery projects. (2) A survey and analysis of categorical exclusions used by other Federal agencies that may be applicable to any activity related to a major disaster or emergency declared by the President under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170, 5191). (3) Recommendations on any further actions, including any legislative proposals, needed to expedite and streamline the review process. (b) REGULATIONS.—After completing the review, survey, and analyses under subsection (a), but not later than 2 years after the date of enactment of this Act, and after providing notice and opportunity for public comment, the Administrator shall issue regulations to implement any regulatory recommendations, including any categorical exclusions identified under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of		As a result of P.L. 115-254, DHS and FEMA added 18 new CEs. Types of actions covered by new CEs, included • facility maintenance and structural modifications (e.g., removal of asbestos-containing materials); • modifications to traffic patterns within existing rights-of-way; • site characterization, environmental monitoring, and testing activities (e.g., well drilling, air and water sampling, geophysical and ecological surveys, and outdoor testing of material and equipment); • aviation-based monitoring and surveillance (e.g., unmanned aircraft systems); • research, development, and pilot projects (e.g., small-scale research and development [R&D], renewable energy R&D, and installation of solar photovoltaic systems); • electrical transmission infrastructure projects (e.g., maintenance and upgrades to existing transmission facilities, decommissioning transmission rights-of-way, construction or modification of power substations and interconnection facilities, construction of certain new powerlines); and • construction, operation, and decommissioning of energy storage systems (e.g., battery or flywheel systems). For the full list, see 89 *Federal Register* 54850.[f]

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	title 40, Code of Federal Regulations, and section II of DHS Instruction Manual 023–01–001–01.		
P.L. 117-58, §11301; 135 Stat. 429, 529	SEC. 11301. CODIFICATION OF ONE FEDERAL DECISION. (a) IN GENERAL.—Section 139 of title 23, United States Code, is amended— [omitted sections irrelevant to CE direction] "(q) DEVELOPMENT OF CATEGORICAL EXCLUSIONS.— "(1) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, and every 4 years thereafter, the Secretary shall— "(A) in consultation with the agencies described in paragraph (2), identify the categorical exclusions described in section 771.117 of title 23, Code of Federal Regulations (or successor regulations), that would accelerate delivery of a project if those categorical exclusions were available to those agencies; "(B) collect existing documentation and substantiating information on the categorical exclusions described in subparagraph (A); and "(C) provide to each agency described in paragraph (2)— "(i) a list of the categorical exclusions identified under subparagraph (A); and "(ii) the documentation and substantiating information under subparagraph (B). "(2) AGENCIES DESCRIBED.—The agencies referred to in paragraph (1) are— "(A) the Department of the Interior; "(B) the Department of the Army;	To implement Section 11301(a) of P.L. 117-58, Department of Transportation (DOT) states that it "provided the CE substantiation information to the Federal Agencies for 4 CEs on January 14, 2022."[g] CRS did not identify any subsequent federal agency action by the Departments of the Interior, Army, Commerce, Agriculture, Energy, or Defense rulemaking to establish four CEs in response to the congressional direction in P.L. 117-58.	CRS was unable to identify the four CEs that DOT provided to the federal agencies or to find that any CEs were established in response to Section 11301(a) of P.L. 117-58.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	"(C) the Department of Commerce; "(D) the Department of Agriculture; "(E) the Department of Energy; "(F) the Department of Defense; and "(G) any other Federal agency that has participated in an environmental review process for a project, as determined by the Secretary. "(3) ADOPTION OF CATEGORICAL EXCLUSIONS.— "(A) IN GENERAL.—Not later than 1 year after the date on which the Secretary provides a list under paragraph (1)(C), an agency described in paragraph (2) shall publish a notice of proposed rulemaking to propose any categorical exclusions from the list applicable to the agency, subject to the condition that the categorical exclusion identified under paragraph (1)(A) meets the criteria for a categorical exclusion under section 1508.1 of title 40, Code of Federal Regulations (or successor regulations). "(B) PUBLIC COMMENT.—In a notice of proposed rulemaking under subparagraph (A), the applicable agency may solicit comments on whether any of the proposed new categorical exclusions meet the criteria for a categorical exclusion under section 1508.1 of title 40, Code of Federal Regulations (or successor regulations)."		
P.L. 118-63, §230; 138 Stat. 1025, 1064	SEC. 230. REVIEW AND UPDATES OF CATEGORICAL EXCLUSIONS. (a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Secretary shall identify each categorical exclusion under the jurisdiction of the Department of	CRS did not identify any agency rulemaking in response to the congressional direction in P.L. 118-63, §230.[h]	The Federal Aviation Administration (FAA) has not established new CEs in response to the congressional direction in P.L. 118-63.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	Transportation, including any operating administration within the Department. (b) NEW CATEGORICAL EXCLUSIONS FOR AIRPORT PROJECTS.—Not later than 2 years after the date of enactment of this Act, the Administrator shall— (1) review the categorical exclusions applied by other operating administrations identified in subsection (a); and (2) take such action as may be necessary to adopt, as relevant and appropriate, new categorical exclusions that meet the requirements of section 1508.4 of title 40, Code of Federal Regulations, from among categorical exclusions reviewed by the Secretary in paragraph (1) for use by the FAA.		
P.L. 118-63, §953; 138 Stat. 1025, 1376	SEC. 953. APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT CATEGORICAL EXCLUSIONS FOR VERTIPORT PROJECTS. In considering the environmental impacts of a proposed vertiport project on an airport for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Administrator shall— (1) apply any applicable categorical exclusions in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and subchapter A of chapter V of title 40, Code of Federal Regulations; and (2) after consultation with the Council on Environmental Quality, take steps to establish additional categorical exclusions, as appropriate, for vertiports on an airport, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and subchapter A of	CRS did not identify any agency rulemaking in response to the congressional direction in P.L. 118-63, §953.[h]	The FAA has not established new CEs in response to the congressional direction in P.L. 118-63.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	chapter V of title 40, Code of Federal Regulations.		
P.L. 118-159, §3511; 138 Stat. 1773, 2307	SEC. 3511. PORT INFRASTRUCTURE DEVELOPMENT PROGRAM. [omitted sections irrelevant to CE direction] (c) ESTABLISHING APPLICABLE CATEGORICAL EXCLUSIONS.— (1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Maritime Administrator shall issue a notice in the Federal Register including the categorical exclusions in use as of the date of enactment of this section by the Maritime Administration for actions or projects the Maritime Administration oversees. The Maritime Administrator may subsequently update such categorical exclusions. Nothing in this section shall be interpreted to limit any existing authority of the Maritime Administration to approve, promulgate, or publish categorical exclusions consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other applicable law. (2) SURVEY AND PROPOSED RULEMAKING.—Not later than 1 year after the date of enactment of this section, the Maritime Administrator shall— (A) survey the use of categorical exclusions by the Maritime Administration with respect to projects initiated during or after 2015; (B) publish on a public website the results of that survey, which shall include a description of the types of actions categorically excluded and any additional categorical exclusions that were legally available to the Maritime Administrator from other operating administrations and the	CRS did not identify any agency rulemaking in response to the congressional direction in P.L. 118-159, §3511.[i]	The Maritime Administration has not established new CEs in response to the congressional direction in P.L. 118-159.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	Department of the Army but were or were not adopted; and (C) publish a notice of proposed rulemaking to propose new Maritime Administration categorical exclusions for projects and a process by which the Maritime Administration will update the list of categorical exclusions to reflect lessons learned in grant administration and project construction.		
P.L. 118-234, §312; 138 Stat. 2836, 2898	SEC. 312. PERMITTING PROCESS IMPROVEMENTS. [omitted sections irrelevant to CE direction] (b) ENVIRONMENTAL REVIEWS.— (1) IN GENERAL.—The Secretary concerned shall, to the maximum extent practicable, utilize available tools, including tiering to existing programmatic reviews, as appropriate, to facilitate an effective and efficient environmental review process for activities undertaken by the Secretary concerned relating to the issuance of special recreation permits. (2) CATEGORICAL EXCLUSIONS.—Not later than 2 years after the date of the enactment of this title, the Secretary concerned shall— (A) evaluate whether existing categorical exclusions available to the Secretary concerned on the date of the enactment of this title are consistent with the provisions of this title; (B) evaluate whether a modification of an existing categorical exclusion or the establishment of 1 or more new categorical exclusions developed in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is necessary to undertake an activity described in paragraph (1) in a	CRS did not identify any agency rulemaking in response to the congressional direction in P.L. 118-234, §312.[h]	The Departments of Agriculture and the Interior had not established new CEs in response to the congressional direction in P.L. 118-234, §312.

Public Law/Statute	Statutory Language Directing an Agency to Establish a CE	Agency Action in Response to the Congressional Direction	CE(s) Established by the Agency's Action
	manner consistent with the authorities and requirements in this title; and (C) revise relevant agency regulations and policy statements and guidance documents, as necessary, to modify existing categorical exclusions or incorporate new categorical exclusions based on evaluations conducted under this paragraph.		

Source: CRS.

Notes: This table compiles congressionally directed CEs identified through a review of federal statutes in which Congress instructed an agency to establish a CE. For each provision, the table includes the congressional directive, relevant information on the agency's action in response to congressional direction, and the CE as codified in the *Code of Federal Regulations* or the agency's NEPA procedures. In some instances, portions of the statutory text that are not relevant to the CE direction have been omitted for clarity and conciseness. CRS attempted to locate all such provisions and corresponding agency actions in the *Federal Register*; however, the table may not be exhaustive. Some directives may be embedded in broader statutory language or agency-specific legislation that does not explicitly identify the action as related to NEPA. As a result, the table should be viewed as a representative, but potentially incomplete, inventory.

a. 23 C.F.R. §771.117(c)(23) and 23 C.F.R. §771.118(c)(13) were subsequently amended by P.L. 114-94, which adjusted the monetary limits annually for inflation based on the Consumer Price Index prepared by the Department of Labor, and by P.L. 117-58, which raised the monetary limits from $5,000,000 to $6,000,000 and total estimated costs from $30,000,000 to $35,000,000.

b. CEs classified under 23 C.F.R. §771.117(d) require approval from FHWA prior to application. Applicants must submit documentation that demonstrates that specific conditions or criteria are satisfied. CEs classified under 23 C.F.R. §771.117(c) normally do not require any further NEPA approvals by FHWA.

c. U.S. Government Accountability Office, *Army Corps of Engineers: Additional Steps Needed to Implement Acceleration Reforms*, GAO-24-107072, July 17, 2024, p. 11, https://www.gao.gov/assets/gao-24-107072.pdf.

d. CRS was unable to locate any record of the Corps subsequently updating its NEPA procedures to reflect additional or new CEs.

e. 42 U.S.C. §4336c allows a federal agency to adopt a CE listed in another agency's NEPA procedures for a category of proposed agency actions for which the CE was established. To adopt another agency's CE, an agency must identify the relevant CE listed in that agency's NEPA procedures that cover its category of proposed actions or related actions; consult with that agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the agency plans to use for its proposed actions; and document adoption of the CE.

f. DHS, "Notice of Adoption of Department of Energy Categorical Exclusions Pursuant to Section 109 of the National Environmental Policy Act," 89 *Federal Register* 54850, July 2, 2024.

g. FHWA, "Environmental Review Provisions in BIL/IIJA: Questions and Answers (Q&A)," September 8, 2022, https://www.environment.fhwa.dot.gov/legislation/authorizations/bil/bil_qa.aspx.

h. At the time of publication of this report, less than two years have elapsed since this law was enacted.

i. At the time of publication of this report, less than one year has elapsed since this law was enacted.

Table A-2. Representative Inventory of Statutory Categorical Exclusions (CEs)

Entries are based on a search conducted on April 8, 2025

Public Law/Statute	Department or Agency	Text of the Provision Establishing a CE
P.L. 108-148, §404; 117 Stat. 1887, 1910	Agriculture, Forest Service (FS)	SEC. 404. (d) CATEGORICAL EXCLUSION.— (1) IN GENERAL.—Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (2) ADMINISTRATION.—Applied silvicultural assessments and research treatments categorically excluded under paragraph (1)— (A) shall not be carried out in an area that is adjacent to another area that is categorically excluded under paragraph (1) that is being treated with similar methods; and (B) shall be subject to the extraordinary circumstances procedures established by the Secretary pursuant to section 1508.4 of title 40, Code of Federal Regulations. (3) MAXIMUM CATEGORICAL EXCLUSION.—The total number of acres categorically excluded under paragraph (1) shall not exceed 250,000 acres. (4) NO ADDITIONAL FINDINGS REQUIRED.—In accordance with paragraph (1), the Secretary shall not be required to make any findings as to whether an applied silvicultural assessment project, either individually or cumulatively, has a significant effect on the environment.
P.L. 108-447, §339; 118 Stat. 2809, 3103	Agriculture	SEC. 339. For fiscal years 2005 through 2007, a decision made by the Secretary of Agriculture to authorize grazing on an allotment shall be categorically excluded from documentation in an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321et seq.) if: (1) the decision continues current grazing management of the allotment; (2) monitoring indicates that current grazing management is meeting, or satisfactorily moving toward, objectives in the land and resource management plan, as determined by the Secretary; and (3) the decision is consistent with agency policy concerning extraordinary circumstances. The total number of allotments that may be categorically excluded under this section may not exceed 900.[a]
P.L. 109-58, §390; 119 Stat. 594, 747	Agriculture, FS, Interior, Bureau of Land Management (BLM)	SEC. 390. NEPA REVIEW. (a) NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas. (b) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:

Public Law/Statute	Department or Agency	Text of the Provision Establishing a CE
		(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed. (2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well. (3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well. (4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline. (5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.
P.L. 111-8, §423; 123 Stat. 524, 748	Agriculture, FS	SEC. 423. LAKE TAHOE BASIN HAZARDOUS FUEL REDUCTION PROJECTS. (a) Hereafter, subject to subsection (b), a proposal to authorize a hazardous fuel reduction project, not to exceed 5,000 acres, including no more than 1,500 acres of mechanical thinning, on the Lake Tahoe Basin Management Unit may be categorically excluded from documentation in an environmental impact statement or an environmental assessment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) if the project: (1) is consistent with the Lake Tahoe Basin Multi-Jurisdictional Fuel Reduction and Wildfire Prevention Strategy published in December 2007 and any subsequent revisions to the Strategy; (2) is not conducted in any wilderness areas; and (3) does not involve any new permanent roads. (b) A proposal that is categorically excluded under this section shall be subject to— (1) the extraordinary circumstances procedures established by the Forest Service pursuant to section 1508.4 of title 40, Code of Federal Regulations; and (2) an opportunity for public input.
P.L. 112-95, §213; 126 Stat. 11, 49	Transportation, Federal Aviation Administration (FAA)	(c) COORDINATED AND EXPEDITED REVIEW.— (1) IN GENERAL.—Navigation performance and area navigation procedures developed, certified, published, or implemented under this section shall be presumed to be covered by a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations) under chapter 3 of FAA Order 1050.1E unless the Administrator determines that extraordinary circumstances exist with respect to the procedure. (2) NEXTGEN PROCEDURES.—Any navigation performance or other performance based navigation procedure developed, certified, published, or implemented that, in the determination of the Administrator, would result in measurable reductions in fuel consumption, carbon dioxide emissions, and noise, on a per flight basis, as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace, shall be presumed to have no significant [e]ffect on the quality of the human environment and the Administrator shall issue and file a categorical exclusion for the new procedure.

Public Law/Statute	Department or Agency	Text of the Provision Establishing a CE
P.L. 113-24, §2; 127 Stat. 498, 498	Interior, Bureau of Reclamation	SEC. 2. AUTHORIZATION. Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) is amended— [omitted sections irrelevant to CE direction] (5) by adding at the end the following: [omitted sections irrelevant to CE direction] "(3) The Bureau of Reclamation shall apply its categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to small conduit hydropower development under this subsection, excluding siting of associated transmission facilities on Federal lands."
P.L. 113-79, §8204; 128 Stat. 649, 916	Agriculture, FS	SEC. 8204. INSECT AND DISEASE INFESTATION. Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591 et seq.) is amended by adding at the end the following: [omitted sections irrelevant to CE direction] "SEC. 603. ADMINISTRATIVE REVIEW. "(a) IN GENERAL.—Except as provided in subsection (d), a project described in subsection (b) that is conducted in accordance with section 602(d) may be— "(1) considered an action categorically excluded from the requirements of Public Law 91–190 (42 U.S.C. 4321 et seq.); and "(2) exempt from the special administrative review process under section 105. "(b) COLLABORATIVE RESTORATION PROJECT.— "(1) IN GENERAL.—A project referred to in subsection (a) is a project to carry out forest restoration treatments that— "(A) maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease; "(B) considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and "(C) is developed and implemented through a collaborative process that— "(i) includes multiple interested persons representing diverse interests; and "(ii)(I) is transparent and nonexclusive; or "(II) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125). "(2) INCLUSION.—A project under this subsection may carry out part of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)). "(c) LIMITATIONS.— "(1) PROJECT SIZE.—A project under this section may not exceed 3000 acres.

Public Law/Statute	Department or Agency	Text of the Provision Establishing a CE
		"(2) LOCATION.—A project under this section shall be limited to areas— "(A) in the wildland-urban interface; or "(B) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface. "(3) ROADS.— "(A) PERMANENT ROADS.— "(i) PROHIBITION ON ESTABLISHMENT.—A project under this section shall not include the establishment of permanent roads. "(ii) EXISTING ROADS.—The Secretary may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section. "(B) TEMPORARY ROADS.—The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed. "(d) EXCLUSIONS.—This section does not apply to— "(1) a component of the National Wilderness Preservation System; "(2) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited; "(3) a congressionally designated wilderness study area; or "(4) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan. "(e) FOREST MANAGEMENT PLANS.—All projects and activities carried out under this section shall be consistent with the land and resource management plan established under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for the unit of the National Forest System containing the projects and activities. "(f) PUBLIC NOTICE AND SCOPING.—The Secretary shall conduct public notice and scoping for any project or action proposed in accordance with this section."
P.L. 113-121, §1005; 128 Stat. 1193, 1212	Defense	SEC. 1005. PROJECT ACCELERATION. (a) PROJECT ACCELERATION.— [omitted sections irrelevant to CE direction] (b) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—For the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is—

Public Law/Statute	Department or Agency	Text of the Provision Establishing a CE
		(1) in the same location with the same capacity, dimensions, and design as the original water resources project as before the declaration described in this section; and (2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.
P.L. 113-291, §3023; 128 Stat. 3292, 3763	Agriculture, FS, Interior, BLM	SEC. 3023. GRAZING PERMITS AND LEASES. Section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752) is amended— [omitted sections irrelevant to CE direction] (3) by inserting after subsection (g) the following: "(h) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.— "(1) IN GENERAL.—The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if— "(A) the issued permit or lease continues the current grazing management of the allotment; and "(B) the Secretary concerned— "(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and "(ii) based on the assessment and evaluation under clause (i), has determined that the allotment— "(I) with respect to public land administered by the Secretary of the Interior— "(aa) is meeting land health standards; or "(bb) is not meeting land health standards due to factors other than existing livestock grazing; or "(II) with respect to National Forest System land administered by the Secretary of Agriculture— "(aa) is meeting objectives in the applicable land and resource management plan; or "(bb) is not meeting the objectives in the applicable land resource management plan due to factors other than existing livestock grazing. "(2) TRAILING AND CROSSING.—The trailing and crossing of livestock across public land and National Forest System land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)."
P.L. 114-322, §3603; 130 Stat. 1628, 1783	Agriculture, FS	SEC. 3603. LAKE TAHOE RESTORATION. [omitted sections irrelevant to CE direction] (c) IMPROVED ADMINISTRATION OF THE LAKE TAHOE BASIN MANAGEMENT UNIT.—Section 4 of the Lake Tahoe Restoration Act (Public Law 106-506; 114 Stat. 2353) is amended— (1) in subsection (b)(3), by striking "basin" and inserting "Basin"; and

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		(2) by adding at the end the following: "(c) FOREST MANAGEMENT ACTIVITIES.— [omitted sections irrelevant to CE direction] "(4) AVAILABILITY OF CATEGORICAL EXCLUSION FOR CERTAIN FOREST MANAGEMENT PROJECTS.—A forest management activity conducted in the Lake Tahoe Basin Management Unit for the purpose of reducing forest fuels is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the forest management activity— "(A) notwithstanding section 423 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009 (division E of Public Law 111–8; 123 Stat. 748), does not exceed 10,000 acres, including not more than 3,000 acres of mechanical thinning; "(B) is developed— "(i) in coordination with impacted parties, specifically including representatives of local governments, such as county supervisors or county commissioners; and "(ii) in consultation with other interested parties; and "(C) is consistent with the Lake Tahoe Basin Management Unit land and resource management plan."
P.L. 115-141, §202; 132 Stat. 348, 1062	Agriculture, FS	SEC. 202. WILDFIRE RESILIENCE PROJECTS. Insert at the end of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511) the following new section: "SEC. 605. WILDFIRE RESILIENCE PROJECTS. "(a) IN GENERAL.—Hazardous fuels reduction projects, as defined in the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511(2)) may be— "(1) carried out in accordance with subsections (b), (c), and (d) of section 102 and sections 104 and 105; "(2) considered an action categorically excluded from the requirements of Public Law 91–190 (42 U.S.C. 4321 et seq.); and "(3) exempt from the special administrative review process under section 105. "(b) COLLABORATIVE RESTORATION PROJECT.— "(1) IN GENERAL.—A project referred to in subsection (a) is a project to carry out forest restoration treatments that— "(A) maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to, wildfires; "(B) considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and "(C) is developed and implemented through a collaborative process that—

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		"(i) includes multiple interested persons representing diverse interests; and
		"(ii)(I) is transparent and nonexclusive; or
		"(II) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).
		"(2) INCLUSION.—A project under this subsection may carry out part of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009
		"(16 U.S.C. 7303(b)).
		"(c) LIMITATIONS.—
		"(1) PROJECT SIZE.—A project under this section may not exceed 3000 acres.
		"(2) LOCATION.—A project under this section shall be—
		"(A) Prioritized within the wildland-urban interface;
		"(B) If located outside the wildland-urban interface, limited to areas within Condition Classes 2 or 3 in Fire Regime Groups I, II, or III that contain very high wildfire hazard potential; and
		"(C) Limited to areas designated under section 602(b) as of the date of enactment of this Act.
		"(3) ROADS.—
		"(A) PERMANENT ROADS.—
		"(i) PROHIBITION ON ESTABLISHMENT.—A project under this section shall not include the establishment of permanent roads.
		"(ii) EXISTING ROADS.—The Secretary may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section.
		"(B) TEMPORARY ROADS.—The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.
		"(4) EXTRAORDINARY CIRCUMSTANCES.—The Secretary shall apply the extraordinary circumstances procedures under section 220.6 of title 36, code of Federal regulations (or successor regulations), when using the categorical exclusion under this section.
		"(d) EXCLUSIONS.—This section does not apply to—
		"(1) a component of the National Wilderness Preservation System;
		"(2) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
		"(3) a congressionally designated wilderness study area; or

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		"(4) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan. "(e) FOREST MANAGEMENT PLANS.—All projects and activities carried out under this section shall be consistent with the land and resource management plan established under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for the unit of the National Forest System containing the projects and activities. "(f) PUBLIC NOTICE AND SCOPING.—The Secretary shall conduct public notice and scoping for any project or action proposed in accordance with this section."
P.L. 115-334, §8611; 132 Stat. 4490, 4847	Agriculture, FS, Interior, BLM	SEC. 8611. CATEGORICAL EXCLUSION FOR GREATER SAGE-GROUSE AND MULE DEER HABITAT. (a) IN GENERAL.—Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591 et seq.) is amended by adding at the end the following: "SEC. 606. CATEGORICAL EXCLUSION FOR GREATER SAGE-GROUSE AND MULE DEER HABITAT. [omitted definitions section] "(b) CATEGORICAL EXCLUSION.— "(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary concerned shall develop a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)) for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer. "(2) ADMINISTRATION.—In developing and administering the categorical exclusion under paragraph (1), the Secretary concerned shall— "(A) comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); "(B) with respect to National Forest System land, apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; "(C) with respect to public land, apply the extraordinary circumstances procedures under section 46.215 of title 43, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and "(D) consider— "(i) the relative efficacy of landscape-scale habitat projects; "(ii) the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and "(iii) the need for habitat restoration activities after wildfire or other natural disturbances. "(c) IMPLEMENTATION OF COVERED VEGETATIVE MANAGEMENT ACTIVITIES WITHIN THE RANGE OF GREATER SAGE-GROUSE AND MULE DEER.—If the categorical exclusion developed under subsection (b) is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered

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		vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer. "(d) LONG-TERM MONITORING AND MAINTENANCE.—Before commencing any covered vegetation management activity that is covered by the categorical exclusion under subsection (b), the Secretary concerned shall develop a long-term monitoring and maintenance plan, covering at least the 20-year period beginning on the date of commencement, to ensure that management of the treated area does not degrade the habitat gains secured by the covered vegetation management activity. "(e) DISPOSAL OF VEGETATIVE MATERIAL.—Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may be— "(1) used for— "(A) fuel wood; or "(B) other products; or "(2) piled or burned, or both. "(f) TREATMENT FOR TEMPORARY ROADS.— "(1) IN GENERAL.—Notwithstanding subsection (a) (1)(B)(xi), any temporary road constructed in carrying out a covered vegetation management activity that is covered by the categorical exclusion under subsection (b)— "(A) shall be used by the Secretary concerned for the covered vegetation management activity for not more than 2 years; and "(B) shall be decommissioned by the Secretary concerned not later than 3 years after the earlier of the date on which— "(i) the temporary road is no longer needed; and "(ii) the project is completed. "(2) REQUIREMENT.—A treatment under paragraph (1) shall include reestablishing native vegetative cover— "(A) as soon as practicable; but "(B) not later than 10 years after the date of completion of the applicable covered vegetation management activity. "(g) LIMITATIONS.— "(1) PROJECT SIZE.—A covered vegetation management activity that is covered by the categorical exclusion under subsection (b) may not exceed 4,500 acres. "(2) LOCATION.—A covered vegetation management activity carried out on National Forest System land that is covered by the categorical exclusion under subsection (b) shall be limited to areas designated under section 602(b), as of the date of enactment of this section."[b]

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P.L. 117-58, §11318; 135 Stat. 429, 543	Interior, BLM, and Bureau of Indian Affairs	SEC. 11318. CERTAIN GATHERING LINES LOCATED ON FEDERAL LAND AND INDIAN LAND. [omitted definitions section] (b) CERTAIN GATHERING LINES.— (1) IN GENERAL.—Subject to paragraph (2), the issuance of a sundry notice or right-of-way for a gathering line and associated field compression or pumping unit that is located on Federal land or Indian land and that services any oil or gas well may be considered by the Secretary to be an action that is categorically excluded (as defined in section 1508.1 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act)) for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the gathering line and associated field compression or pumping unit— (A) are within a field or unit for which an approved land use plan or an environmental document prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) analyzed transportation of oil, natural gas, or produced water from 1 or more oil or gas wells in the field or unit as a reasonably foreseeable activity; (B) are located adjacent to or within— (i) any existing disturbed area; or (ii) an existing corridor for a right-of-way; and (C) would reduce— (i) in the case of a gathering line and associated field compression or pumping unit transporting methane, the total quantity of methane that would otherwise be vented, flared, or unintentionally emitted from the field or unit; or (ii) in the case of a gathering line and associated field compression or pumping unit not transporting methane, the vehicular traffic that would otherwise service the field or unit. (2) APPLICABILITY.—Paragraph (1) shall apply to Indian land, or a portion of Indian land— (A) to which the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applies; and (B) for which the Indian Tribe with jurisdiction over the Indian land submits to the Secretary a written request that paragraph (1) apply to that Indian land (or portion of Indian land). (c) EFFECT ON OTHER LAW.—Nothing in this section— (1) affects or alters any requirement— (A) relating to prior consent under— (i) section 2 of the Act of February 5, 1948 (62 Stat. 18, chapter 45; 25 U.S.C. 324); or (ii) section 16(e) of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 102 Stat. 2939; 114 Stat. 47; 25 U.S.C. 5123(e)) (commonly known as the "Indian Reorganization Act"); (B) under section 306108 of title 54, United States Code; or (C) under any other Federal law (including regulations) relating to Tribal consent for rights-of-way across Indian land; or

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		(2) makes the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) applicable to land to which that Act otherwise would not apply.
P.L. 117-58, §40806; 135 Stat. 429, 1110	Agriculture, FS, Interior, BLM	SEC. 40806. ESTABLISHMENT OF FUEL BREAKS IN FORESTS AND OTHER WILDLAND VEGETATION. [omitted definitions section] (b) CATEGORICAL EXCLUSION ESTABLISHED.—Forest management activities described in subsection (c) are a category of actions designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the categorical exclusion is documented through a supporting record and decision memorandum. (c) FOREST MANAGEMENT ACTIVITIES DESIGNATED FOR CATEGORICAL EXCLUSION.— (1) IN GENERAL.—The category of forest management activities designated under subsection (b) for a categorical exclusion are forest management activities described in paragraph (2) that are carried out by the Secretary concerned on public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) administered by the Bureau of Land Management or National Forest System land the primary purpose of which is to establish and maintain linear fuel breaks that are— (A) up to 1,000 feet in width contiguous with or incorporating existing linear features, such as roads, water infrastructure, transmission and distribution lines, and pipelines of any length on Federal land; and (B) intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community. (2) ACTIVITIES.—Subject to paragraph (3), the forest management activities that may be carried out pursuant to the categorical exclusion established under subsection (b) are— (A) mowing or masticating; (B) thinning by manual and mechanical cutting; (C) piling, yarding, and removal of slash or hazardous fuels; (D) selling of vegetation products, including timber, firewood, biomass, slash, and fenceposts; (E) targeted grazing; (F) application of— (i) pesticide; (ii) biopesticide; or (iii) herbicide; (G) seeding of native species; (H) controlled burns and broadcast burning; and

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		(l) burning of piles, including jackpot piles. (3) EXCLUDED ACTIVITIES.—A forest management activity described in paragraph (2) may not be carried out pursuant to the categorical exclusion established under subsection (b) if the activity is conducted— (A) in a component of the National Wilderness Preservation System; (B) on Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress, Presidential proclamation (including the applicable implementation plan), or regulation; (C) in a wilderness study area; or (D) in an area in which carrying out the activity would be inconsistent with the applicable land management plan or resource management plan. (4) EXTRAORDINARY CIRCUMSTANCES.—The Secretary concerned shall apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or a successor regulation), in determining whether to use a categorical exclusion under subsection (b). (d) ACREAGE AND LOCATION LIMITATIONS.—Treatments of vegetation in linear fuel breaks covered by the categorical exclusion established under subsection (b)— (1) may not contain treatment units in excess of 3,000 acres; (2) shall be located primarily in— (A) the wildland-urban interface or a public drinking water source area; (B) if located outside the wildland-urban interface or a public drinking water source area, an area within Condition Class 2 or 3 in Fire Regime Group I, II, or III that contains very high wildfire hazard potential; or (C) an insect or disease area designated by the Secretary concerned as of the date of enactment of this Act; and (3) shall consider the best available scientific information. (e) ROADS.— (1) PERMANENT ROADS.—A project under this section shall not include the establishment of permanent roads. (2) EXISTING ROADS.—The Secretary concerned may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section. (3) TEMPORARY ROADS.—The Secretary concerned shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed. (f) PUBLIC COLLABORATION.—To encourage meaningful public participation during the preparation of a project under this section, the Secretary concerned shall facilitate, during the preparation of each project— (1) collaboration among State and local governments and Indian Tribes; and (2) participation of interested persons.

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P.L. 118-63, §788; 138 Stat. 1025, 1314	Transportation, FAA	SEC. 788. CATEGORICAL EXCLUSIONS. (a) CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE.—An action by the Administrator to approve, permit, finance, or otherwise authorize any airport project that is undertaken by the sponsor, owner, or operator of a public-use airport shall be presumed to be covered by a categorical exclusion under FAA Order 1050.1F (or any successor document), if such project— (1) receives less than $6,000,000 (as adjusted annually by the Administrator to reflect any increases in the Consumer Price Index prepared by the Department of Labor) of Federal funds or funds from charges collected under section 40117 of title 49, United States Code; or (2) has a total estimated cost of not more than $35,000,000 (as adjusted annually by the Administrator to reflect any increases in the Consumer Price Index prepared by the Department of Labor) and Federal funds comprising less than 15 percent of the total estimated project cost. (b) CATEGORICAL EXCLUSION IN EMERGENCIES.—An action by the Administrator to approve, permit, finance, or otherwise authorize an airport project that is undertaken by the sponsor, owner, or operator of a public-use airport shall be presumed to be covered by a categorical exclusion under FAA Order 1050.1F (or any successor document), if such project is— (1) for the repair or reconstruction of any airport facility, runway, taxiway, or similar structure that is in operation or under construction when damaged by an emergency declared by the Governor of the State with concurrence of the Administrator or for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); (2) in the same location with the same capacity, dimensions, and design as the original airport facility, runway, taxiway, or similar structure as before the declaration described in this section; and (3) commenced within a 2-year period beginning on the date of a declaration described in this section. (c) EXTRAORDINARY CIRCUMSTANCES.—The presumption that an action is covered by a categorical exclusion under subsections (a) and (b) shall not apply if the Administrator determines
P.L. 118-105, §2; 138 Stat. 1587, 1588	Commerce, National Institute of Standards and Technology	SEC. 2. SEMICONDUCTOR PROGRAM. Title XCIX of division H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651 et seq.) is amended— (1) in section 9902 (15 U.S.C. 4652)— (A) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and (B) by inserting after subsection (g) the following: [omitted sections irrelevant to CE direction] "(d) CATEGORICAL EXCLUSIONS.— [omitted sections directing the National Institute of Standards and Technology to adopt existing CEs from other agencies]

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		"(2) ADDITIONAL CATEGORICAL EXCLUSIONS.—Notwithstanding any other provision of law, each of the following shall be treated as a category of action categorically excluded from the requirements relating to environmental assessments and environmental impact statements under section 1501.4 of title 40, Code of Federal Regulations, or any successor regulation: "(A) The provision by the Secretary of any Federal financial assistance for a project described in section 9902, if the facility that is the subject of the project is on or adjacent to a site— "(i) that is owned or leased by the covered entity to which Federal financial assistance is provided for that project; and "(ii) on which, as of the date on which the Secretary provides that Federal financial assistance, substantially similar construction, expansion, or modernization is being or has been carried out, such that the facility would not more than double existing developed acreage or on-site supporting infrastructure. "(B) The provision by the Secretary of Defense of any Federal financial assistance relating to— "(i) the creation, expansion, or modernization of one or more facilities described in the second sentence of section 9903(a)(1); or "(ii) carrying out section 9903(b), as in effect on the date of enactment of this subsection. "(C) Any activity undertaken by the Secretary relating to carrying out section 9906, as in effect on the date of enactment of this subsection."

Source: CRS.

Notes: This table presents statutory CEs identified through a review of enacted federal legislation. It includes provisions in which Congress has explicitly categorically excluded federal actions from some of the procedural requirements of the National Environmental Policy Act (NEPA). Each entry identifies the statutory citations and language establishing the CE, where available. While CRS attempted to identify and include all relevant statutory CEs in effect as of April 8, 2025, the table may not be exhaustive. Some provisions may be embedded in broader legislative texts or agency-specific authorizations that are not readily identifiable as CEs. The table should be viewed as a representative, but potentially incomplete, inventory.

a. P.L. 110-161 subsequently amended P.L. 108-447 to extend the CE through 2008 and to prohibit its applicability in designated wilderness. P.L. 113-291 codified in statute an amended version of this CE in Section 402 of the Federal Land Policy and Management Act (43 U.S.C. §1752).

b. Although the text of the categorical exclusion established by P.L. 115-334 states, "the Secretary concerned shall develop a CE," implying a congressionally directed CE, both the Departments of Agriculture and the Interior list the CE as statutorily established in their NEPA procedures. See U.S. Forest Service, "Chapter 30 – Categorical Exclusion from Documentation," in *Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook*, March 3, 2023, pp. 29-30, https://www.fs.usda.gov/about-agency/regulations-policies/handbook/190915-30-categorical-exclusion-documentation, and Department of the Interior, "Managing the NEPA Process—Bureau of Land Management," in *Department of the Interior Departmental Manual*, December 10, 2020, https://www.doi.gov/document-library/departmental-manual/516-dm-11-managing-nepa-process-bureau-land-management.

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