

United States Environmental Protection Agency/National Environmental Policy Act: Notice of Adoption of Categorical Exclusions



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

03/25/2024

The United States Environmental Protection Agency (“EPA”) published a Notice in the March 22nd Federal Register that it is adopting two National Environmental Policy Act (“NEPA”) Categorical Exclusions (“CE”). See 89 Fed. Reg. 20470.

The two CEs are described as:

- Drop-off, collection, and transfer facilities for recyclable materials.
- Installation or relocation of machinery and equipment to use in EPA’s Programs and in funding opportunities administered by the Agency.

NEPA requires federal agencies to include values and issues their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statutes require federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to prepare this document is only triggered in the event of a major federal action that will significantly affect the human environment.

As opposed to an EIS, which is a much more detailed document, an Environmental Assessment (“EA”) provides sufficient evidence and analysis for determining whether a Finding of No Significant Impact for an EIS should be prepared. Neither an EA nor an EIS need be prepared if a particular federal action falls within the scope of a NEPA Categorical Exclusion. CEs are promulgated by the federal agencies and are described actions which have been determined to not involve significant environmental impacts.

EPA states in the March 22nd Federal Register Notice that the CEs it is adopting have been utilized by the United States Department of Energy (“DOE”).

DOE’s CE for recycling facilities is codified as CE B1.35 of 10 CFR Part 1021, Subpart D Appendix B.

DOE’s CE for equipment installation or relocation is codified in DOE’s NEPA procedures as CE B1.31 of 10 CFR Part 1021, Subpart D Appendix B.

Note that when applying these CEs, or any CEs, EPA or other federal agencies will evaluate the proposed action to ensure consideration of extraordinary circumstances. In other words, federal agencies are required to consider whether the proposed action has the potential result of significant effects despite

constituting a described CE. A cited example is DOE's description which defines extraordinary circumstances as:

...unique situation presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources.

A copy of the Federal Register Notice can be downloaded [here](#).