



# Federal Aviation Administration

## Memorandum

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Date: September 13, 2019

To: FAA Lines of Business and Managers with NEPA Responsibilities

From: Katherine Andrus, Manager, Environmental Policy and Operations, Office of Environment and Energy (AEE-400)

Subject: **Use and Documentation of Categorical Exclusions (CATEXs)**

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This Memorandum clarifies existing FAA policy and guidance on categorical exclusions (CATEXs) as provided in FAA Order 1050.1F, specifically the definition of a categorical exclusion, the application of extraordinary circumstances, and the determination of when it is appropriate to document categorical exclusions. This memorandum does not introduce new policy or impose any additional requirements for categorical exclusions.

### **Categorical Exclusion Defined**

The Council on Environmental Quality (CEQ) defines “categorical exclusion” as a category of actions which do not individually or cumulatively have a significant effect on the human environment, and which have been found to have no such effect in procedures adopted by a Federal agency. 40 CFR § 1508.4. CATEXs are not exemptions from NEPA; rather, they are one type of NEPA review. Like an Environmental Assessment (EA) concluding in a Finding of No Significant Impact (FONSI), a CATEX supports a decision not to conduct additional environmental review and, used appropriately, satisfies the requirements of NEPA.

The FAA has listed categories of actions in FAA Order 1050.1F paragraphs 5-6.1 through 5-6.6 that it has found normally do not have the potential for individual or cumulative significant impacts. Actions that are not covered by these CATEXs listed in the Order cannot be categorically excluded and an EA or EIS must be prepared.

### **Extraordinary Circumstances**

Extraordinary circumstances are factors or circumstances in which a normally categorically excluded action may have a significant environmental impact. Order 1050.1F, para. 5-2.b lists twelve circumstances that, when applied to a specific action, assist in identifying situations that require further consideration before using a CATEX to satisfy NEPA. Evaluating the potential for significant impacts under these circumstances may require screening, preliminary analysis and/or consultation. Several of the circumstances refer to special purpose laws; if these apply to a proposed action it may be necessary to complete the process under that law before determining if there are extraordinary circumstances.

If the proposed action involves any of the circumstances listed in para. 5-2.b of the Order **AND** the action has the potential for a significant impact under those circumstances, a CATEX may not be used. Both conditions must apply – the circumstance and the potential for a significant impact – to preclude use of a CATEX based on extraordinary circumstances. An EA or EIS must be prepared unless the proposed action is modified to eliminate the potential for a significant impact. If there is no potential for significant impacts despite the presence of one or more of these circumstances, then an *extraordinary* circumstance does not exist and a CATEX may be used for the proposed action.

### **Documenting Categorical Exclusions**

Documentation of a CATEX determination should be as concise as possible and tailored to the type of action and potential for extraordinary circumstances.

Simple Documentation: A simple written record is sufficient for CATEXs that have been determined by the LOB/SO to have little or no potential to trigger extraordinary circumstances, including those designated with an asterisk (\*) in FAA Order 1050.1F, para. 5-6. This can be a notation in documentation prepared in the normal course of the proposed action development that a specific CATEX was determined to apply to the action, or a separate statement maintained within the project file identifying the CATEX used. Simple documentation for a CATEX does not need to be signed by the responsible FAA official.

Additional Documentation: For actions covered by a CATEX that have a greater potential to trigger extraordinary circumstances or otherwise warrant additional documentation, the documentation should cite the CATEX used and describe how the proposed action fits within the

scope of the CATEX. The documentation also should explain that there are no extraordinary circumstances triggered by the proposed action (i.e., that none of the circumstances is present or that there is no potential for significant impacts despite the presence of one or more of these circumstances). Order 1050.1F lists five factors that may warrant the preparation of additional documentation:

- (1) Likely to affect sensitive resources sufficiently to heighten concerns regarding the potential for extraordinary circumstances;
- (2) That would result in changes to the routine routing of aircraft that have the potential to result in significant increases in noise over noise sensitive areas;
- (3) Involving situations in which the applicability of a CATEX is not intuitively clear;
- (4) Involving known controversy or public opposition; or
- (5) For which litigation is anticipated.

An LOB/SO may decide to document a project-specific CATEX even if none of these factors is present. The CATEX documentation for these actions should be signed by the responsible FAA official, which can be an Environmental Protection Specialist (EPS) or another FAA employee with overall responsibility to independently evaluate the environmental issues, furnish guidance and participate in the preparation of NEPA documents, and evaluate and take responsibility for the scope and content of the documents for a specific action or project.<sup>1</sup> The Office of Chief Counsel (AGC) may advise preparation of a separate formal decision document such as a Record of Decision (ROD) in connection with a CATEX determination, for example, where there is substantial controversy regarding the applicability of a CATEX or regarding the existence of extraordinary circumstances.

In addition to making the CATEX determination, which satisfies the requirements of NEPA, the responsible FAA official must document compliance with any other applicable requirements, such as consultations, findings, or determinations under special purpose laws. For example, many actions covered by a CATEX under NEPA require consultation under Section 106 of the National Historic Preservation Act.<sup>2</sup> Similarly, consultation with the U.S. Fish & Wildlife Service is required for actions which may affect listed species or critical habitat.

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<sup>1</sup> See Order 1050.1F, para. 11-5(b)(11) for the definition of “responsible FAA official.”

<sup>2</sup> Unless an action is the type of activity that does not have the potential to affect historic properties, Section 106 consultation must be initiated and concluded prior to making a CATEX determination. See FAA’s *Section 106 Handbook: How to Assess the Effects of FAA Actions on Historic Properties under Section 106 of the National Historic Preservation Act* (June 2016) at pages 7-10, available at [https://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/environ\\_policy\\_guidance/guidance/media/section-106-handbook.pdf](https://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/guidance/media/section-106-handbook.pdf)