



POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act Implementing Procedures

AGENCY: Postal Service.

ACTION: Interim final rule with request for comments.

SUMMARY: The Postal Service (USPS)TM is publishing this interim final rule with request for comments to amend a categorical exclusion, which is currently in the Postal Service's National Environmental Policy Act (NEPA) implementing procedures. This amendment will make the categorical exclusion (CATEX) more consistent with the intended scope of covered activities and with those CATEXs used by other Federal entities for property disposals.

DATES: *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Submit comments on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Deliver written comments by e-mail to USPSFAC@usps.gov, with the subject heading "CATEX Rulemaking," or by mail to Angie Mitchell, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6611, Washington, DC 20260. You may inspect and photocopy all written comments at the USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC, by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 202-268-2906 in advance. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Charlotte Parrish, Environmental Specialist, at charlotte.parrish@usps.gov or 201-714-7216, or Matthew Raeburn, Environmental Counsel, at matthew.d.raeburn@usps.gov or 202-268-4570.

SUPPLEMENTARY INFORMATION:

The Postal Service is publishing this interim final rule with request for comments to amend a categorical exclusion under the National Environmental Policy Act (NEPA). Amending this categorical exclusion (CATEX) is consistent with NEPA and the Council on Environmental Quality's (CEQ's) regulations. This amendment focuses the CATEX more clearly on activities that, absent extraordinary circumstances, do not normally have the potential for individual or cumulative significant impacts on the quality of the human environment. The amendment also makes the CATEX more consistent with analogous CATEXs used by the General Services Administration (GSA) and other Federal entities. The Postal Service has determined that the activities included in this category – *i.e.*, property disposals undertaken in the normal course of the Postal Service's business – do not normally, absent extraordinary circumstances, individually or cumulatively create the potential for significant effects on the human environment. The updated CATEX is necessary to ensure greater clarity and consistency when the CATEX is used because of the increasing regularity of property disposals by the Postal Service. There have also been changes to the Postal Service's business and infrastructure since its last CATEX revisions in 1997. This amendment maintains the Postal Service's compliance with NEPA while greatly reducing the Postal Service's administrative burden, and the amendment advances the ongoing

efforts to enhance the efficiency and effectiveness of timely environmental review processes.

NEPA applies to Federal actions and requires an Environmental Impact Statement (EIS) for major actions significantly affecting the quality of the human environment (42 U.S.C. 4332(C)). NEPA established CEQ, whose regulations at 40 CFR parts 1500–1508 implement NEPA across the Executive Branch. CEQ's regulations require Federal agencies to adopt their own implementing procedures to supplement CEQ's regulations and to establish and use CATEXs to define categories of actions that do not normally, absent extraordinary circumstances, have the potential for individual or cumulative significant impacts on the human environment and, thus, do not necessitate the preparation of an EIS or an environmental assessment (EA) (40 CFR 1507.3(b)(2)(ii), 1508.4).

CEQ also requires that CATEXs be used to reduce paperwork and delay (40 CFR 1500.4(p), 1500.5(k)). In its guidance on “Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act” (75 FR 75628, February 18, 2010), CEQ recommends that agencies periodically review their CATEXs and benchmark them against those of other agencies. An agency can substantiate its own CATEX by comparing another agency's experience promulgating and applying a comparable CATEX. CEQ also encourages agencies to establish new CATEXs and to revise existing CATEXs to eliminate unnecessary paperwork and delay for categories of actions that, absent extraordinary circumstances, do not have significant environmental effects. This approach leaves more resources available to assess, either in an EA or EIS, those

proposed Federal actions that are actually likely to have the potential to cause significant environmental effects.

The Postal Service, which is an independent establishment of the executive branch rather than a Federal agency (39 U.S.C. 201), has its own NEPA regulations at 39 CFR part 775. Those regulations include several CATEXs for categories of actions that the Postal Service has determined do not individually or cumulatively have the potential for significant effects on the human environment (39 CFR 775.6). The Postal Service last revised its CATEXs through a rulemaking that became effective on October 1, 1997 (63 FR 45720). One of the CATEXs promulgated in that rulemaking applied to the “[a]cquisition and disposal through sale, lease, transfer or exchange of real property that does not involve an increase in volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents, and that under reasonably foreseeable uses, have generally similar environmental impacts as compared to those before the acquisition or disposal” (39 CFR 775.6(e)(8)).

In the 16 years since, the Postal Service became aware of refinements in similar CATEXs in other Federal agency regulations. In particular, the Postal Service examined a similar CATEX for disposals finalized in 2000 by the General Services Administration (GSA) (65 FR 69558). GSA’s disposal CATEX is included in that agency’s *NEPA Desk Guide*, which the Environmental Protection Agency called “a good model for other agencies” (65 FR 69558). Indeed, in July 2013, the U.S. Coast Guard (USCG) used GSA’s disposal CATEX as a basis for USCG’s own CATEX (78 FR 44140). Whereas the Postal Service’s disposal CATEX at 39

CFR 775.6(e)(8) – prior to this interim final rule – could have been read to compare the environmental impact of current and reasonably foreseeable uses only on the property being disposed of, the GSA’s and USCG’s CATEXs more broadly and realistically compare the reasonably anticipated and reasonably foreseeable uses on the disposal property to other property uses in the surrounding area. In other words, those CATEXs take into account the environmental effects of the agencies’ disposals in the context of the surrounding neighborhoods. Both GSA and USCG have determined that a property disposal that results in a use or uses similar to those on surrounding properties does not, when undertaken in the normal course of business, give rise to the potential for significant impacts and therefore does not necessitate the preparation of an EA (or an EIS).

The frequency of property disposals by the Postal Service has increased dramatically in recent years. For example, the total number of Postal Service facilities fell from 34,175 in 2008 to 32,604 in 2012 (U.S. Postal Service 2012 Sustainability Report (2013)). The Postal Service anticipates that the frequency of property disposals will persist or increase in the foreseeable future. As a result, the Postal Service would reduce paperwork and delay by updating its CATEX to clarify that an EA is not required for the overwhelming majority of its normal course of business property disposals. That determination is based on the Postal Service’s experience that such disposals do not normally result in significant environmental effects.

The Postal Service’s NEPA procedural safeguards will continue to apply to the Postal Service’s application of the amended CATEX. Specifically, the Postal

Service's NEPA regulations require that all proposed real property actions, including property disposals, be reviewed using a process that includes the completion of a Facilities Environmental Checklist (FEC). The FEC allows the Postal Service's personnel and consultants to identify and list any potential environmental effects of the proposed action. The FEC's signatory determines whether the proposed action qualifies for a CATEX under NEPA and whether extraordinary circumstances exist that could cause the proposed action to have a significant environmental effect that would preclude the use of the CATEX.

If the person completing the FEC concludes that a CATEX applies, then a Record of Environmental Consideration (REC) – a formal record justifying the use of a CATEX – must be completed and signed by both the project manager and a responsible official at the Postal Service. The REC's signatories must affirm they have reviewed the applicable NEPA guidance and considered the environmental impacts of the proposed property action.

The Postal Service's experience leads it to believe that, as demonstrated by the GSA's and USCG's use of their property disposal CATEXs, its amended CATEX reflects an appropriate and realistic view that such activities undertaken in the normal course of business do not individually or cumulatively have significant impacts on the human environment. The Postal Service also finds those agencies' experience and consideration to be a useful guide. Like the Postal Service, both agencies are responsible for the acquisition and disposal of Federal property. GSA, which is responsible for the acquisition and disposal of most Federal property, has promulgated a property disposal CATEX that reflects its seasoned

judgment about the precise scope of real property acquisition and disposal that lacks significant individual and cumulative environmental impact. The Postal Service also notes that neither GSA nor USCG received adverse public comments regarding their property disposal CATEXs (see 65 FR 69558; 78 FR 44139).

Although the Postal Service notes minor differences between the phrasing of GSA's and USCG's CATEXs, those differences are not substantive or otherwise of a nature to change the projected environmental consequences of the activities. Because of GSA's preeminent experience with the acquisition and disposal of Federal real property, the Postal Service believes that it is appropriate to amend its own CATEX to match that of the GSA. The Postal Service does not believe that this update to a single CATEX, which follows the model of Federal agencies' existing CATEXs, should be significant or controversial.

The Administrative Procedure Act does not apply to this action (5 U.S.C. 553(a)(2); 39 U.S.C. 410(a)), which is being taken pursuant to the Postal Service's general rulemaking authority under 39 U.S.C. 401(2). Nevertheless, the Postal Service is complying with CEQ Regulations and seeking public input when revising this CATEX. The Postal Service therefore invites comments on the following revision of 39 CFR 775.6(e)(8).

Note that this interim final rule is effective upon its date of publication in the *Federal Register*. The Postal Service will review any comments received during the 30-day comment period. Following the expiration of the comment period, the Postal Service will publish its responses to any adverse comments in a subsequent *Federal Register* notice, together with its determination whether the interim final

rule will be made permanent without change, or adjusted in response to the comments received.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

For the reasons stated in the preamble, 39 CFR part 775 is amended as follows:

PART 775 – NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.*; 40 CFR 1500.4.

2. In § 775.6, paragraph (e)(8) is revised to read as follows:

§ 775.6 Categorical exclusions.

* * * * *

(e) * * *

(8) Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

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Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

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