

Instructions for Filling out CDOT Form 128

Updated 11/7/2023

Completion of CDOT Form 128 is required for all CDOT projects, even those that have been cleared as fully documented (template) CatExs, EAs or EISs, as well as state-only funded projects. Parts A and B must be completed for Right of Way (ROW) authorization and obligation of federal funds for ROW. Parts A, B, C, and E must be completed prior to project advertisement and/or construction.

FHWA signature is required for all federally funded CatExs unless CDOT has been allowed to make a CatEx certification and approval on FHWA's behalf (Programmatic CatEx). Programmatic CatExs are those that can be approved by CDOT without FHWA's signature based upon the requirements of the *FHWA/CDOT Programmatic Agreement for Categorical Exclusions*.

When FHWA signature is required, the FHWA will retain a copy of the signed Form 128 and return the original to the RPEM. A scanned copy is acceptable. The RPEM will be responsible for distributing copies within CDOT and maintaining the original within the Region.

FHWA approval is required for projects that exceed certain evaluation criteria, even if they would normally be considered Programmatic CatExs. Examples of reasons why a project could require FHWA approval include residential displacements, Individual Section 404 permits, Individual Section 4(f) evaluations, or changes to access to the Interstate. The reason why FHWA signature is required when the project would normally be a Programmatic CatEx shall be stated in the Part B comments section.

If it is necessary for the Environmental Programs Branch to prepare a Form 128 for a statewide project, the EPB NEPA Program Manager will be responsible for clearances, certification, and appropriate distribution.

If project revisions result in changes to the clearance/permit requirements, a revised Form 463 (Design Data) is required in addition to an updated Form 128. A CDOT Form 1399, NEPA Reevaluation, may also be appropriate.

STEP BY STEP INSTRUCTIONS FOR FILLING OUT THE FORM

Section A. Project Information

- Form #:** It is a way to track clearances for projects that need to be updated more than twice and require multiple Form 128s. This is applicable for projects with multiple phases as well, including Design Build.
- Environmental Scoping Date:** An initiation date is required for FHWA annual tracking purposes. If there is no scoping meeting, please use the date of the environmental kick-off meeting. The third preference for this cell would be the date of the Environmental Clearance Request.
- Federal Project #:** This is the federal project number including its prefix.
- Subaccount #:** This is the CDOT 5-digit Project Control Number (PCN).
- Related Subaccount Numbers:** Some projects have different subaccount numbers for the NEPA phase and the construction phase(s), especially for EA and EIS projects. Also, for smaller Design Build projects it is common to combine multiple CatEx projects into one project for construction. This is where you would enter all those numbers.
- Project Name:** Enter the full name of the project.
- Project Description (and Location):** Succinctly explain the full scope of work including the name of the roadway, endpoints, or mileposts, etc.
- Region:** Enter Region(s) number. For statewide projects enter HQ.

9. **CDOT Program/Residency:** Based on how your Region divides projects, enter either the Program or Residency.
10. **Environmental PM:** Provide the name of the person who has coordinated the environmental work for the project.
11. **FHWA Area Engineer:** Provide the name of the Area Engineer who is responsible for the project.
12. **FHWA Nexus:** This is for annual tracking purposes so please make sure to check the ‘Yes’ box if this is a project with FHWA funding, oversight, and/or other FHWA nexus. If no FHWA nexus exists, check ‘No’.
13. **Other Federal Nexus or State Only (SO):** This is for projects that have a federal nexus from a different agency. An example is a project that needs a 404 permit from the USACE, or projects that have FTA or FRA oversight or approval. There is also a box to check if the project is using state-only funds. This field should be filled out even if there is not a FHWA nexus. Check ‘Other’ if the nexus agency is not listed, and fill in with that agency name.
14. **Class of Action:** This is for documenting the NEPA class of action. This 128 form should be filled out for every project, even EIS/ROD and EA/FONSI projects, in order to document back part clearance (Section E) and project certification. It should also be filled out for state-only funded projects. Check the box for the appropriate class of action. If there is no NEPA involvement, leave blank.
15. **Class Determination Date:** A date needs to be added here for every NEPA project. For EAs and EISs the date should be when the class determination is made by FHWA (see NEPA manual chapters 4 and 6). For CatExs you should use the same date as the Environmental Scoping Date. Leave blank for SO projects.
16. **Project Lead:** Provide the agency proponent. This is required for annual tracking purposes. If it is a CDOT project, that box should be checked. If it is any other agency leading the project, check the ‘Other’ box and write in the agency name. Examples of other agencies include a local agency like a city or county or another federal agency like FTA or FRA.
17. **CE Number:** Provide the CatEx category the project is being cleared under. If more than one category applies, include all category numbers here, but circle the main category number being used. The designation must be taken from 23 CFR 771.117(c)-(d) or from the current *FHWA/CDOT Programmatic Agreement for Categorical Exclusions*. Project types that are not listed in 23 CFR 771.117(c)-(d) or the Programmatic Agreement may still be considered as Non-Programmatic CatExs; these require a transmittal letter of explanation to FHWA and are coded as “Dx” CatExs. If the CatEx is for an Electric Vehicle Charging Station, you should use the Department of Energy category for this and code it as “DOE”.
18. **Construction/Contracting Method:** This is for annual tracking purposes and will help explain how the form will be used (i.e., whether the revised clearances will be used only if there are changes to the project, or if they will have to be used as a regular part of the approval process [for design-builds]).

Section B. The NEPA Process

1. **Clearance Date:** The original clearance date for a resource on most CatEx projects is noted here (in the left-hand column). Each dated resource area must have corresponding clearance documentation in the project file. Resources without dates indicate the resource did not require a clearance. A brief note/memo to the file should describe the conditions of non-cleared resources (e.g., project limits are in ROW and no excavation needed, therefore no Section 4(f), Section 6(f), or Paleo clearances are requested).

For a separate, fully documented CatEx (using a template), EA, or EIS project, these dates are left blank.

For Design Build projects, this column indicates a clearance for preliminary design (traditionally no more than 30% design), as well as for Advertised plans or Bid. After awarded, subsequent environmental clearances will be obtained based on final design. The project can then be certified for construction.

2. **Check box:** The check box to the right of a resource should be checked if there is an impact or anticipated impact to that resource, or if a minimization/avoidance measure needs to be included in the construction plans (see explanation for each resource below). A clearance date will always accompany a checked box. During the clearance process it was determined if: mitigation is required, further evaluation is required, or a permit is required.

Minimization or avoidance measures should be noted on the plan sheets. Here is an explanation of when to check the box for each resource:

- *Air Quality/GHG*: checked if there is an air quality impact within non-attainment or maintenance areas, or GHG modeling is required.
- *Noise*: checked if the project is classified as Type I in CDOT's Noise Guidance and there is a noise impact, even if noise mitigation is not recommended.
- *Hazmat*: checked if there are special handling requirements of known or potential hazardous materials or if further hazmat investigation is required prior to construction.
- *T & E / State Listed Species*: checked if there is an impact to federal or state listed species and/or avoidance/minimization measures are needed during construction. Clearance will include Section 7 consultation and Concurrence (if required).
- *Wetlands*: checked if there are impacts to wetland or Waters of the US, or a permit or mitigation is required to avoid impacts.
- *Paleontology*: checked if there is a paleontology impact or mitigation/monitoring is required.
- *Archaeology*: checked if there are direct impacts to any significant archaeological sites or features, or if mitigation/monitoring is required.
- *History*: checked if there are *Adverse Effects* or a *No Adverse Effects* with impacts to any eligible historic site, or if mitigation/monitoring is required.
- *Section 4(f) – Historic*: checked if a *de minimis*, programmatic, or individual 4(f) is required, or if an exception is required that includes mitigation (e.g., temporary occupancy).
- *Section 4(f) – Non-Historic*: checked if a *de minimis*, programmatic, or individual 4(f) is required or if an exception is required that includes mitigation (e.g., temporary occupancy).
- *Section 6(f)*: checked if a Temporary Non-conforming Use or Conversion is required; or if avoidance measures are required.
- *Environmental Justice/Equity*: checked if there are disproportionately high and adverse impacts, or if enhanced outreach and/or mitigation is necessary.
- *Other*: this box can be used for any other resource that is impacted but not listed on the form. Common examples are Visual, Floodplains or Farmlands. If you have two or more resources that you need to add, please add them to the comment box at the bottom of Section B.

Date Only – If the resource is present, but there is no impact or minimization measure to it, the check box should not be checked, however, there should be a date on the line to document when the resource was evaluated, and clearance was provided.

- *Air Quality/GHG*: provide clearance date if a hotspot analysis is required.
- *Noise*: provide clearance date if a noise analysis or review by the noise specialist is required.
- *Hazmat*: provide clearance date if an ISA or MESA is required.
- *T & E/ State Listed Species*: provide date of no effect or no impact determination.
- *Wetlands*: provide clearance date if a wetland survey or delineation was conducted.
- *Paleontology*: provide clearance date if paleontology specialist reviewed the project.
- *Archaeology*: provide clearance date if an archaeological survey was done.
- *History*: provide clearance date for history review of the project.

- *Section 4(f) - Historic:* provide clearance date if the History or Archaeology reviews show that Section 4(f) is not applicable.
- *Section 4(f) - Non-Historic:* provide clearance date from Section 4(f) subject matter expert when there are non-historic Section 4(f) resources in the area (e.g., parks, trails, wildlife refuges).
- *Section 6(f):* provide clearance date if there are LWCF parks or trails in the area.
- *Environmental Justice:* provide clearance date if any EJ communities are present in the area.
- *Other:* this date line can be used for any other resource that is in the area but not listed on the form. Common examples are Visual, Floodplains or Farmlands. If you have two or more resources that you need to add, please add them to the comment box at the bottom of Section B.

Neither Checkbox nor Date – If a resource is clearly not present in the project area or if the project scope would clearly not impact a certain resource and therefore no verification would be necessary, the check box and date line can be left blank. They can also be blank for projects that have an EIS/ROD, EA/FONSI, or separate, fully documented (template) CatEx.

3. Revised Clearances: (the middle and right-hand columns) should be filled out for NEPA revisions or reevaluations, including the following:

- For CatExs, these columns can be used to reevaluate the project, including documenting the updated resource clearances and/or impacts. Checkboxes and dates are used in the same way as for the first column. However, only resources with new impacts should have checked boxes.
- For EAs or EISs where there are NO changes to the project or impacts, this column can be used in place of the Form 1399, and dates can be entered to show that the resources were reviewed.
- If the Form 1399 is used, the resource portion does not need to be filled out, just check the box indicating that a Form 1399 was completed and provide the reevaluation date, design plan set date, and signatures required.

These columns are applicable for Design Build projects. As mentioned above, when a Design Build project goes out for bid it is generally at 30% design. Once awarded, the contractor will be responsible for finalizing the design, so this design set needs an environmental clearance before it is released for construction. This could happen once or several times depending on how the contractor is advancing the project. Any of the above reevaluation methods could be appropriate depending on the circumstances. It also needs to be used for back part clearance (project certification) in Section E. A second form should be used if additional reevaluations are required.

- 4. NEPA Class Checkboxes:** The checkboxes at the bottom of Section B (above the signature lines) should be appropriately checked to note the NEPA class of action.
- 5. Design Plan Set and Date:** This section should always be filled out so that it is clear what level of design (scoping, FIR, or FOR) was used for the front part clearance in Section B. This is the plan set provided to specialists for resource clearances.
- 6. RPEM Signature and Date:** Coordinate with your RPEM to determine who has authorization to sign within your region.
- 7. FHWA Signature:** If an FHWA signature is required due to a project being a Non-Programmatic CatEx or any FHWA review is needed, the FHWA Division Administrator or designee will sign here.
- 8. Revision Signature Section:** If revisions or reevaluations occur, the RPEM or designee should review updated clearances and sign once revisions are complete. FHWA also signs if Non-Programmatic.

Section C. Permits and Additional Requirements

1. **404 Permit:** This permit is needed if there will be any discharge of fill into a water of the U.S. Check the box if any 404 permit (individual, nationwide or non-notifying) is needed from the USACE. Add the date when that permit is authorized. For a NWP with no Preconstruction Notification, use the date the clearance is received from the resource specialist. If there is consultation with the USACE, but no permit is needed, do not check the box or add a date.
2. **401 Certification:** This water quality certification from the CDPHE or Tribal Authority/EPA is needed when a 404 permit is needed. If the 404 permit is a nationwide, the 401 certification is automatic - except where CDPHE is not the lead for 401 (e.g., Indian reservation, military base, etc.). If the certification is automatic, do not check the box or add a date. Check the box if 401 certification is not automatic and is needed, including if an individual 404 permit is needed. Add a date to the line when the nationwide permit/401 certification is received, or the individual permit/401 certification is received.
3. **402 Certification (Federal permit):** This is a National Pollutant Discharge Elimination System (NPDES) permit certification issued by EPA and is needed when there will be a discharge of pollutants to waters of the U.S. and when working on military bases, Indian lands, or some other federal lands. Check the box if any 402 NPDES Certification (includes all federal permits) is required. Add a date when that certification is received from the EPA or when the water quality sign-off is received from the regional water quality specialist. If there is consultation with the EPA, but no certification is needed, just add the date of that consultation.
4. **Const. Stormwater Permit (State permit):** This is a stormwater construction permit (SCP) issued by CDPHE. Projects with any construction activity that disturbs one or more acres, or is part of a larger common plan of development or sale require this permit (unless on federal lands). Check the box when the permit is required. Add a date when the water quality sign-off is received from the regional water quality specialist. Projects with no SCP will not have a checked box. If the permit is the responsibility of the contractor, note that in Section D of the 128 form and leave the date blank.
5. **Const. Dewatering Permit:** This is a Colorado Discharge Permit System (CDPS) permit issued by CDPHE for groundwater. If known during design, check the box for a project with any construction activity that requires dewatering (clean water) or remediation (contaminated water). Add a date when the water quality sign-off is received from the regional water quality specialist. If the permit is the responsibility of the contractor, note that in Section D of the 128 form and leave the date blank.
6. **Noxious Weed Management:** Check the box when a noxious weed management plan is needed for the project. Add a date when the management plan document is final and complete. If the process varies, add a note in Section D of the 128 form explaining.
7. **SB40 Certification:** This certification is required from CPW when there are plans for construction in any SB40 jurisdictional stream or its bank or tributaries. Check the box if SB40 certification is required. Add a date when the certification process is complete, or clearance is received from the resource specialist. For a Programmatic SB40, use the date 15 days after the letter was sent to CPW unless they request more time or provide written concurrence during the 15-day review period. In these instances, use the date of CPW concurrence as the clearance date.
8. **Wetland Finding:** This is needed when permanent wetland impacts are greater than 500 sq. ft., or temporary + permanent wetland impacts are greater than 1000 sq. ft. Check the box if a wetland finding is required. Add a date when the finding is final and/or approved by the resource specialist.
9. **Structure Demolition Permit:** Check the box when the project will involve demolishing any structures (defined by CDPHE). However, prior to applying for and obtaining this permit, the structure must be inspected, and if necessary, abated for asbestos and lead based paint. Add a date when the permit is obtained from CDPHE, or when the resource specialist gives final clearance.
10. **Hazardous Materials - Phase II:** This is needed to obtain sound, scientifically valid data concerning actual property conditions to confirm findings from a Phase I or MESA, or to seek such data to inform evaluations, conclusions, and choices of action. Check the box if a Phase II is required. Add a date when the Phase II is complete and final.

11. **Permanent WQ:** Check the box when a project will install PWQ. Projects with no PWQ Control Measures (CMs) will not check the box; however, all projects require a PWQ clearance date. Add the date when the water quality sign-off is received from the regional water quality specialist. If the project is in an MS4 area, or if an EIS requires it, add a note stating that in Section D of the 128 form.
12. **Colorado Clean Water Policy 17:** CO CWP 17 is required when a project will discharge fill into aquatic resources termed "Sackett Gap Waters". Sackett Gap Waters include waters that were under the jurisdiction of the Clean Water Act pursuant to the pre-2015 federal regulations and the 2008 Guidance but that are no longer considered federally jurisdictional following the *Sackett v. EPA* decision and the subsequent EPA 2023 Conforming Rule. Check the box if the policy applies to the project and there will be discharge fill, and add a date when the notification to CDPHE is complete and the CDOT resource specialist gives final clearance.
13. **SWMP:** Stormwater Management Plans (SWMPs) must be prepared for every construction project, regardless of the size of the disturbance area. Check the box for every construction project. Add a date when a project SWMP has been reviewed and cleared by an approved CDOT SWMP Reviewer.
14. **Other:** Use this box and date line for any other back-part permit or certification needed. Be sure to add details about this in Section D of the 128 form (e.g., floodplain approvals, or a Section 408 permit).

For Design Build projects, the left-hand column displays the permits that the contractor will be required to obtain, and which will be obtained by CDOT. When plans are sent to the CDOT Environmental Manager for review, a copy of the contractor-obtained permits should also be included. The Environmental PM should enter the date the permit was obtained on the appropriate line in the middle and right-hand columns.

Section D. Comments

Describe any permits obtained by the contractor after advertisement or any other special conditions for the project.

Section E. Environmental Project Certification

1. **Design Plan Set and Date:** The RPEM, or designee, must indicate the set of plans and specification (FIR, FOR, advertisement, award, etc.) that were reviewed prior to certification. The date of these plans must be provided. If the project is being certified for construction, then the plans being reviewed need to be marked as FINAL, AD or AWARD.
2. **Certification Type:**
 - a) **Advertisement** – Applicable for Design Build. By checking this box, you are releasing the project for advertisement, but not for construction. For Design Build, the project is certified for construction when the final plans are verified. This subsequent sign off will be documented in the middle column of this section.
 - b) **Advertisement & Construction** – Checked for a traditional design-bid-build project that is being released for advertisement and construction at the same time.
 - c) **Other** – An example of when this box gets checked is a CM/GC project.
3. **RPEM Signature & Date:** This is required for all projects being released for advertisement and/or construction. This signature is a certification that 1) all required clearance and permits have been obtained, 2) environmental mitigation is included in the referenced plans and specifications, and 3) the appropriate NEPA documentation is on file.