

Categorical Exclusions: problems in the evaluation and submission process, comparison of requirements and guide to help the professional in the process of environmental compliance.

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Abstract

Categorical exclusions are actions that do not have a significant effect on human health or the environment. In Puerto Rico, projects that are considered to be categorical exclusions are worked on under a Declaration of Categorical Exclusion (DEC) that is requested to the General Permits Office (OGPe). Many problems have arisen on the island and permits have been revoked due to the misuse of this document and its expeditious approval through the OGPe. A guide of the requirements of the OGPe and federal agencies was created to help the industry professional evaluate the environmental aspects of projects and determine if their project is in fact a categorical exclusion.

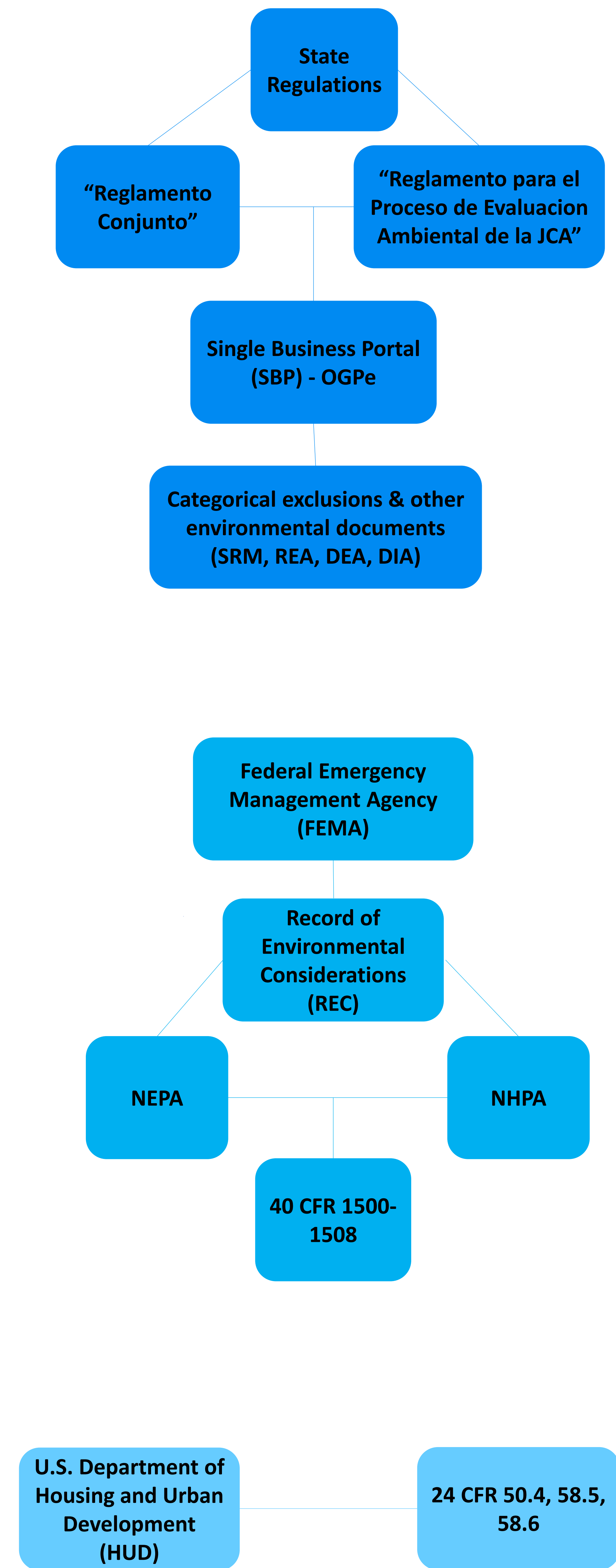
Introduction

Categorical exclusions are defined as the processes or actions that being evaluated both individually and cumulatively, do not have significant effects on the environment or human health. Both state and federal regulations require that the projects to be carried out comply with the obtaining of permits, including environmental compliance, which includes the "Determinations of Categorical Exclusions" (DECs) granted by the Puerto Rico General Permits Office. For several years now, there has been much controversy about the application process, supporting documentations, and permits approval for projects in Puerto Rico. Among the aspects that have most worried environmental agencies and groups is the fact that many works that apparently threaten the conservation of resources and areas without urban construction, have approval of permits requested to the OGPe and that after these concerns are brought to light, these projects are reviewed and many times the permits are revoked, or additional studies or information is requested. After the catastrophes that have occurred in Puerto Rico since September 2017, including hurricanes Maria, Irma, Fiona and the earthquakes of January 2020, the island has received many federal funds from agencies such as FEMA and HUD to help with the recovery of the island. These federal agencies require environmental compliance at both the state and federal levels, which leads us to ask, do the professionals carrying out the projects take this into consideration and have the necessary knowledge to carry out the evaluations necessary to have said compliance in their projects?

Objectives

The main objective of this article is to analyze the regulations in force in Puerto Rico for the granting of Categorical Exclusions and compare them with the requirements and current process of requesting said document in the OGPe. In addition, state regulations will be compared with those used by FEMA and HUD agencies and a guide will be created for the professional user with which they can evaluate their project and determine if it qualifies as a Categorical Exclusion and, at the same time, the necessary documentation can be compiled to be in both federal and state environmental compliance.

Background



Results

Table 1 Basic Environmental Evaluation for Submitting a DEC Request to OGPe

Consideration	Yes, or no?	Comments
Is the project a "light" construction? (Less than 5,000 ft2 of constructions, new structures, and demolition activities)		If the answer to this question is "No", the DEC is not applicable for your project.
Is the project located in an area at risk of flooding, landslides, tidal waves, or the terrestrial maritime zone?		
Is the project located in areas where there is a degree of contamination exceeding those permitted by current regulations?		
Is the project located in ecologically sensitive or protected areas, in areas with unique species of flora and fauna that are in danger of extinction, or in area where natural or man-made systems may be ecologically affected (directly or indirectly)?		If you are unsure of any of these environmentally related considerations, request a SRM from OGPe to receive feedback from DRNA experts about your project.
Is the project located in an area where there are infrastructure problems or deficiencies in drinking water systems, sanitary water disposal, electricity supply or capacity for adequate transit of motor vehicles?		The exception to this rule is agricultural projects that are located in rural areas, as well as single-family residences associated with such projects.
Is the project located in an area that contains known or potential mineral deposits?		
Is the project located in an area where there are archaeological or cultural sites?		The only exception to this rule is that the project proponent has an endorsement from the "Instituto de Cultura Puertorriqueña" (ICP). If you are unsure of the resources that could be present on site, request an SRA from OGPE for feedback from ICP.
Is the project located in an area of steep topography, in hydrographic basins where sources of drinking supply may be affected?		
Will the project discharge pollutants to water bodies, or generate hazardous waste or air emission that exceed two (2) tons per year of criteria air pollutants, or five (5) tons of any combination of criteria pollutants, or will it release to air hazardous or toxic contaminants or objectionable odors?		
Will the project and its operations affect residential areas or quiet areas due to sound pollution, acoustic vibrations, or light pollution?		
If it is a commercial, industrial, service, or institutional facility, or is part of the development of land for tourist use and recreational projects, does it not exceed 20,000 ft2 of construction and does it comply with the conditions of local zoning and operation?		
If they are existing buildings or structures for the use of commercial, institutional, warehouse, and industrial or service facilities, does it not exceed 10,000 ft2 in total occupancy area and gross floor area?		
Is the proposed action being presented as a complete project or is it being proposed in parts or phases?		The actions may not be fragmented or segmented for environmental review purposes. These actions and their impacts must be seen as a whole.
If the proposed action is affected by the use or award of federal funds that require an evaluation process similar to that of NEPA ("NEPA-like process"), have you completed an evaluation according to the requirements of said agencies?		If you have not completed this evaluation, please see the next tables in which it is shown the FEMA and HUD requirements for the environmental evaluation of projects.

Table 2 Environmental Evaluation: HUD Requirements

Rule or Act	Compliance: Yes or No?	Supporting Documentation
Airport Clearance Zone		Map indicating distance between project and nearest airport
Coastal Barrier Resources (CBRA)		Map indicating distance between project and nearest CBR unit
Flood Insurance		FIRM map
Clean Air Act (CAA)		Levels or evidence of possible levels that the project will emit in during its construction and operation.
Coastal Zone Management		Map indicating location of project
Contamination and Toxic Substances		CERCLA Map (Superfund)
Explosive and Flammable Hazards		CERCLA Map (Superfund)
Endangered Species Act (ESA)		IPaC Report and comments from the agency, if available.
Farmland Protection		USGS Croplands Maps
Floodplain Management		FIRM Map
National Historic Preservation (NHPA)		SHPO maps and letter from the agency, if available.
Noise Abatement Control		Noise levels that will be produced during the construction and operations
Sole Source Aquifers		This does not apply to PR, but the evidence for projects in the U.S. are maps of Aquifers.
Wetlands Protection		USFWS - NWI Map
Wild and Scenic Rivers Act		NWI Map
Environmental Justice		EJ Screen Report or HUD Environmental Justice Aid Tool Report

Table 2 Environmental Evaluation: FEMA Evaluation (REC)

Rule or Act	Compliance: Yes or No?	Supporting Documentation
Clean Air Act (CAA)		Levels or evidence of possible levels that the project will emit in during its construction and operation.
Coastal Barrier Resources (CBRA)		Map indicating distance between project and nearest CBR unit
Clean Water Act		Map indicating nearest water body and statement explaining how the works to be performed could affect them.
Coastal Zone Management		Map indicating location of project
Floodplain Management (EO 11988)		FIRM Map
Wetland Protection (EO 11990)		NWI Map
Environmental Justice (EO 12898)		EJ Screen Report
Endangered Species Act (ESA)		IPaC Report
Farmland Protection Policy Act		USGS Croplands Maps
Migratory Birds Treaty Act		IPaC Report
National Historic Preservation (NHPA)		SHPO Maps
Magnuson-Stevens Fishery Conservation and Management Act		IPaC Report
Resources Conservation and Recovery Act		Statement describing nearest landfill, and the procedures that will be made for the disposal of materials and waste.
Wild and Scenic Rivers Act		NWI Map

Discussion

As a result of the literature review carried out on the "Reglamento Conjunto", the JCA regulation, the OGPe system and the FEMA and HUD requirements, the following tables were created. These tables can be used by the professional in charge of submitting the DEC in the Single Business Portal (SBP) and will help them in evaluating their project, determining if it can be considered as a categorical exclusion and can also serve as a guide of the supporting documents that the professional should compile as evidence of said request. Problems that have arisen with the misuse and approval of said document can be said to be the responsibility of both the proponent who submits the application and the authorized OGPe professional who approves it by means of the expedite procedure currently used. A more exhaustive evaluation process should be made before the approval of said document to avoid construction and development in sensitive areas and avoid wasting time reviewing files and revoking previously approved permits. In addition, all professionals in the industry should be aware of everything related to environmental preservation and do everything possible so that their projects and the projects for which they are requesting permits are in due environmental compliance.

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