

PLAN CATEGORICAL EXCLUSION QUESTIONS AND ANSWERS

What is a Categorical Exclusion?

Categorical exclusions are an essential part of NEPA that provide a categorical determination, based on agency experience, that certain categories of actions do not result in significant impacts to the human environment, eliminating the need for unnecessary or lengthy documentation in an environmental assessment or environmental impact statement.

What did a review of the new process determine?

The Forest Service has completed environmental review of the new process for developing and updating land management plans under regulations published last year. The environmental review has documented that writing management plans has no effect on the environment; this qualifies the individual plans of each National Forest for categorical exclusion from individual study under the National Environmental Policy Act. Further specific environmental study will be focused on each project that carries out the plan.

What happens if a proposed revision or amendment to a land management plan includes project or activities with on-the-ground effects?

A proposed revision or amendment to a land management plan will typically not include proposals for actions that approve projects or activities with on-the-ground effects - such proposals will be considered separately from the land management plan under appropriate Forest Service NEPA procedures.

How does a Categorical Exclusion benefit the planning process?

The rule establishes a dynamic process to account for changing forest conditions and assures that our national forests, grasslands, and prairies are better managed to provide clean air, clean water, and abundant wildlife for future generations. The planning rule allows us to respond to rapidly changing conditions such as wildfires, new science, and many other dynamics. Preparing land management plans and updating plan components to respond to new information or changed conditions is more timely and effective with the new categorical exclusion. It allows forest managers to spend more of their time implementing good management on the ground instead planning in the office.

With the categorical exclusion, forest plan revisions will now take 2-3 years instead of over 5 years with the previous rule. Under the 2005 planning rule, environmental analysis at the project level will be informed by more current and comprehensive information on forest conditions, thereby enabling the agency to work more effectively with the public to make sound on-the-ground decisions.

What does this new categorical exclusion do?

The Plan CE establishes an agency procedure to comply with NEPA for land management plans using a categorical exclusion. It defines the types of plans that may be categorically excluded from preparing an EA or EIS. Land management plans do not create significant environmental effects because they are strategic in nature, typically do not contain proposals for actions that approve projects and activities, and do not command anyone to refrain from undertaking projects and activities. Establishing the Plan CE does not, in and of itself, have effects on the social, economic, or ecological environment or on public participation and involvement.

At what level does the public become involved?

Public involvement is strengthened through this new approach to planning. The 2005 planning rule requires extensive public participation that exceeds the NEPA requirements when developing, amending, or revising plans. The rule improves the planning process by actively involving the public at every step. The Forest Service first collaborates with communities to identify how forests should improve in the future. The public participates throughout the process as plans are refined and finalized.

Why do you think these proposed plans have no significant impacts?

The Forest Service is looking at the nature of planning itself under the 2005 planning rule. These proposed plans set out a strategic framework to guide future management of the national forests, grasslands, and prairies and their resources. These proposed plans typically do not contain proposals for actions that approve projects and activities and do not command anyone to refrain from undertaking projects and activities. It is not until a specific project or activity is proposed by the agency that potential impacts to the environment can be meaningfully evaluated.

What is the Forest Service's legal basis to create a new categorical exclusion category?

In *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726 (1998), the Supreme Court recognized that, in contrast to proposals for actions that approve projects and activities, the land management plan provisions at issue “do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations” (523 U.S. at 733 (1998)). In the *Norton v. Southern Utah Wilderness Alliance* case, the Supreme Court's description of the BLM's land use plan, developed under FLPMA, is in accord with Forest Service land management plans developed under the 2005 planning rule. The Supreme Court noted that BLM's land use plans are “tools by which ‘present and future use is projected’ . . . [and] generally a statement of priorities.” The Court also noted that BLM's plans are normally not used to make site-specific implementation decisions.

Because of these and other cases, the Forest Service believes that an EIS is not required for plans and that plans can be categorically excluded from further NEPA documentation.

How does the Forest Service define an “extraordinary circumstance” that prompts an EA/EIS?

The following resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species
- Flood plains, wetlands, or municipal watersheds
- Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas
- Inventoried roadless areas
- Research Natural Areas
- American Indians and Alaska Native religious or cultural sites; and
- Archaeological sites, or historic properties or areas.

The further definition of extraordinary circumstances specifies that *the mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion.*

The responsible official must determine (1) whether a cause-effect relationship between a proposed action and the potential effect on these resource conditions exists and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions determines whether extraordinary circumstances exist.

What changes will be made to the Forest Service Handbook as a result of this new category?

The Handbook will:

- Define resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS. The Handbook will further explain application of the extraordinary circumstance conditions.
- Explain how scoping is required for all proposed actions, including those that would appear to be categorically excluded and that the public participation requirements the 2005 planning rule satisfy those requirements. It will contain related direction on correction, supplementation, or revision of environmental documents and reconsideration of decisions to take action.
- State that land management plans, plan amendments, and plan revisions developed in accordance with the planning rule provide broad guidance and information for project and activity decision-making in a National Forest System unit. Proposals for actions that

approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits, or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

Why wasn't the comment period for this proposal longer?

The comment period was from January 5 to March 7, 2005. After receiving over 55,000 comments on the proposed plan categorical exclusion published in the Federal Register on January 5, the agency did not find it necessary to extend the comment period.

If a categorical exclusion is used, how will the NEPA scoping requirement be satisfied?

Scoping is required on all proposed actions, including those that would appear to be categorically excluded. For land management plans, the 2005 planning rule requires extensive public participation when developing, amending, or revising plans. This rule's public participation requirements are sufficient to satisfy the scoping requirements for a categorical exclusion.

Will the Categorical Exclusion mean cumulative effects won't be analyzed in plans?

No. To account for cumulative effects of management and natural events, the 2005 planning rule requires a comprehensive evaluation be performed for the development of a new plan or plan revision, an annual monitoring plan and evaluation, and a review of the comprehensive evaluations at least every 5 years. These evaluations, as opposed to predictive EISs that quickly grow stale over time, will provide information for timely consideration of cumulative effects. The Plan or Plan Set of Documents provide a robust information base for the considering the cumulative effects of management activities in project or activity NEPA documents.

How are alternatives developed and analyzed without an EIS?

The 2005 planning rule presents a more effective planning process to encourage people to work together in planning. The Responsible Official and the public can review various options that respond to the need for changing the plan. Together they can successively narrow potential options until a proposed plan is developed. The 2005 planning rule recognizes that it is not always possible to present only one proposed plan for public comment. Therefore, options to the proposed plan may be provided for public comment when appropriate.

How will the Forest Service fulfill its trust responsibility to American Indian Tribal Governments?

Nothing in this Plan CE removes the Forest Service responsibility to honor the government-to-government relationship between Tribes and the Federal Government. The categorical exclusion complies with National Environmental Policy Act requirements for documenting land management planning activities. Establishing the CE itself has no direct effect on the occupancy and use of National Forest System land. In addition, the 2005 planning rule imposes an

obligation on the Responsible Official to consult early with tribal governments on a government-to-government basis. Given this early consultation, effects on tribal treaty-reserved rights and tribal-related concerns such as sacred sites can be identified and resolved as the plan is developed, amended, or revised.