



NATURAL RESOURCES
DIVISION

ARKANSAS DEPARTMENT OF AGRICULTURE

NATURAL RESOURCES DIVISION

Categorical Exclusions and Extraordinary Circumstances:

- (a) A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances.
 - (1) Certain actions eligible for Categorical Exclusion require the Responsible Official to document a determination that a Categorical Exclusion applies. The documentation must include: A brief description of the proposed action; a statement identifying the Categorical Exclusion that applies to the action; and a statement explaining why no extraordinary circumstances apply to the proposed action. The Responsible Official must make a copy of the determination document available to the public upon request. The Categorical Exclusions requiring this documentation are listed in paragraphs (a)(1)(i) through (a)(1)(iv) of this section.
 - (i) Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
 - (ii) Actions in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge.
 - (iii) Actions involving re-issuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.
 - (iv) Actions for award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

(2) Certain actions eligible for Categorical Exclusion do not require the Responsible Official to document a determination that a Categorical Exclusion applies. These Categorical Exclusions are listed in paragraphs (a)(2)(i) through (a)(2)(v) of this section.

(i) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local, and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility (see paragraph (a)(1)(i) of this section).

(ii) Actions involving emergency preparedness planning and training activities.

(iii) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials, or personal property provided that the property: has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property (see paragraph (a)(1)(i) of this section).

(iv) Actions involving providing technical advice to federal agencies, state or local governments, federally recognized Indian tribes, foreign governments, or public or private entities.

(v) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions

(b) The Responsible Official must review actions eligible for Categorical Exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are listed in paragraphs (b)(1) through (b)(10) of this section. (See 40 CFR 1508.4.)

(1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

(2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.

(4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.

(5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(6) The proposed action is known or expected to cause significant adverse air quality effects.

(7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally recognized Indian tribe approved land use plans or federal land management plans.

(8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

(9) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

(10) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(c) The Responsible Official may request that an applicant submit sufficient information to enable the Responsible Official to determine whether a Categorical Exclusion applies to the applicant's proposed action or whether an exceptional circumstance applies. Pursuant to 40 CFR Part 6 April 2019 Page 4 of 5 Subpart C, applicants are not required to prepare EIDs for actions that are being considered for Categorical Exclusion.

(d) The Responsible Official must prepare an Environmental Assessment (EA) or EIS when a proposed action involves extraordinary circumstances.

(e) After a determination has been made that a Categorical Exclusion applies to an action, if new information or changes in the proposed action involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the action may not meet the criteria for Categorical Exclusion and the Responsible Official determines that an action no longer qualifies for a Categorical Exclusion, the Responsible Official will prepare an EA or EIS.

(f) The Responsible Official, or other interested parties, may request the addition, amendment, or deletion of a Categorical Exclusion.

(1) Such requests must be made in writing, be directed to the NEPA Official, and contain adequate information to support and justify the request.

(2) Proposed new categories of actions for exclusion must meet these criteria:

- (i) Actions covered by the proposed Categorical Exclusion generally do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect.
- (ii) Actions covered by the proposed Categorical Exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(10) of this section and generally do not require preparation of an EIS; and
- (iii) Information adequate to determine that a proposed action is properly covered by the proposed category will generally be available.

(3) The NEPA Official must determine that the addition, amendment, or deletion of a Categorical Exclusion is appropriate.

(g) Any addition, amendment, or deletion of a Categorical Exclusion will be done by rulemaking and in coordination with CEQ pursuant to 40 CFR 1507.3 to amend paragraph (a)(1) or paragraph (a)(2) of this section.

Public Participation

Categorical Exclusions are granted without substantive environmental review requirements which accompanies the full EID requirements; however, some projects, even those that are granted a CE, will be subject to a “limited” amount of required correspondence with a short list of environmental crosscutters, as agreed upon with EPA (SEE AGENCIES BELOW):

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Field Supervisor

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Cindy Osborne, Data Manager

Arkansas Natural Heritage Commission

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USDA Natural Resources Conservation Service

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U.S. Army Corps of Engineers (Select Appropriate District)

Chief, Regulatory Branch U.S.

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