

On September 18, 1998, a lawsuit was filed against the Forest Service arguing that the 1992 categorical exclusions were improperly promulgated. On September 28, 1999, the United States District Court for the Southern District of Illinois found that the categorical exclusions were properly promulgated. However, the court found insufficient evidence in the record to support the agency's decision to set the volume limits in Categorical Exclusion 4 at 250,000 board feet of merchantable wood products for timber harvest and 1 million board feet of merchantable wood products for salvage. Accordingly, the court declared Categorical Exclusion 4 in section 31.2 of Chapter 30 FSH 1909.15 null and void and enjoined the agency from its further use.

In an October 1, 1999, letter, the Associate Chief for Natural Resources notified the Regional Foresters of the court's injunction and instructed them to refrain from further use of Categorical Exclusion 4. The agency has recently issued Interim Directive No. 1909.15–2002–1 to formally notify employees to discontinue use of Categorical Exclusion 4 in Forest Service Handbook 1909.15, Environmental Policy and Procedures.

Most timber harvest projects that were originally excluded under Categorical Exclusion 4 were subsequently reconsidered, analyzed, and documented in environmental assessments. However, field offices reported that the level of documentation and analysis required for these environmental assessments forced agency personnel to extend timeframes and expend undue energy and funding in order to complete minor harvesting projects.

In response to field concerns during the fall of 2001, the Associate Deputy Chief for the National Forest System requested field units to monitor selected timber harvests that would have qualified under former Categorical Exclusion 4. In response, field units collected data on 154 randomly selected timber harvests. The review's objective was to determine if these harvests did or did not have significant effects on the human environment. The review concluded that none of the 154 projects had a significant effect on the human environment.

Based on this review and the agency's extensive experience with small timber harvest projects, the Forest Service proposes to add three new categorical exclusions to its Environmental Policy and Procedures Handbook (FSH 1909.15). These categories would appear in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, and

would provide specific, narrow categorical exclusions for limited timber harvest. For each of the proposed categories, examples of potential actions that fit the category are provided. These examples are intended to be illustrative only and are not intended to be either constraining or all-inclusive.

It is important to note that the proposed categorical exclusions are not intended to replace the former Categorical Exclusion 4. They are limited by size and are more specific about the types of harvest methods, when compared to the agency's former Categorical Exclusion 4. The proposed categorical exclusions are, therefore, much more limited in scope than the former Categorical Exclusion 4.

Description of Proposed New Categorical Exclusions

The first new proposed categorical exclusion (Categorical Exclusion 10) would allow harvest of live trees not to exceed 50 acres with no more than ½ mile of temporary road construction. This category could not be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another, such as converting a timber stand to an open field. Proposed Categorical Exclusion 10 would not include these types of treatments. This category would allow incidental removal of trees for temporary roads, landings, and skid trails. It would allow low-impact silvicultural treatments by timber purchasers.

Examples of projects that could be implemented under proposed Categorical Exclusion 10 are removal of individual trees to reduce fuels adjacent to a residential area and removal of scattered trees to improve the health and vigor of a remaining stand.

The next category that the agency proposes (Categorical Exclusion 11) would allow salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction. This categorical exclusion would permit salvage harvest in areas where trees have been severely damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product.

Categorical Exclusion 11 would be limited to salvage of dead and dying trees by timber purchasers and may also allow incidental removal of green trees

for temporary roads, landings, and skid trails.

The final new category (Categorical Exclusion 12) proposed by the Forest Service would allow removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. This category may allow incidental removal of green trees for temporary roads, landings, and skid trails.

In all three proposed categories, trees could be sold as sawlogs, fuelwood, or specialty products.

Rationale for the Proposal

The scope of the proposed new categories is consistent with the scope of the 154 projects examined in the 2001 review, each of which had no significant environmental effects. Consequently, the level of effects associated with these proposed new categories would also be below the level of significant environmental effects. Green tree harvests monitored in the 2001 review averaged 70 acres in size while sanitation and salvage harvests averaged 253 acres in size. Having reconsidered the basis for establishing categorical exclusions for small timber harvests, the Forest Service now believes that acreage is a more useful measure of project magnitude than timber volume. Acreage is easily delineated and quantified when developing a proposal, while estimating timber volume within a given acreage may vary considerably based on statistical samples, merchantability standards, and condition of the timber.

With regard to road construction that would fall within these new categorical exclusions, it is important to note that only temporary road construction would be permitted. As defined in Forest Service Manual 7705, temporary roads are not intended to be a part of the forest transportation system and are not necessary for long-term resource management. The Forest Service anticipates that only a small percentage of projects would require any temporary road construction. The 2001 review data indicates that for each project that would have qualified under Categorical Exclusion 4 an average of ½ mile of temporary road was built. Therefore, the agency has selected ½ mile as the upper limit of temporary road construction.

These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat,