

PBR VS. NEPA CATEGORICAL EXCLUSIONS

At first glance, permit by rule (PBR) and categorical exclusions (CE) within the National Environmental Policy Act (NEPA) may seem very similar. But they should not be confused. PBR allows for one-time substantive assessment and approval of activities that might be repeated for many projects at many locations. Essentially, a single permit that applies to multiple parties, so long as pre-set criteria are met. CE's are a one-time determination that certain activities do not warrant the need for site specific environmental assessments (EA) or environmental impact statements (EIS), which are much more involved. But CE's still require agency decisions specific to each site. They are both streamlining measures, but are otherwise entirely separate.

PBR

Pre-approved permits with specific substantive standards.

CE

Pre-approved activity that bypasses only NEPA studies.

CE's and PBR would rarely coincide. CE's only occur when an activity does not individually or cumulatively impact the environment negatively. Permits typically are required when there is a negative impact, but when it's regulatable. The two are used differently.

When CE's are not in effect, an EA or EIS will be required under NEPA. First, an EA would be performed, which would determine whether a project would have significant environmental impacts. If not, a Finding of No Significant Impact (FONSI) would be issued. If so, the EIS would be performed. This EA/EIS process can take years or even upwards of a decade. PBR becomes very valuable in those circumstances because those lengthy processes can be done one time, as opposed to doing those processes repeatedly for each permit application.

Despite CE's shortening the NEPA process, the action is still subject and beholden to an agency decision, which will always require a NEPA process.

PBR VS. NEPA CATEGORICAL EXCLUSIONS

PBR

All considerations,
including NEPA, evaluated

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Government approves activity

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Automatic/Near Automatic
Approval Upon Notice

NEPA

Proposed Action

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If CE does not apply, EA

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If significant environmental
impacts found, EIS

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If EIS, Notice/public involvement

↓

Agency Decision

CE

Proposed Action → Does a CE Apply? → Agency Decision Bypassing NEPA Studies

With a PBR, nearly the entire permitting process occurs when the PBR is created. Site-specific actions are already covered by the PBR and a project is not beholden to an agency decision on a site-specific level. All NEPA review will have already concluded. Once a source has self-determined it qualifies, all that has to be done is to notify the government of its intention to commence a project. The government does not have the same discretionary function. Rather, it either automatically processes the permit or does so with limited time and discretion.

Congress could encourage the streamlined approach found in PBRs by identifying particular activities that should be subject to PBR and NEPA CE's. But even if a CE is not achievable, a PBR could drastically improve the permitting process. The ability to avoid site-specific EA's or EIS's is where a PBR solves the problem that CE's do not.