

## **Categorical Exclusions under the National Environmental Policy Act and Transportation Conformity Requirements**

The purpose of this Fact Sheet is to clarify when a transportation conformity determination may be required for a project for which a Categorical Exclusion (CE) will be prepared under the National Environmental Policy Act (NEPA).

### **Categorical Exclusions under NEPA Assignment**

Caltrans prepares CEs under NEPA under both the [23 USC 326 CE Assignment MOU](#) and the [23 USC 327 NEPA Assignment MOU](#). The 23 USC 326 CE Assignment MOU assigns to Caltrans the authority and responsibility for making CE determinations under the 23 CFR 771.117(c) and 23 CFR 771.117(d) lists, plus those activities included in Appendix A of the CE Assignment MOU.

For projects that are not included on either 1) the “c” or “d” lists or 2) included in Appendix A of the CE Assignment MOU, but nevertheless qualify as a CE, Caltrans has the authority and responsibility to make this determination under the 23 USC 327 MOU.

### **Transportation Conformity**

Transportation “conformity” is the requirement under the federal Clean Air Act that all Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) transportation activities (including regional and metropolitan transportation plans [RTP/MTP], regional and metropolitan transportation improvement programs [RTIP/MTIP], and projects) “conform” to the State Implementation Plan (SIP). The SIP is a collection of plans the state has developed for attaining and maintaining the National Ambient Air Quality Standards (NAAQS) that are established by the U.S. Environmental Protection Agency (U.S. EPA). Under the federal Clean Air Act, U.S. EPA has designated “planning areas” throughout the country. Areas are designated as being in “attainment” for a given pollutant if they meet the prescribed standards. If an area does not meet the standard, it is designated as a “nonattainment” area for that pollutant. Areas that were previously designated as non-attainment areas but have now met the standard (with U.S. EPA approval of a suitable air quality plan) are called “maintenance” areas. Transportation conformity applies only in nonattainment and maintenance areas. It also applies if projects are determined to be regionally significant as defined at [40 CFR 93.101](#) and are approved by a regular recipient of federal highway or transit funds, such as Caltrans and most local transportation agencies. Conformity applies to projects both on and off the State Highway System (SHS) and takes place on two levels—the regional (planning and programming) level and at the project level. The project must “conform” at both levels to be approved.

### **Responsibility for Transportation Conformity Determinations under NEPA Assignment**

Under the CE Assignment MOU, the Department has been assigned authority and responsibility for making the project-level conformity determination. The [Air Quality Conformity Findings Checklist](#) must be completed for each project regardless of attainment status and included in the project environmental file. For projects processed under 23 USC 326, the Senior Environmental Planner’s signature on the CE form formally documents the conformity determination for the project. If any analysis is performed to support the checklist entries, that analysis must be retained in the project file.

Under the 23 USC 327 NEPA Assignment MOU, the Department has *not* been assigned transportation conformity determinations; for 23 USC 327 CEs, coordination with FHWA is needed to obtain the transportation conformity determination. FHWA's transportation conformity determination must be made by FHWA before the 23 USC 327 CE can be signed and approved by the Department. See the [Air Quality Section of Chapter 38, NEPA Assignment](#) for additional details on coordinating with FHWA to obtain the conformity determination.

## Categorical Exclusions under the National Environmental Policy Act and Transportation Conformity Requirements

### When is a project EXEMPT from both PROJECT LEVEL AND REGIONAL Transportation Conformity Requirements?

There are only **two** situations in which transportation conformity requirements do not apply:

- Conformity does not apply to the project area (i.e., the area is designated as “attainment”/“unclassifiable”) for all NAAQS. If the area is designated as “attainment-maintenance” then conformity requirements must be met.
- The project is exempt from ALL conformity analysis requirements. Projects exempt from all conformity analysis requirements include:
  - Projects listed in Table 2 of 40 CFR 93.126. For more information, please see the Fact Sheet [“Clarifications on Exempt Project Determinations.”](#)
  - Traffic signal synchronization projects (using ONLY existing signals) per 40 CFR 93.128. These projects are exempt at the time of the project, but must be reported to the Metropolitan Planning Organization (MPO) and included in the baseline of the next regional conformity analysis.

### When is a project EXEMPT from REGIONAL transportation Conformity Requirements?

The project types listed in Table 3 of 40 CFR 93.127 are exempt from REGIONAL conformity requirements only. These types of projects include:

- Intersection channelization projects.
- Intersection signalization projects at individual intersections.
- Interchange reconfiguration projects.
- Changes in vertical and horizontal alignment.
- Truck size and weight inspection stations.
- Bus terminals and transfer points.

Although exempt from regional analysis, these projects must have a hot-spot requirement demonstrated prior to making a project-level conformity determination if the project is located in a CO and/or PM 2.5 or PM 10 nonattainment or maintenance area, *including* concurrence via interagency consultation that the project is not a Project of Air Quality Concern (POAQC) in a PM 2.5 or PM 10 nonattainment or maintenance area.

### Frequently Asked Questions

**Q:** My project qualifies for a CE under 23 USC 326. Is it exempt from transportation conformity?

**A:** No. There is no relationship between a Categorical Exclusion under NEPA and the transportation conformity requirements under the Clean Air Act. There are many types of projects that would qualify for a CE under 23 USC 326 that would also need to be included in the area’s regional or metropolitan transportation plan (RTP/MTP) and regional or metropolitan transportation improvement program (RTIP/MTIP) conformity determination. Such a project may also require a project-level conformity determination as well as interagency consultation.

**Q:** Does every project that qualifies for a CE under 23 USC 326 and is located in a nonattainment/maintenance area for PM2.5, PM10, or CO require interagency consultation?

## **Categorical Exclusions under the National Environmental Policy Act and Transportation Conformity Requirements**

**A:** Generally, projects that **clearly fit within the exempt** categories listed in (40 CFR 93.126 and 93.128) do not require any project-level conformity determination and are not required to undergo interagency consultation to determine whether they are in fact exempt from conformity requirements, although some Metropolitan Planning Organizations or Regional Transportation Planning Agencies may follow different procedures. Projects that were previously found to be exempt (based on 40 CFR 93.126 and 93.128) as part of the programming or NEPA processes also need not be revisited for confirmation of exemption through interagency consultation unless the project has substantially changed.

**Q:** What types of projects could qualify for a CE yet still need a project-level conformity determination (including hot-spot analysis)?

**A:** In general, any project that may affect the FLOW and/or VOLUME of traffic may require a conformity determination. Some examples of the types of projects that may need a project-level conformity determination (and possibly interagency consultation) include:

- The addition of mixed-flow lanes, managed lanes, etc.
- The conversion of a mixed-flow flow lane to a managed lane OR vice versa
- The addition of auxiliary lanes more than one mile
- The addition of weaving lanes
- The addition of turning lanes
- The addition of truck climbing lanes (inside an urbanized area)
- Park and ride projects
- Bridge replacement projects if ANY of the following are included as part of the project:
  - The roadway(s) approaching the bridge are widened
  - Channelization (right-turn, left-turn) lanes are added to an intersection at the end of the bridge
  - A signal is added to an intersection at the end of the bridge
  - The bridge is NOT on the same vertical/horizontal alignment as the old one

**Q:** My project is part of the Highway Safety Improvement Program (HSIP). Is it exempt from transportation conformity?

**A:** Yes. Projects that are in the state's Highway Safety Improvement Program (HSIP) are exempt, regardless of funding source. That is, projects that are listed in the state's HSIP are exempt even if they are not funded from "Safety" funds but funded by other sources, such as "Surface Transportation Program" funds.

**Q:** Can projects that are undertaken for safety but are not listed in the HSIP be exempt?

**A:** Yes, it's possible that such a project could be exempt under the item "Projects that correct, improve, or eliminate a hazardous location or feature" from 40 CFR 93.126 Table 2. For more information, please see the Fact Sheet "[Clarifications on Exempt Project Determinations](#)" as well as the "[Conformity Streamlining Exemption Form](#)."