

MAP-21 FACT SHEET

PREPARED BY: GINA MORAN Chief, Environmental Management Office
Environmental Analysis
Phone: (916) 651-8164; Fax: (916) 653-7757; e-mail: Gina.Moran@dot.ca.gov

DATE: October 12, 2012

SUBJECT: MAP-21: Categorical Exclusions

PROBLEM STATEMENT:

Sections 1315 through 1318 of MAP-21 provide a number of new provisions for the use of categorical exclusions (CEs). These provisions require that the USDOT issue a notice of proposed rulemaking. This includes the publication in the *Federal Register* of a proposed rule and the publication of a final rule after consideration of public comments on the proposed rule. The final rule will establish the date when the new CEs become effective.

RECOMMENDATION:

It is recommended that Caltrans continue to use our unique authority under NEPA Assignment and existing procedures to process NEPA CE documentation for projects. Caltrans should continue to work through AASHTO and the Department's Office of Legislative Affairs to comment on proposed Federal regulations and guidance.

BACKGROUND:

The proposed changes will add or modify CEs listed in 23 CFR 771.117 (c) and (d). The existing NEPA Assignment program allows Caltrans to determine if a project qualifies for a CE with the proper documentation. Section 1508.4 of the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR 1508.4) defines a categorical exclusion as "a category of actions which to not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations." Any new CEs will be subject to the same "unusual circumstances test" that applies to existing FHWA CEs (23 CFR 771.117(b)). Documentation that the project meets the CE requirements is still required. The Caltrans Standard Environmental Reference has procedures in places for this documentation.

ALTERNATIVES:

Alternative 1: Use the existing procedures to process NEPA CE documentation for projects. In coordination with the AASHTO Standing Committee on the Environment, have Caltrans staff work to ensure that added conditions are not included as part of the rulemaking process. Comment as part of SCOE and as a State on the rulemaking.

Pros: Minimizes Caltrans effort and avoids duplication by utilizing existing processes to meet MAP-21 requirements.

Cons: None

Alternative 2: Wait for FHWA to issue guidance on these processes.

Pros: Eliminates "guesswork" as to what FHWA requires.

Cons: A new process may create additional work for staff.

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PROPOSED IMPLEMENTATION SCHEDULE:

Caltrans will comment on proposed rulemaking and guidance as it comes from US DOT.

As final rulemaking is completed, the Standard Environmental Reference will be updated to ensure that CE documentation includes any new requirements.