

# Categorical Exclusion Assignment Overview

## (23 U.S.C. 326)

### What is Categorical Exclusion (CE) Assignment?

- CE Assignment allows the Secretary of Transportation to assign, and the State to assume, the Secretary's National Environmental Policy Act (NEPA) responsibilities for highway projects listed in 23 CFR 771.

### How does a State assume CE responsibilities?

- A State must waive its sovereign immunity under the Eleventh Amendment.
- NEPA decisions are assigned through a Memorandum of Understanding (MOU) between FHWA and the State as outlined in 23 U.S.C. 326(c).

### What is the State responsible for?

- NEPA decisions for assigned CEs.
- Environmental responsibilities to comply with Federal laws other than NEPA (as determined in the MOU).
- Solely liable for assigned CE decisions in Federal court.
- Maintaining project files and documenting all actions.
- Maintaining professional and experienced staff.
- Project-level transportation conformity determinations on assigned projects.

*Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.*

### What responsibilities does FHWA retain?

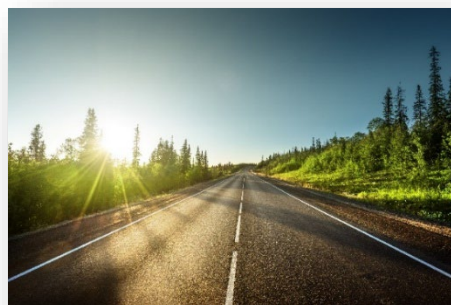
- Government-to-Government Tribal consultation.
- NEPA decisions for projects that are not assigned.
- Oversight of CE Assignment (monitoring).
- Program technical assistance and policy interpretation.
- Section 4(f) Constructive Use determinations.

### What are the benefits of CE Assignment?

- Increased control over decision-making.
- Accelerated project delivery.
- Cost savings.
- State employee capacity building.
- State can make project-level transportation conformity determinations.
- Increased consistency.
- Stronger stakeholder relationships.

### Where can I find more information?

- [23 U.S.C. 326](#)
- [FHWA's Environmental Review Toolkit](#)
- Contact FHWA's Office of Project Development and Environmental Review
- [FHWANepaAssignment@dot.gov](mailto:FHWANepaAssignment@dot.gov)



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