

description of the criteria for exemptions and clarification of the types of projects and programs that are exempt. Projects for which exemptions can not be granted are also included in this policy memorandum.

#### A. General Description

Highway sanctions, when applied, halt the approval of projects and the award of any grants funded under title 23, United States Code (Title 23), except as defined in section 179(b) and this policy. This applies to the following major funding programs:

1. Surface Transportation Program (STP);
2. National Highway System;
3. Interstate Maintenance;
4. Bridges;
5. Interstate Construction;
6. Interstate Substitution; and
7. Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Projects funded under all other Title 23 programs and other authorizations are also subject to sanctions, including demonstration projects identified by the Congress and specified in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 under sections 1103–1108 or in other laws, unless they meet the criteria set forth in this policy memorandum. Additionally, projects to be funded under previously authorized programs, such as Federal-aid Urban, etc., are also subject to sanction.

Projects funded under title 49, U.S.C., chapter 53, the Federal Transit Laws, as amended, are categorically exempt from sanctions by law as are other transportation programs authorized by statutes other than Title 23.

#### B. Typical Nonexempt Projects

The following types of projects generally do not meet the exemption criteria in section 179(b)(1) and would not be allowed to proceed if funded or approved under Title 23 unless it is demonstrated that they meet one or more of the exemption criteria. These include projects that expand highway or road capacity, nonexempt project development activities and any other project that does not explicitly meet the criteria in this notice. These may include activities for:

1. The addition of general purpose through lanes to existing roads;
2. New highway facilities on new locations;
3. New interchanges on existing highways;
4. Improvements to, or reconfiguration of, existing interchanges;
5. Additions of new access points to the existing road network;

6. Increasing functional capacity of the facility;

7. Relocating existing highway facilities;

8. Repaving or resurfacing except for safety purposes, as defined by section 179(b);

9. Nonexempt projects, project development, including NEPA documentation and preliminary engineering, right-of-way purchase, equipment purchase, and construction;

10. Stand-alone projects that do not affect air quality but have other environmentally beneficial impacts such as wetland mitigation, planting and landscaping, purchase of scenic easements, billboard and other sign removal, historic preservation, transportation enhancements, and noise abatement.

#### C. Project Exemptions

Under section 179(b)(1) of the CAA, once the EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those which fall under three categories: (1) safety programs and projects; (2) congressionally-authorized activities under section 179(b)(1)(B); and (3) air quality improvement projects that do not encourage single occupancy vehicle capacity.

##### 1. Safety Programs and Projects

Safety projects are those for which the principal purpose is an improvement in safety but the projects may also have other important benefits. These projects must resolve a demonstrated safety problem with the likely result being a significant reduction in or avoidance of accidents as determined by the FHWA. Such demonstration must be supported by accident or other data submitted by the State or appropriate local government.

Three types of categories of safety-based programs and projects could potentially meet the exemption criteria: grant programs and related activities; statewide safety improvement programs; and specific projects outside of a statewide safety program. Each category calls for a different level of justification specific to a particular category.

a. Programs administered by the National Highway Traffic Safety Administration qualify for blanket exemptions, on the basis that their principal purpose is to improve safety and do not include any capital improvements. Programs that fall within this category include but are not limited to: Use of Safety Belts and Motorcycle Helmets (23 U.S.C. 153); National Maximum Speed Limit (23 U.S.C. 154); Highway Safety Programs (23 U.S.C.

402); Highway Safety Research and Development (23 U.S.C. 403); Alcohol Traffic Safety Programs (23 U.S.C. 408); and Alcohol-Impaired Driving Countermeasures (23 U.S.C. 401).

b. Statewide safety improvement programs include specific safety projects that can be justified on the basis of State or national level data, which will be additionally supported by data and analysis stemming from the management system requirements once the systems are fully operational. Projects meeting this exemption category would come out of the Highway Safety Improvement Program (23 CFR part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR part 650, subpart D). The Highway Safety Improvement Program also includes the Hazard Elimination Program (23 U.S.C. 152).

c. Specific projects for which justification is needed to show that the project is related to safety, unless the project is drawn out of a statewide safety program and would be likely to reduce accidents, would include capital projects such as:

1. Elimination of, and safety features for, railroad-highway grade crossings;
2. Repair of damage caused by natural disasters, civil unrest, or terrorist acts;
3. Changes in vertical or horizontal alignment;
4. Increasing sight distance;
5. Elimination of high hazard locations or roadside obstacles;
6. Shoulder improvements, widening narrow pavements;
7. Adding or upgrading guardrail, medians and barriers, crash cushions, fencing;
8. Pavement resurfacing or rehabilitation to improve skid resistance;
9. Replacement or rehabilitation of unsafe bridges;
10. Safety roadside rest areas, truck size and weight inspection stations;
11. Addition and upgrading of traffic control devices, (traffic signals, signs, and pavement markings);
12. Lighting improvements; and
13. Truck climbing lanes.

Justification for an exemption on the grounds of safety must be based on accident or other data such as the data derived from a safety management system, bridge management system, the Highway Safety Improvement Program, or the Highway Bridge Replacement and Rehabilitation Program. Such data need not be specific to the proposed project's location but may be based on accident or other data from similar conditions, including national experience where such projects have been implemented to remove safety hazards. For example,