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# SECTION F

## PROJECT LEVEL CONFORMITY

### OVERVIEW OF PROJECT LEVEL REQUIREMENTS WITHIN NONATTAINMENT AND MAINTENANCE AREAS

The following Chapter provides a general overview of the regulatory framework under the 1990 CAA and EPA's transportation conformity rule for demonstrating project level conformity in carbon monoxide (CO) nonattainment and maintenance areas.<sup>1</sup> In addition, project level hot-spot modeling methodologies and requirements for CO and PM-10 areas are discussed in [Chapter 10](#) of this guide. Hot-spot analyses are not required in ozone and NO<sub>2</sub> nonattainment and maintenance areas.

Both Section F and [Chapter 10](#) focus on the key elements of project level conformity requirements, including CO hot-spot requirements. Questions and answers are provided at the end of this section in order to provide the reader with a better understanding of some of the key issues related to project level conformity.

### STATUTORY REQUIREMENTS UNDER THE CLEAN AIR ACT AMENDMENTS (CAA) FOR PROJECT LEVEL CONFORMITY

Under the CAA, all Federal actions within nonattainment and maintenance areas must first be shown to conform to the purpose of an EPA-approved SIP prior to any approval, acceptance, or funding actions. In terms of demonstrating conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS (as well as achieving expeditious attainment of the NAAQS), the CAA requires that Federal activities will not:

*42 U.S.C. §176(c)(1)(B)*

- (i) cause or contribute to any new violation of any standard in any area;*
- (ii) increase the frequency or severity of any existing violation of any standard in any area; or*
- (iii) delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area...*

Further, the CAA requires that the determination of conformity shall be based upon the:

*42 U.S.C. §176(c)(1)(B)(iii)*

*...most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates...*

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<sup>1</sup> Under the National Highway System Designation ("NHS") Act, transportation and general conformity requirements are only applicable to nonattainment and maintenance areas designated by the EPA.

In addition, the CAA requires that transportation projects may only be adopted or approved by a metropolitan planning organization (MPO) or any recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, or found in conformity by a MPO or approved, accepted, or funded by the U.S. DOT only if the transportation project meets either the requirements of §176(c)(2)(D) or the following requirements:

*42 U.S.C. §176(c)(2)(C)*

- (i) such a project comes from a conforming plan and program;*
- (ii) the design concept and scope of such a project has not changed significantly since the conformity finding regarding the plan and program from which the project derived; and*
- (iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.*

Under §176(c)(2)(D) of the CAA, any transportation project *not* referred to in §176(c)(2)(C) as shown above, (a category that is commonly referred to as "projects not from a conforming plan/TIP") shall be treated as conforming to the applicable SIP only if it is demonstrated that the projected emissions from such a project, when considered together with emissions projected for the conforming transportation plan and program within the nonattainment or maintenance area, do not cause such plan and program to exceed the emissions reductions projections and schedules assigned to such plan and program in the SIP. Conformity of transportation projects may be found to conform if they meet the following statutory requirements under §176(c)(3)(B) of the CAA:

*42 U.S.C. §176(c)(3)(B)*

- ...(i) come from a conforming transportation plan and program;*
- (ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project....*

Under §176(c)(3)(B)(ii) of the CAA shown above, such a determination may be made either through the conformity determination on the TIP or the individual project taken as a whole during the environmental review phase of project development.

## **TRANSPORTATION CONFORMITY RULE CRITERIA FOR MEETING PROJECT LEVEL REQUIREMENTS**

The following table summarizes the project level conformity requirements based upon procedures and criteria extracted from the transportation conformity rule.<sup>2</sup> [Exhibit 41](#) provides a cross-reference to other parts of this Guide based on three different scenarios: a) actions at all times; b) projects from a conforming plan/TIP; and c) projects not from a conforming plan/TIP.

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<sup>2</sup> 40 CFR, Part 93, §93.109, as amended by 62 FR 43806-43818, Aug. 15, 1997.

**Exhibit 41**  
**Project Level Transportation Conformity Criteria<sup>3</sup>**

All Actions at All Times		Cross-reference in Guide
§93.110	Latest planning assumptions.	<a href="#">Chapter 5</a>
§93.111	Latest emissions model.	<a href="#">Chapter 5</a>
§93.112	Consultation	<a href="#">Chapter 2</a>
<b>Project (From a Conforming Plan/TIP)</b>		
§93.114	Currently conforming plan/TIP	<a href="#">Section A</a> and Chapters 1-5
§93.115	Project from a conforming plan/TIP	<a href="#">Section F</a> and <a href="#">Chapter 10</a>
§93.116	CO and PM-10 hot spots	<a href="#">Chapter 10</a>
§93.117	PM-10 control measures	<a href="#">Section F</a> and <a href="#">Chapter 10</a>
<b>Project (Not From a Conforming Plan/TIP)</b>		
§93.113(d)	TCMs	<a href="#">Chapter 3</a>
§93.114	Currently conforming plan/TIP	<a href="#">Section A</a> and Chapters 1-5
§93.116	CO and PM <sub>10</sub> hot spots.	<a href="#">Section F</a> and <a href="#">Chapter 10</a>
§93.117	PM <sub>10</sub> control measures.	<a href="#">Section F</a> and <a href="#">Chapter 10</a>
§§93.118 or 93.119	Emissions budget or emissions reduction	<a href="#">Section B</a> and <a href="#">Chapter 5</a>

**CRITERIA AND PROCEDURES FOR DETERMINING PROJECT LEVEL CONFORMITY**

The following regulatory and preamble excerpts were taken from the transportation conformity rule and are shown below in order to provide you with a better understanding of the criteria and procedures for demonstrating conformity.

*40 CFR §93.104(d), as amended by 62 FR 43804, August 15, 1997*

*Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.*

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<sup>3</sup> 40 CFR, §93.109(b)-Table 1, as amended by 62 FR 43807, Aug. 15 1997.

*Criteria and procedures: Projects from a plan/TIP.*

*(a) The project must come from a conforming plan and program. If this criteria is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan/TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.*

*(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:*

*(1) For projects which are required to be identified in the transportation plan in order to satisfy §93.106 ("Content of transportation plans"), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or*

*(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.*

*(c) A project is considered to be from a conforming program if the following conditions are met:*

*(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and*

*(2) If the TIP describes a project design concept and scope which includes project level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by §93.125(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.*

*(d) TCMs. This criteria is not required to be satisfied for TCMs specifically included in an applicable implementation plan.*

## **WHO MAKES PROJECT LEVEL CONFORMITY DETERMINATIONS?**

Project sponsors are responsible (typically a State or local transportation agency) for gathering information for project level conformity determinations, and their roles are discussed and clarified by EPA in the transportation conformity rule published in November 1993.<sup>4</sup> Metropolitan planning organizations (MPOs) do not necessarily adopt or approve specific projects, and are not required by the CAA to make project level conformity determinations (unless they are the project sponsor involved in a project level adoption or approval role, such as a region-wide congestion pricing project, or an ITS project or program implemented at the regional level). U.S. DOT must determine

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<sup>4</sup> 40 CFR, 58 FR 62207, Nov. 24, 1993.

project-level conformity before a federal highway or transit project can be funded or approved.

Project level conformity determinations will be made as part of the NEPA process on those projects which require U.S.DOT funding or approval actions. Project level conformity determinations are required to be performed by the project sponsor prior to U.S. DOT actions to approve a transportation project under NEPA. In addition, prior to NEPA approval action and subsequent funding actions by U.S. DOT, the project itself must be included in the latest conforming MPO's transportation plan/TIP (as well as the latest approved statewide transportation improvement program-STIP).<sup>5</sup> Due to the March 1999 conformity court decision, project-level conformity determinations are required at federal approval and funding stages after NEPA (e.g., final design, right-of-way acquisition).

### **INTERAGENCY CONSULTATION IN PROJECT LEVEL CONFORMITY DETERMINATIONS**

The interagency consultation process has several critical links to project level conformity determinations. For more information related to the interagency consultation process, please refer to [Chapter 2](#) of this guide or 40 CFR §93.105, as amended by 62 FR 43804-06, Aug. 15, 1997 of the transportation conformity rule. Perhaps the most important part of interagency consultation is the opening of communication channels among all parties (including the general public) involved in the conformity process to avoid last minute problems which could delay a project. In summary, the specific, required interagency related to project level analysis are listed below.

*40 CFR §93.105(c)(1)(i)(ii)(iii)(v), as amended by 62 FR 43805, August 15, 1997*

*Interagency consultation procedures. Specific Processes.*

*Interagency consultation procedures shall also include the following specific processes:*

*(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:*

*(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analysis and regional emissions analysis;*

*(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;*

*...(v) Identifying, as required by §93.123(b), projects located at sites in nonattainment areas which have vehicle and roadway emissions and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore, require quantitative PM-10 hot-spot analysis.*

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<sup>5</sup> 23 CFR, §450.222, Oct. 1993.

## **HOW DOES PROJECT LEVEL CONFORMITY APPLY TO NON-FEDERAL PROJECTS?**

Project level conformity determinations are not required for regionally significant non-federal projects, but the conformity rule requires that these projects be included in a conforming plan/TIP or plan/TIP regional analysis before they are approved by a recipient of federal funds. Failure to consider the regional emissions impacts of regionally significant non-federal projects would be inconsistent with Clean Air Act section 176(c)(2)(C)<sup>6</sup>. Projects sponsors of regionally significant projects which are not FHWA/FTA projects must provide information on these projects to MPOs (including changes on design concept and scope or if alternative locations are still being considered) as part of the interagency consultation process. The conformity SIP must include a process for ensuring that information about non-federal projects is disclosed to the MPO on a regular basis<sup>7</sup>.

## **HOW ARE MULTIPLE STAGE PROJECTS HANDLED IN PROJECT LEVEL ANALYSIS?**

In response to commenters who requested clarification of how EPA intends to treat projects with multiple stages, the EPA's November 1993 transportation conformity rule defines highway project to consist of *all required phases* necessary for implementation. NEPA requires projects to have logical termini and independent utility. Therefore, project level conformity determinations are made on entire projects as defined by NEPA, not just stages of them. NEPA termini must be included in the regional emissions analysis and project level analysis before the project may be found to conform. If only some of the project's stages are included in the conforming TIP, the project may still be found to conform provided the total project is included in the regional emissions analysis. Hot spots must be addressed separately for different project phases if there is significant delay between them, in order to prevent violations being caused for a period of years before later phases which would correct the violations are actually programmed and built. Also [see Appendix M](#) for additional information on projects impacted by conformity lapse.

## **HOW DOES PROJECT LEVEL CONFORMITY RELATE TO THE CONFORMITY SIP?**

Once a conformity SIP (which may also include applicable CO project level conformity criteria and procedures) is approved by EPA it becomes part of the applicable SIP and is enforceable under Federal law for fulfilling the transportation conformity requirements under the CAA. Conformity SIPs have been submitted and approved by EPA in several States (e.g., Ohio, New Mexico, Texas, Alaska, and Oregon) since the transportation conformity rule was published in November 1993. However, only one State, California, has received EPA regional office approval of a CO project level modeling protocol. Readers should check with their appropriate EPA regional office to find out if alternate methods other than those prescribed in Appendix W of 40 CFR Part 51 have been approved for project level analysis purposes.

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<sup>6</sup>40 CFR 58 62205, Nov.24, 1993.

<sup>7</sup>40 CFR, §93.105(c)(4), as amended by 62 FR 43805, Aug. 15, 1997.

## KEY DEFINITIONS USED IN PROJECT LEVEL CONFORMITY

The following definitions related to project level conformity determinations are included in EPA's transportation conformity rule. Understanding these definitions may assist readers toward a better interpretation of project level conformity determinations within nonattainment and maintenance areas. Following these definitions, [Chapter 10](#) will further explore the technical modeling-related issues involving CO hot-spot analysis within CO nonattainment and maintenance areas.

40 CFR §93.101, Definitions as amended by 62 FR 43802-43803, August 15, 1997

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or (2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Design concept means the type of facility identified by the project, e.g. freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g. number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e. be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Hot-spot analysis is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

*Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.*

*NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.*

*Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.*

*Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e. be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.*

*Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in §108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.*

*Transportation project is a highway project or a transit project.*

*Written commitment for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.*

## QUESTIONS AND ANSWERS

### **What happens if the design concept and scope changes during project development?**

Before a project can be approved, it needs to be included in a regional analysis. Should the NEPA process result in a project with a design concept and scope that is significantly different from that in the transportation plan or TIP, the project must be re-analyzed with a new conformity determination. This can be done according to the criteria for projects not from a conforming plan and TIP before NEPA process completion (see 40 CFR §93.107, as amended by 62 FR 43806, Aug. 15, 1997). Or, the revised project itself may be amended back into the TIP and plan. The amended TIP and plan, including the revised design concept and scope, would then have to undergo a conformity redetermination by the MPO and approved by U.S. DOT prior to NEPA action by FHWA or FTA (under 23 CFR Part 771). Either way, project level analysis also requires that projects be re-analyzed in the plan/TIP.

### **What is the relationship of project level conformity to the National Environmental Policy Act (NEPA) requirements?**

A project-level conformity determination is required for FHWA/FTA projects before the NEPA process can be completed in nonattainment and maintenance areas. The Federal NEPA requirements apply to all areas regardless of nonattainment or maintenance designation status. In fact, all Federally-funded or approved highway or transit projects must undergo NEPA analysis pursuant to 23 CFR 771 in order to document potential socioeconomic or other environmental consequences pertaining to Federal actions. In addition, Federal-aid transportation projects in metropolitan areas must be included in an MPO's plan/TIP prior to Federal actions to approve a NEPA document. It should also be noted that transportation projects will not be eligible for Federal funding under title 23 or the Federal Transit Act if they are not included in the Federally-approved State TIP.<sup>8</sup>

### **What are exempt projects and how are they handled in terms of NEPA?**

Certain types of transit and highway projects are exempt from all or some part of the transportation conformity requirements because they are considered "neutral" in terms of emissions. However, all of these exempt projects must still undergo some form of NEPA documentation (typically as a Categorical Exclusion under 23 CFR 771) in order for U.S. DOT to provide funding under title 23 U.S.C. or the Federal Transit Act. Projects which are exempted from conformity regional emissions analysis<sup>9</sup> requirements still must be evaluated in order to determine if a hot-spot analysis is required prior to making a project level conformity determination. Traffic synchronization projects, although exempted by Congress from meeting transportation conformity requirements, must be included in all subsequent regional emissions analysis and are not exempt under NEPA.

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<sup>8</sup> 23 CFR §450.332, 58 FR 58064, Oct. 1993.

<sup>9</sup> 40 CFR §93.127, as amended by 62 FR 43818, Aug. 15, 1997.

**Are Federal transportation projects in isolated rural areas exempted from meeting transportation conformity or NEPA requirements?**

No. Federal transportation projects located in isolated rural nonattainment or maintenance areas require the same degree of regional and project level hot-spot emissions analysis (as applicable) which must be performed by the project sponsor to ensure conformity requirements are being met. Under the transportation conformity rule,<sup>10</sup> these projects (along with all of the other regionally significant projects included in the statewide transportation plan and statewide TIP for this area) should be shown to meet conformity requirements by applicable conformity emissions tests (e.g. emissions budget tests, emissions reduction tests, or air quality modeling, etc.) as determined through the interagency consultation process. A project must be found to conform prior to amending it into the statewide transportation plan or statewide TIP. These projects are not exempted from also meeting the NEPA requirements under 23 CFR 771, particularly if Federal approval, action or funding is necessary to implement the title 23 U.S.C. or Federal Transit Act transportation project. [See Chapter 9](#) for complete information on isolated rural nonattainment or maintenance areas.

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<sup>10</sup> 40 CFR §93.109(g), as amended by 62 FR 43808, Aug. 15, 1997.