



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

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Subject: **INFORMATION**: General and
Transportation Conformity Frequently
Asked Questions
/S/Original signed by
From: April L. Marchese
Director, Office of Natural Environment
Washington, DC

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To: Division Administrators

PURPOSE

The purpose of this memorandum is to share a new set of frequently asked questions (FAQs) regarding how and when transportation conformity requirements (40 CFR Part 93 subpart A) and general conformity requirements (40 CFR Part 93 subpart B) apply at the project level. These FAQs also address the Federal Highway Administration's (FHWA) role in implementation of non-highway projects and meeting Clean Air Act (CAA) requirements.

These FAQs do not address all the requirements of either general or transportation conformity, nor are they intended to supersede or alter either the general or transportation conformity regulations, which should be consulted in all cases on questions regarding their requirements. The U.S. Environmental Protection Agency was consulted on the interpretation of the conformity requirements for these FAQs.

BACKGROUND

The CAA requires that Federal agencies do not adopt, accept, approve or fund activities that are not consistent with air quality goals. The transportation and general conformity regulations provide the framework for meeting this CAA requirement. Transportation conformity applies to Federal highway and transit projects, while general conformity applies to all other Federal actions. However, certain transportation projects can involve Federal actions that necessitate the evaluation of both transportation conformity and general conformity requirements. These FAQs provide responses to common questions and scenarios where these two sets of regulations may intersect and to clarify how the requirements should be met.



TRANSPORTATION AND GENERAL CONFORMITY: FREQUENTLY ASKED QUESTIONS

1. What is the statutory requirement of conformity?

Conformity is required by Clean Air Act Section 176(c). This section requires that Federal agencies do not adopt, accept, approve or fund activities that are not consistent with State air quality goals. This section contains additional conformity requirements specifically addressing Federally-supported highway and transit projects.

2. Where does transportation conformity apply and what actions are subject to transportation conformity?

Transportation conformity is required in areas designated nonattainment and maintenance by the U.S. Environmental Protection Agency (EPA) for the transportation-related criteria pollutants: ozone, particulate matter, nitrogen dioxide, and carbon monoxide. It applies to metropolitan transportation plan and transportation improvement program updates and amendments unless an amendment merely adds or deletes projects exempt from conformity (40 CFR 93.104(b) and (c)). Transportation conformity also applies to “FHWA/FTA projects”, which are defined in the transportation conformity rule as “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.” (40 CFR 93.101)

3. Where does general conformity apply and what actions are subject to general conformity?

General conformity applies to all Federal actions (e.g., funding, licensing, permitting or approving) that do not include FHWA/FTA projects as defined in 40 CFR 93.101 and that take place in nonattainment or maintenance areas for all criteria pollutants: ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, and sulfur dioxide.

General conformity also applies to Federal highway and transit projects that do not involve either Title 23 or 49 funding or FHWA or FTA approval such as connection to an Interstate highway or deviation from applicable design standards per 40 CFR 93.101. Additional examples are discussed in Question 8.

4. Can one project be subject to both general and transportation conformity requirements?

Yes. If the project includes Federal actions on FHWA/FTA highway or transit elements as well as Federal actions on other elements of the project, both requirements may apply. For example, if an airport expansion project includes widening the airport access road using FHWA highway funds and runway extension which requires FAA approval, transportation conformity requirements would apply to the road widening action, and general conformity requirements would apply to the runway extension action.

5. If FHWA or FTA is responsible for administering and/or implementing a non-highway or transit project in a nonattainment or maintenance area, does transportation conformity automatically apply?

No. Transportation conformity requirements apply only to FHWA/FTA actions on highway and transit projects. Therefore, a project in a nonattainment or maintenance area that is not a FHWA/FTA project, as defined in 40 CFR 93.101, would be subject to general conformity, rather than transportation conformity. If FHWA or FTA approval is still necessary, a general conformity determination would be required for such a project.

6. If a new non-highway/non-transit project is being initiated in a nonattainment or maintenance area and uses Congestion Mitigation and Air Quality Improvement (CMAQ) program funds for a portion of the project, which conformity requirements apply?

If a portion of the non-highway/non-transit project uses CMAQ funds (such as road-to-rail transfer yards or the outright purchase or retrofit of “green” freight locomotives), then general conformity requirements would apply since the CMAQ funds are being used for non-road equipment.

For CMAQ-funded projects with a highway or transit element (e.g., a freight project that includes new or expanded highway links to a major maritime port), transportation conformity requirements would apply to the highway or transit portion of the project (see Question 4). The highway or transit portion of the project would be determined based on the elements of the project that meet the applicable definitions for “FHWA/FTA project,” “highway project,” “transit,” and “transit project,” per 93.101:

These documents provide more information regarding CMAQ-funded projects that may include non-highway/non-transit elements:

In October, 2008, FHWA issued “[Final Program Guidance for the Congestion Mitigation and Air Quality Improvement \(CMAQ\) Program](#)” under the SAFETEA-LU.

In January 2003, FHWA issued the “[Eligibility of Freight Projects and Diesel Engine Retrofit Programs](#)” guidance document to convey agency policy on freight projects and diesel engine retrofit programs.

In June 2006, EPA issued “[Diesel Retrofits: Quantifying and Using Their Benefits in SIPs and Conformity: Guidance for State and Local Air and Transportation Agencies](#)” to provide guidance¹ on quantifying and using emission reductions from highway and non-road diesel vehicles, engines, and equipment that have been retrofitted with emission reduction technology. This guidance addressed both transportation and general conformity determinations.

¹ EPA indicated that they intend to update this guidance document primarily to describe how to use MOVES to calculate emissions reductions from retrofits of on-road vehicles.

7. If a non-highway/non-transit project requires the use of highway right-of-way, does this require either transportation or general conformity?

If the transfer is temporary (e.g. for construction and staging activities) or if the transfer does not affect highway operations, then neither a transportation nor a general conformity determination from FHWA is required. For significant highway right-of-way transfer that may affect highway operations, please contact FHWA Office of Real Estate Services and Office of Natural Environment for further assistance.

8. Examples:

Scenario 1a: FHWA participates in the National Environmental Policy Act (NEPA) analysis and general conformity determination with the Department of the Interior (DOI):

The DOI is the lead agency for the environmental review process for a non-highway/non-transit project which does not use Title 23 (highway) or Title 49 (transit) funding. The DOI completed the NEPA document for the project, which also included a demonstration that all general conformity requirements for the various aspects of the project had been met, and all other Federal agencies involved in the project (including FHWA) joined in that document. The project is then transferred to FHWA for implementation. Subsequent FHWA project approvals (e.g. construction) do not require a transportation conformity determination because this project does not fall within the transportation conformity rule's definition of an FHWA/FTA project (40 CFR 93.101). Additionally, no new general conformity determination is required by FHWA because FHWA had already joined in the prior general conformity analysis provided in the NEPA document and that analysis had considered the emissions resulting from the FHWA approvals.

Scenario 1b: FHWA does not participate in the NEPA analysis and general conformity determination with Federal Rail Administration (FRA):

The FRA is the lead agency for the environmental review process for a non-highway/non-transit project that does not use Title 23 (highway) or Title 49 (transit) funding. The NEPA document is completed and the general conformity requirements have been met before FHWA can sign onto the environmental review. The project is then transferred to FHWA for implementation. Subsequent FHWA project approvals (e.g. construction) do not require a transportation conformity determination because this project does not fall within the transportation conformity rule's definition of an FHWA/FTA project (40 CFR 93.101). Additionally, no new general conformity analysis would be needed; however, FHWA would have to fulfill the public notice and comment requirements of general conformity and publish its determination in the Federal Register.

Scenario 2

The FHWA has entered into an agreement with another Federal agency for FHWA to be the lead agency for a new freight terminal (a non-highway/non-transit project with no Title 23 or 49 funding involved) that is in a nonattainment area. As part of this agreement, FHWA will sign the NEPA document for the project. The project is subject to general conformity because the project does not fall within the transportation conformity rule's definition of an FHWA/FTA project (40 CFR 93.101).

Scenario 3

The FHWA is the lead agency for the development and implementation of a new intermodal freight facility. The new facility includes creating a new interchange at the Interstate with a new

road to the intermodal facility. The freight company is funding the new access road as well as the Interstate interchange. In this case, both general and transportation conformity apply. General conformity is required for the Federal actions associated with the non-highway portions of the project (e.g., increasing freight rail locomotive capacity at the facility). Transportation conformity is required for the new interchange and road because, while not Federally-funded, the new access road requires FHWA approval for Interstate access and thus qualifies as a FHWA/FTA project.

Scenario 4

The FHWA is the lead agency for the implementation of a project that includes high speed rail and a highway improvement project. Title 23 funds are being used to cover the highway improvement portions of the project. Both general and transportation conformity apply to this project. General conformity is required for the high speed rail portion of the project, which does not involve Title 23 funds or require approval by either FHWA or FTA. Transportation conformity applies to all portions of the project funded with Title 23 funds or approved by FHWA or FTA, per 40 CFR 93.101, which includes the highway improvement portion. In order to use Title 23 funds, and under transportation conformity, the portions of the project (highway improvement) that use Title 23 funds must satisfy the relevant transportation conformity requirements.

9. Who Can I Contact?

Any questions on these FAQs or related to their application to a specific project should be directed to FHWA's Office of Natural Environment, Air Quality and Transportation Conformity Team (TAQC@dot.gov) for further assistance.