

INTERAGENCY CONSULTATION

(Adopted September 9, 1994)

(Amended May 10, 1996)

(Amended July 10, 1998)

RULE 1902 Transportation Conformity - Preamble

The provisions of Part 93 (Amended), Subpart A, Chapter I, Title 40, of the Code of Federal Regulations (CFR), amended May 10, 1996, applicable to the subparts listed in this regulation were adopted by the South Coast Air Quality Management District (SCAQMD) on the Date shown and were made part of Rule 1902 - Transportation Conformity in the Rules and Regulations of the South Coast Air Quality Management District.

The provisions of this Regulation apply to federal transportation projects, which are funded or approved under Title 23 U.S.C. and regionally significant, non-federal projects. For the purpose of this Regulation, the 'State' agency primarily responsible for the applicable implementation plan" as used in Part 93, Subchapter A, Chapter I, Title 40, of the CFR shall mean SCAQMD, the word "MPO" as used in Part 93, Subchapter A, Chapter I, Title 40, of the CFR shall mean Southern California Association of Governments (SCAG).

This rule incorporates the provisions of 40 CFR, Part 93, Subpart A by reference, except in the Sections which appear below. Sections that deviate from the federal criteria and procedures are presented in their entirety in this rule.

Unless otherwise specified, SCAG shall be the responsible agency for ensuring all aspects of interagency consultation will be carried out in accordance with the MOU. Consultation shall occur on an annual basis unless otherwise specified in this rule.

(1902) 93.102 Applicability(a) Action applicability

(1) Except as provided for in paragraph (c) of this section or §93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

- _____ (iii) The approval, funding, or implementation of FHWA/FTA projects.
- _____ (2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, §93.121 applies to such projects if they are regionally significant.
- _____ (c) Geographic Applicability. The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

 - _____ (1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).
 - _____ (2) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

 - _____ (i) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;
 - _____ (ii) NO_x in NO₂ areas; and
 - _____ (iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
 - _____ (3) The provisions of this rule apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107 (d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.
 - _____ (d) Limitations.

- (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (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. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.
- (2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

(1902) 93.105 Consultation.

Consultation criteria and procedures as required by 40 CFR Part 93, Subpart A shall be as set forth in a Memorandum of Understanding among the District, the Southern California Association of Governments, the California Air Resources Board, the California Department of Transportation, the Environmental Protection Agency, the Federal Highway Administration, the Federal Transit Administration, the Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino Associated Governments, Caltrans, and all recipients of federal funds dated 6/1/95, and/or any subsequently adopted revisions or amendments to the Memorandum of Understanding once such revisions are approved into the applicable implementation plan by EPA.

(1902) 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

- (a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

- (1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or
 - (2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §§93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).
- (b) In isolated rural nonattainment and maintenance areas subject to §93.109(g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:
 - (1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or
 - (2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of §93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP).
- (c) Adopt or approve a regionally significant highway or transit project shall mean any of the following actions:
 - (1) Policy board action or resolution that is necessary for a regionally significant project to proceed.
 - (2) Administrative permits issued under the authority of the agency, policy board, or commission for a regionally significant project.

- (3) The execution of a contract to construct, or any final action by an elected or appointed commission or administrator directing or authorizing the commencement of construction of a regionally significant project.
- (4) Providing grants, loans or similar financial support, for the construction of a regionally significant project.
- (5) Participation or membership in an entity, including an authority or special district, that takes any action listed in paragraphs (1) through (4) of this definition.

(1902) 93.122 (a)(4)(ii)

Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.

(1902) 93.125 Enforceability of design concept and scope and project-level mitigation and control measures.

- (a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM10 or CO impacts. Before making conformity determinations enforceable, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §93.118 ("Motor vehicle emissions budget") and §93.119 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by §93.116.
- (b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and must comply with the obligations of such commitments.
- (c) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors must comply with

such commitments.

- (d) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of §93.116, emission budget requirements of §93.118, and emission reduction requirements of §93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under §93.105. The MPO and DOT must find that the transportation plan and TIP still satisfy the requirements of 93.118 and/or 93.119 and that the project still satisfies the requirements of §93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in §93.105(e) for conformity determinations for projects.