



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MEMORANDUM

OFFICE OF  
AIR AND RADIATION

SUBJECT: Interim Conformity Guidance

FROM: Richard D. Wilson, Director  
Office of Mobile Sources

TO: Air Management Division Directors  
Regions 1, 3, 5, 9

Air and Waste Management Division Director  
Region 2

Air and Toxics Division Directors  
Regions 7, 8, 10

Air, Pesticides, and Toxics Management Divisions  
Directors Regions 4, 6

Attached is the joint EPA/DOT Guidance for Determining Conformity of Transportation Plans, Programs, and Projects with Clean Air Act Implementation Plans During Phase 1 of the Interim Period. We have come to agreement with DOT for the purpose of issuing this guidance, although several issues with strong regional concern have not been closed definitively.

The guidance contains language explaining that we still disagree over the application of conformity to non-federal projects and attainment areas. Until this is settled in a final rule on conformity criteria and procedures (due November 15, 1991), we anticipate that DOT will apply its interpretation. In addition, discussions of implementation of previous TCM commitments now quote the statute (transportation improvement programs must provide for expeditious implementation of TCM's) rather than provide resolution on whether all federally assistable TCM's actually must be included in the TIP, or whether a TIP can be considered to "provide for" a locally funded TCM merely by not interfering. The distinction was important to some commenters but should be of little immediate practical import. EPA Regional Offices meanwhile are free to press for actual inclusion in the TIP. Finally, the guidance states that NO<sub>2</sub> and PM<sub>10</sub> conformity determinations are required, but through November 15, 1991, EPA, DOT, and the affected MPO can

agree that the determinations may be qualitative in nature instead of quantitative. Since the rulemaking process will allow extra time to identify and expand issues and will also enjoy the benefit of public comment on the NPRM, we felt it was best to leave these issues unresolved during Phase 1 and seek closure in the final rule.

Also included is draft guidance for making conformity determinations of highway and transit projects which do not involve FHWA or UMTA, but do require some other type of federal permit, action, or approval. In keeping with DOT's preference that they not be involved in any way, this additional guidance was developed separately by us (OMS). We are only starting to coordinate this guidance with your staff and other agencies, particularly the Coast Guard and the Army Corps of Engineers. It should be treated only as a draft.

Attachment

cc: Mike Shapiro, OAR  
Rob Brenner, OPAR

**U.S. Environmental Protection Agency  
U.S. Department of Transportation**

**GUIDANCE FOR DETERMINING CONFORMITY OF  
TRANSPORTATION PLANS, PROGRAMS AND PROJECTS WITH  
CLEAN AIR ACT IMPLEMENTATION PLANS  
DURING PHASE 1 OF THE INTERIM PERIOD**

**1.0 PURPOSE AND LEGAL STATUS**

The purpose of this document is to provide guidance regarding the criteria and procedures to be followed by Metropolitan Planning Organizations (MPOs), other recipients of funds designated under Title 23 United States Code (U.S.C.) or the Urban Mass Transportation Act (49 U.S.C. 1601 et seq)<sup>1</sup>, and the United States Department of Transportation (DOT) in making conformity determinations regarding transportation plans<sup>2</sup>, programs<sup>3</sup>, and projects during the first part of the interim period referred to in §176(c)(3) of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments (the Amendments) of 1990<sup>4</sup>. These conformity determinations must be made with respect to the

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<sup>1</sup>In most urban areas, the organization or governmental unit that performs the transportation planning required under §134 of Title 23 U.S.C. is not designated as an MPO under state law. For purposes of clarity in this guidance, references to MPOs will include these planning units in their MPO-like role if treated as an MPO by DOT. Where 'other recipients of funds' is specifically referenced, it refers to State and local transportation officials that receive funds under Title 23 U.S.C. or the Urban Mass Transportation Act.

<sup>2</sup>Only those transportation plans developed pursuant to Title 23 U.S.C. or the Urban Mass Transportation Act.

<sup>3</sup>Only those transportation improvement programs developed pursuant to Title 23 U.S.C. or the Urban Mass Transportation Act.

<sup>4</sup>Unless otherwise specified, all section references throughout the guidance will be to the Act as amended.

applicable implementation plan<sup>5</sup> developed to control those pollutants for which national ambient air quality standards (NAAQS) exist<sup>6</sup>.

This guidance is a joint interpretation of the Act by the United States Environmental Protection Agency (EPA) and DOT as it applies during 'Phase 1' of the interim period<sup>7</sup>. There is no statutory requirement for this guidance, and it should not be construed as regulatory in nature. It is not a final action by either EPA or DOT, but rather a first step toward the development of productive interactions between the transportation and air quality planning processes. It is meant to assist MPOs, other recipients of funds, and DOT in determining the conformity of transportation plans, programs, and projects during the transition from criteria and procedures in use prior to November 15, 1990 (date of enactment of the 1990 Amendments), to those promulgated criteria and procedures which will ultimately govern the conformity process. It is also meant to assist EPA and State/local air quality officials in reviewing proposed conformity determinations during the same period.

This guidance does not establish or affect legal rights or obligations. It does not establish a binding norm and it is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the applicable law and regulations to the specific facts of that case. In any proceeding in which the policy articulated in this guidance may be applied, the Agencies will thoroughly consider the policy's applicability to the facts, the underlying validity of the policy, and whether changes should be made in the policy based on submissions made by any person.

It should be noted that in accordance with the General Savings Clause (§193), this interim guidance does not supersede criteria and procedures which may already have been included in an implementation plan. Any such criteria and procedures must still be met along with those contained in this guidance until the implementation plan revision referred to in paragraph (4)(C) is approved by EPA and DOT. It also does

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<sup>5</sup>The term 'applicable implementation plan' is defined in §302(q) as "the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of this Act".

<sup>6</sup>NAAQS pollutants which are of interest in any discussion of mobile sources include ozone and NO<sub>2</sub> precursors (VOC and/or NO<sub>x</sub>), carbon monoxide (CO), and particulate matter (PM<sub>10</sub>).

<sup>7</sup>Phase 1 of the interim period is defined in section 2.0 of this guidance.

not supersede any agreements reached prior to its issuance among EPA, DOT, and MPOs regarding analytical methodologies, approval criteria, or completed MPO conformity findings.

## **2.0 DEFINITION OF THE INTERIM PERIOD AND RELATIONSHIP TO THE CONTROL STRATEGY PERIOD**

### **2.1 Definition of The Interim Period**

Section 176(c)(3) of the Act provides criteria that apply "until such time as the implementation plan revision referred to in paragraph (4)(C) is approved." Paragraph (4)(C) refers to the implementation plan revision which States must submit by November 15, 1992, and which must contain specific criteria and procedures for assessing the conformity of transportation plans, programs, and projects.

However, the full measure of §176(c) conformity requirements cannot be applied to any pollutant until EPA approves the implementation plan revision containing specific strategies for controlling and reducing its emissions in accordance with §182, §187, or §189 of the Act, therefore the actual length of the interim period may extend beyond the time EPA approves the paragraph (4)(C) plan revisions. As a result, there will be two distinct phases of the interim period:

**Phase 1:** The period between enactment and promulgation of the EPA/DOT final rule containing criteria and procedures for determining conformity as required by §176(c)(4)(A). The criteria and procedures for determining conformity of transportation plans, programs, and projects during Phase 1 is discussed in sections 4, 5, and 6 (respectively) of this guidance.

**Phase 2:** The period between promulgation of the EPA/DOT final rule and EPA approval of the ozone/CO/PM<sub>10</sub> control strategy implementation plan revisions. The EPA/DOT final rule will contain criteria and procedures for determining conformity of transportation plans, programs, and projects during Phase 2 and, if necessary, any subphases of Phase 2.

Once the control strategy implementation plan revisions and conformity procedures have been approved by EPA, the full requirements of §176(c) will apply, and conformity determinations of transportation plans, programs, and projects will be dependent upon the area-wide transportation emissions budget for each pollutant established in the implementation plan. This control strategy period will remain in effect until the area is redesignated as an attainment area, at which point the requirements for conformity determinations will be based on the maintenance plan approved for the area in accordance with the criteria and procedures established in the EPA/DOT final rule.

## 2.2 Relationship of the Interim and Control Strategy Periods

The 1990 Amendments give States several years to develop new implementation plan revisions which contain sufficient emission control strategies to assure attainment by the applicable deadlines. The Amendments also contain many new provisions and requirements to assist States in meeting these dates, including the §176(c) conformity review process (especially as it applies in the case of transportation plans, programs, and projects). Although some conformity requirements apply immediately upon enactment, the ultimate purpose and function of conformity is best understood in terms of its application after States have revised their implementation plans to include control strategies and emissions projections<sup>8</sup>. Only then will it be possible to calculate the contribution of transportation sources to the reduction of emissions annually until attainment is achieved, and the full requirements of §176(c)(2) can be applied to conformity determinations regarding transportation plans and transportation improvement programs (TIPs).

In most urbanized areas, the transportation planning process is the most practical means for identifying transportation measures which benefit air quality and for incorporating these strategies into an area's transportation plans and programs so that they conform to the applicable implementation plan. Among the most effective strategies are those which reduce the amount of emissions from single occupant vehicles. This can be achieved in a number of ways including reducing the actual number of trips made by single occupant vehicles, the construction and operation of better facilities and/or services, the use

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<sup>8</sup>An emissions budget will be available for moderate and above areas which submit new attainment demonstrations. For other areas, an emissions budget will likely be established as part of the maintenance demonstration, if not sooner.

of positive or negative monetary incentives, or even outright restrictions on the use of single occupant vehicles. In the long run, local governments participating in the transportation planning process can also influence the demand for transportation by their own growth management policies.

Depending on the severity of the air quality problem, the local population and economic growth forecasts, the number and character of non-transportation sources, and local preferences, the new attainment plan may rely to a greater or lesser extent on transportation control measures to reduce single occupant vehicle usage and emissions. In all areas, the attainment strategy will include a specific estimate or budget for emissions in the nonattainment area allocated to mobile sources. Should actual emissions exceed these budgeted levels, progress toward attainment would be slower than planned, jeopardizing attainment by the required dates unless changes were instituted. In this context, the transportation conformity review process will serve three primary functions: (1) it will prevent changes to transportation systems that exacerbate air quality problems, (2) it will provide for the expeditious implementation of transportation control measures (TCMs) in the applicable implementation plan, and (3) most importantly, the periodic review requirement [§176(c)(4)(B)(ii)] will ensure that transportation plans and TIP's in nonattainment areas will remain consistent with the budgets established in the applicable implementation plan, in light of actual transportation demand due to population and economic growth.

The transportation and air quality planning processes are part of the larger urban planning process and are influenced by many dynamic, sometimes conflicting variables. It is impossible to develop comprehensive long-term plans that precisely predict future conditions, no matter how carefully each variable is incorporated, since local conditions are constantly changing to reflect emerging constraints and opportunities. Therefore, it should be expected that future realities and conditions may not resemble those forecasted in the implementation plans. The conformity review process requires the transportation system plan to change in order to continue to meet the overall emissions budget in the applicable implementation plan, unless that implementation plan is revised to allocate a greater percentage of the area's total allowable emissions to mobile sources or to require a reduction in per vehicle emissions. Should neither of these courses of action occur, and the area exceeds its attainment date, it would be

reclassified to a higher category, thereby providing extra time to reduce vehicle emissions, albeit at a cost of more restrictive control requirements on various other sources of emissions.

The conformity of transportation plans and TIPs must be assured through periodic demonstrations (by law not less than every three years, although EPA and DQT may specify a shorter period) that resultant motor vehicle emissions are within the implementation plan budget limits. Failure to provide such assurance will prevent MPO endorsement or DOT acceptance of, and conformity findings for, new transportation plans and TIPs, and will result in a loss of federal funds for transportation projects until the situation is corrected.

Once an area has achieved attainment of the NAAQS for any pollutant(s) for which the area is currently in a nonattainment status, it may request formal redesignation as an attainment area and submit to EPA a plan for the maintenance of the ambient standard(s) which have been achieved. The maintenance plan will resemble the attainment plan by containing a budget of allowable emissions allocated to stationary and mobile sources. The conformity review process will continue during the maintenance period using this budget as a target.

Section 176(c)(3) allows transportation-related conformity determinations to be made for a period of time after enactment with special interim criteria and procedures that are not the same as those in §176(c)(2). The special interim criteria recognize both the need for a transition period to allow for new analyses or revisions of previously planned transportation activities, and the temporary lack of an overall air quality improvement strategy consistent with the new Clean Air Act requirements as discussed above. It is not necessary to the purpose of the Act that this interim guidance become, in effect, a requirement for more accelerated development of control strategies. Congress clearly intended that previously planned transportation control measures be implemented without delay during the interim period. It appears to have accepted the need for a new planning period for additional measures, however. A variation of a year or two in their implementation will not affect their long term impact too greatly. However, capital facilities once constructed can rarely, if ever, be reversed. Therefore, there is a need during the interim period to ensure that capital projects which would be adverse to air quality do not proceed before they can be considered by the conformity review process and modified or mitigated, unless offsetting projects are also implemented in the same time



frame. The requirement of §176(c)(3)(A)(iii) that transportation plans and programs contribute to emission reductions will ensure that adverse facility changes, if any, are offset.

Despite the difficulty in defining a future control scenario and its exact effects on overall emissions, there is no doubt that CO, VOC, NOx, and particulate emissions from motor vehicles will decline between 1990 and 1995, 1996, or 2000, in all areas, taking regional growth into account, due to fleet turnover and new control measures imposed by the Amendments. Thus, air quality should not deteriorate in the period it takes for States to prepare control strategies that meet the requirements of the new law, despite the fact that during the interim period transportation-related emissions will not be required to remain within any pre-determined set limit.

### **3.0 APPLICATION**

Section 176(c)(1) states that "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of Title 23 U.S.C., shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110." A project may be approved by an MPO, DOT, or any recipient of federal transportation assistance under Title 23 U.S.C. or the Urban Mass Transportation Act only if it meets the three tests outlined in §176(c)(2)(C) for projects from existing transportation plans and TIPs, or if it meets the requirements of §176(c)(2)(D) for case-by-case approvals otherwise. Yet the title of §176 - "Limitations on Certain Federal Assistance" - and past interpretations give support to a view that Congress intended only federally approved or assisted projects to be affected by the provisions of §176(c). Likewise, since §176 is contained in Part D - Plan Requirements for Nonattainment Areas, there are arguable ambiguities as to the geographic areas to which §176(c) is meant to apply. EPA and DOT agree to interpret §176(c) during Phase 1 as certainly applying to conformity determinations for transportation plans, programs, and

federally-assisted<sup>9</sup> or approved<sup>10</sup> (hereinafter referred to as 'federal') transportation projects, with respect to each pollutant for which NAAQS exist in the areas designated as nonattainment for that pollutant. This guidance will not specifically address any criteria and procedures for NO<sub>2</sub> and PM<sub>10</sub> conformity determinations, instead deferring guidance on these pollutants to further discussions between EPA and DOT and/or the EPA/DOT rulemaking. In Phase 1, conformity determinations for NO<sub>2</sub> and PM<sub>10</sub> may be based upon a qualitative assessment jointly agreed upon by the MPO, DOT, and EPA.

EPA and DOT do not yet agree upon an interpretation of the Act language in the case of projects which do not receive federal assistance or approval, or in the case of pollutant-specific impacts of projects in areas which are now in attainment with the NAAQS for that pollutant and have not in the past been in nonattainment with that same NAAQS. The Notice of Proposed Rulemaking (NPRM) will propose that §176(c) applies to such projects, but will also propose in the alternative that it does not apply, and seek public comment on the legal and policy issues involved. Meanwhile, this guidance is intended to clarify procedures for issues where agreement has been reached, and to expedite transportation planning action in nonattainment areas in general.

In addition, development of the NPRM will allow EPA and DOT time to further examine all issues in greater detail, and as a result, the EPA/DOT final rule may contain supplemental criteria and procedures for determining conformity during Phase 2 of the interim period and the subsequent control strategy period that differ significantly from this interim guidance; affected parties are cautioned that no guarantees can be offered concerning any similarities between guidance in effect during Phase 1 and that guidance which will be promulgated as part of the final rule.

By agreement between EPA and DOT, this interim guidance does not explicitly apply to those projects which do not receive federal assistance or approval. However, both agree that once into the control strategy period, the collective prospective impact of regionally significant non-federal projects must be considered in periodically

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<sup>9</sup>These are projects which receive funding assistance through the Federal-Aid Highway program or the Federal mass transit program.

<sup>10</sup>Some transportation projects may not utilize federal assistance, but may require FHWA approval for some aspect of the project, such as connection to an interstate highway, etc. Conformity determinations are required in all such cases.

determining the conformity (or non-conformity) of transportation plans and TIPs with respect to emissions milestones, and may prevent all project sponsors from implementing their federal projects. (The point of disagreement is essentially whether new non-federal projects would be able to proceed, or would be stopped.) Therefore, to exclude non-federal projects from the formal, federally imposed conformity process would not reduce the practical need to include them within the local transportation/air quality planning process, and MPOs should begin to consider the emissions and VMT impacts of them as they prepare plan and program revisions for the federal projects.

Where the applicable implementation plan establishes a process of local conformity reviews, the present lack of an EPA/DOT agreement on the coverage of non-federal projects does not in any way reduce the applicability of the local process from that provided by the implementation plan.

#### **4.0 SPECIFIC REQUIREMENTS FOR MAKING CONFORMITY DETERMINATIONS FOR TRANSPORTATION PLANS**

##### **4.1 Overview**

A transportation plan describes policies, strategies and transportation facilities of regional significance within an urbanized area based on existing and future transportation needs, with due consideration given to comprehensive long-range land use plans and forecasts. It is developed through a cooperative process between State and local officials and can be modified as future changes in policy dictate. It is required under the regulations implementing §134 of Title 23 U.S.C., and §8 of Title 49 U.S.C., and is intended to foster a continuing, cooperative, and comprehensive planning process; it must be endorsed by the MPO as evidence of this process in order for DOT to accept any TIP or approve any project. Under the old §176(c), and DOT regulations thereunder, DOT was required to find that the transportation plan conforms to the applicable SIP in order to find that the TIP also conforms.

The Clean Air Act requires transportation plans to conform to applicable implementation plans. Specifically, transportation plans must meet the requirements set forth in §176(c)(1) and §176(c)(2)(A),

except that during Phase 1, the three tests established in §176(c)(3)(A) may be applied instead of the requirements of §176(c)(2)(A). Of the three criteria listed in §§176(c)(1)(B)(i)-(iii), EPA and DOT have agreed that only §176(c)(1)(B)(ii) has meaning for a transportation plan in the interim period in a nonattainment area. In all cases, the conformity determination must be based on the most recent estimates of emissions, and those emissions estimates must be based upon the most recent population, employment, travel, and congestion estimates as determined by the MPO. In addition, transportation plans must provide for the expeditious implementation of TCMs from the applicable implementation plan. MPOs must make conformity determinations for transportation plans developed under their jurisdiction and endorsed by them prior to their transmittal to DOT. DOT must, in turn, make a conformity determination based upon its review of the MPO conformity analysis for the transportation plan, and must always seek EPA comment before doing so; early consultation with EPA regarding conformity issues will avoid the potential for negative comments later in the process. During Phase 1, there is no requirement that the existing transportation plan be modified to conform under the new provisions of §176(c), since projects may proceed without a conforming plan as long as they come from a conforming TIP (see section 5.2 below). As of November 15, 1991, the lack of a conforming plan may become an obstacle to the funding and approval of new projects, and transportation plan conformity must have been determined according to the new criteria. MPOs may wish to take action on a new transportation plan, or to analyze and reaffirm the conformity of their current plan, as soon as possible in Phase 1 to avoid an interruption in project funding.

Since there are no federal guidelines regulating format and content of existing transportation plans, planning data on future projects have not been consistently provided, and current plans may not contain sufficient specificity, detail, and quality necessary to perform a detailed emissions analysis. The transportation plans now ready for conformity determinations may not be commitments to particular, well-described options, and may not be easily adapted for analysis of air quality emissions. Not all MPOs have the immediate ability to perform long-range emissions forecasts, even if their transportation plan is relatively specific. Also, during the interim period, there may be no applicable implementation plan strategy, hence no emission reduction milestones to avoid delaying, although the requirement to contribute to emission reductions would still apply. On the other hand, some transportation plans are quite specific, and some nonattainment areas

have locally adopted air quality plans which do contain transportation control measure commitments and/or emission reduction schedules and milestones. Because of the short duration of Phase 1 and the diversity of local situations, it does not seem possible, appropriate, or necessary to the purpose of the Act to require MPOs to add specificity where it is now lacking, or to perform emissions analyses not previously performed at the plan stage, for transportation plans reaffirmed or adopted during this period. However, MPOs should be advised that this specificity may be required of transportation plans under the EPA/DOT final rule.

Although the exact criteria and procedures will be established in the EPA/DOT final rule, MPOs should be aware that §176(c)(2) treats transportation plans and transportation improvement programs with nearly identical wording. Also, the purpose of the Act can only be served if conformity determinations are made for plans and programs that are realistic with regard to resources for implementation. Therefore, EPA and DOT consider it important that in a longer time frame, the transportation plan should be reasonable when compared to all likely public and private funding sources, that it affirmatively provides for the expeditious implementation of TCMs in the applicable implementation plan, and that it provides a reasonable demonstration that emissions estimates for at least one reasonably specific and realistic option shown in it are consistent with the emissions reduction estimates in the applicable implementation plan over the entire period addressed by both the transportation plan and the applicable implementation plan, recognizing that the transportation plan may lack complete network detail for this and other options.

#### 4.2 Conformity Criteria

Unlike transportation programs and projects, no transportation plans are grandfathered as a result of the Amendments. During Phase 1, this situation does not directly affect the ability of MPOs or other recipients of funds, or DOT to proceed with project funding, approval, or implementation, since the Act does not specifically require the existence of a conforming transportation plan. However, after November 15, 1991, any transportation project approved by DOT must either come from a conforming transportation plan and program, or meet the requirements of §176(c)(2)(D). This will require all transportation plans to be found to conform to the new Act in order to avoid an interruption in project funding.

The EPA/DOT final rule will include criteria and procedures for making conformity determinations after November 15, 1991, and must also by law contain a requirement that conformity determinations for transportation plans (and programs) be reaccomplished periodically, with a frequency (to be established by EPA and DOT in the final rule) of not less than every three years; if the conformity determination is not reaccomplished, approval of new projects (except those which the final rule categorically exempts from the conformity process) will halt. Transportation plans endorsed by MPOs and found to conform by the MPO and DOT prior to November 15, 1991, and therefore subject to the interim criteria contained in this guidance, will not immediately be superseded or voided as a result of promulgation of the final rule, but will remain in effect after promulgation and will expire no later than November 15, 1994, depending upon the frequency for reaccomplishment as established in the final rule. All initial and reaccomplished conformity determinations of transportation plans after promulgation of the final rule must meet the criteria and procedures established in the rule. All conformity determinations reaccomplished after the start of the implementation plan control strategy period will not only be based upon the final rule criteria and procedures, but will also be required to conform to the applicable implementation plan's control strategy for mobile source emissions.

In light of the more thorough reassessment that will occur within a few years, EPA and DOT suggest the following as criteria and procedures to use in making conformity determinations of transportation plans during Phase 1:

1. The MPO and DOT should determine that the transportation plan as endorsed will generally conform to the applicable implementation plan by supporting its broad intentions of achieving and maintaining the NAAQS.

2. The MPO and DOT should assure that no goals, directives, recommendations, or projects identified in the transportation plan contradict in a negative manner any specific requirements or commitments of the applicable implementation plan (e.g., a plan which states that a SIP TCM will not be implemented, or which make it impossible to implement any SIP TCM) for the area as it exists at the time of the conformity determination. This assurance is a precondition for the MPO's own conformity determination

whenever that determination occurs. DOT will also require written assurance to this effect as part of the next annual (or biennial) revision of the TIP, or as a separate statement accompanying the TIP submission.

3. The MPO and DOT should assure that the plan provides for the expeditious implementation of transportation control measures in the applicable implementation plan. If the transportation plan lacks the necessary specificity, the MPO should commit (by a statement in the plan or by a separate document) that TIP's developed under the transportation plan will provide for the expeditious implementation of those TCMs committed to in the applicable implementation plan for the area as it exists at the time of the conformity determination for the transportation plan. The details of how TIP's must provide for TCMs are discussed in section 5.3.2 below.

4. The MPO and DOT must determine that the transportation plan contributes to reductions in annual emissions in carbon monoxide and ozone nonattainment areas. The definition of what constitutes a contribution to reductions and the future period which must be considered are the same as described in section 5.3.3 below. The 'build/no-build' determination of such a reduction must be based upon reasonable assumptions and logic, and may be based on a qualitative determination rather than a quantitative analysis. Where they exist, quantitative methods should be exercised and the results considered.

5. EPA and DOT agree that satisfying §176(c)(1)(B)(ii) in the interim period requires that the MPO and DOT must determine that the plan does not increase the frequency or severity of the existing violation of the NAAQS for which the area is designated as nonattainment. This can be based on a finding that the plan does not increase emissions of the relevant pollutants in the future, relative to emissions over the same period without the plan. This is a similar test to the 'build/no-build' determination on whether the plan (and the TIP) contribute to emissions reductions, except that the criteria is that there be no increase (as opposed to a requirement for some finite decrease) in emissions. Also, for

a transportation plan, the "will not increase the frequency or severity" test applies over the entire period of the plan. As explained in section 5 below, in contrast, the test for "contributes to reductions" strictly applies only for the period up to the attainment deadline. As with #4 above, this determination must be based upon reasonable assumptions and logic, and may be based on a qualitative determination rather than a quantitative analysis. Where they exist, quantitative methods should be exercised and the results considered.

## **5.0 SPECIFIC REQUIREMENTS FOR MAKING CONFORMITY DETERMINATIONS FOR TRANSPORTATION IMPROVEMENT PROGRAMS**

### **5.1 Overview**

The TIP is a program or schedule of intended transportation improvements (or continuations of current activities) usually covering a three to five year period, developed as part of the process of applying for Federal funds from the Federal Highway Administration or the Urban Mass Transportation Administration. TIP acceptance by these agencies is usually a precondition for funding, with conformity a precondition to TIP acceptance. Projects in the TIP are taken from the transportation plan or are consistent with the plan; EPA and DOT consider it important that the TIP be reasonable when compared to likely available funds. Among the requirements which must be met (section 5.3 below) in order to make a conformity determination for the TIP during Phase 1, is a finding regarding the total emissions impacts from federal projects in the TIP. MPOs should be advised that after the start of the control strategy period, the emissions impacts from non-federal projects may influence the conformity of the TIP with respect to emissions milestones, and analyses will need to consider all transportation projects with regional impacts, regardless of funding source, in order to determine the cumulative impact of transportation related emissions. It is advantageous, but not required, to begin analysis of non-federal projects with potential regional impacts during the interim period so as to avoid any future problems in making conformity determinations of federal projects.



## 5.2 TIP's Requiring No Further Conformity Determinations

Section 176(c)(3)(B)(i) allows transportation projects to proceed, for 12 months after the date of enactment without further emissions analysis provided they come "from a transportation program found to conform within 3 years prior to such date of enactment." This, in effect, grandfathers those TIPs that were found to conform and accepted by DOT between November 15, 1987, and November 15, 1990. Any TIPs so affected are to be treated as if they conform to the new statutory criteria until November 15, 1991, and require no further conformity determination during Phase 1<sup>11</sup>. After that time, all TIPs must have been developed and approved under the new substantive criteria contained in section 5.3 of this guidance. As with transportation plans, MPOs may wish to develop and get DOT acceptance for a new TIP prior to November 15, 1991 so as to avoid an interruption in project funding. TIPs accepted by DOT after November 15, 1991 must also meet any additional criteria which may be promulgated in the EPA/DOT final rule.

## 5.3 Conformity Criteria and Procedures For New TIP's and TIP Amendments

All TIPs which are not grandfathered will require conformity determinations in accordance with these procedures. In order for MPOs and DOT to determine that a TIP conforms to the applicable implementation plan during Phase 1, the TIP must meet the requirements of §176(c)(1) and pass the three tests described in §176(c)(3)(A). All TIPs accepted by DOT after enactment, and all TIPs endorsed by MPOs and submitted to DOT prior to enactment but which did not receive DOT acceptance by that date now require a conformity determination that meets the requirements of the amended Act. EPA

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<sup>11</sup>This would also apply to TIPs in nonattainment areas where the applicable implementation plan did not contain TCMs. Under 23 CFR 770 and the June 12 1980 DOT/EPA procedures (which treated conformity primarily as a matter of TCM implementation) for conformance of plans, programs, and projects, conformity did not apply in nonattainment areas where the applicable implementation plan did not contain TCMs. Since conformity was considered as not applying, MPOs and DOT did not make individual findings of conformity for such TIPs. To deny them grandfathering now would not be fair or in keeping with the apparent intent of the Act. Therefore, these plans, programs, and projects are also grandfathered for the same period.

and DOT agree on the following criteria and procedures for meeting these tests and making a conformity determination during Phase 1:

#### 5.3.1 Consistency With Mobile Source Emissions Estimates

In accordance with §176(c)(1)(B), all conformity determinations must be "based upon the 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." The TIP documentation must reference the published source of these estimates and the authority of those sources to make such estimates.

Section 176(c)(3)(A)(i) also requires TIPs to be "consistent with the most recent estimates of mobile source emissions." Since most currently applicable implementation plans do not contain projections beyond 1987, they will not contain estimates of emissions for the period covered by the TIP. Therefore, an analysis of the emissions impact of TIP execution (accounting for the emissions impact of all transportation projects) using the MOBILE4 emissions model<sup>12</sup> will be adequate for TIPs accepted by DOT after enactment. EPA is currently working to update the MOBILE model, with release of MOBILE4.1 scheduled for June 1991. All TIPs whose emissions analysis work starts later than 3 months after release of the model update must have a conformity determination based on an emissions analysis using the updated model version in lieu of any earlier model versions. TIPs with analysis in progress may continue to use MOBILE4. EPA Regional Office agreement should be obtained for any exceptions made necessary by unusual local circumstances.

#### 5.3.2 Provision For Expeditious Implementation of TCMs

Section 176(c)(3)(A)(ii) requires transportation plans and TIPs to "provide for the expeditious implementation of TCMs in the applicable implementation plan." This provision does not apply in areas whose applicable implementation plan does not contain TCMs, or in areas newly

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<sup>12</sup>As explained in section 5.3.3 of this guidance, during Phase 1, the TIP conformity test is based on a comparison of future emission levels for the 'baseline' and 'new TIP' scenarios, not on the absolute level of those future emissions compared to current (1990) emissions.

designated as nonattainment for which no implementation plan containing emission control strategies exists.

The definition of 'expeditious implementation' is generally accepted to mean as soon as practicable, but in no event longer than the project would have taken to implement under the original implementation plan schedule. This requires current and future TIPs to provide for the implementation of TCMs which were committed to in the applicable implementation plan but which have not yet been fully implemented.

Some TCMs may be non-implementable as a practical matter because they are unspecific as to the degree of commitment (i.e., absolute vs. contingent), proposed scale and location(s), unit of government responsible for implementation, source and level of funding, etc. Only those TCMs which are described in the applicable implementation plan in enough detail to allow development of specific implementation steps are required to be provided for by the TIP. Classification of TCM references in the applicable implementation plan as specific or non-specific will depend on the wording in the implementation plan, and must be done in consultation and with the agreement of the air agencies involved<sup>13</sup>.

The TIP submission must include the status of each TCM in the applicable implementation plan, regardless of funding source(s). Such status must be discussed with each TIP submission until the TCMs are fully implemented; this discussion should be a document attached to, but not part of the TIP itself. In addition, SIP-related transportation measures must retain a high priority, and funding decisions must promote timely implementation of eligible implementation plan measures to the extent that funds are available. The projects in the TIP must not interfere with or cause delay in the implementation of any TCM. Any failure to implement TCMs, regardless of funding source and unit of government responsible, must be recognized in the emissions analysis when making or renewing conformity determinations<sup>14</sup>.

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<sup>13</sup>In general, the test for specificity and reality of commitment must be about the same as would be applied if EPA or a citizen were to seek a court order for implementation of the specific TCM.

<sup>14</sup>All TCMs in the applicable implementation plan require consideration under this section and inclusion in the status report, except for programs which may have in the past been called TCMs (such as Inspection/Maintenance) but which are no longer listed in §108 and are not eligible for funding under Title 23 U.S.C. or the Urban Mass Transportation Act.

If the applicable implementation plan contains real commitments to sufficiently specific TCMs which no longer appear to be beneficial to the air quality goals of the area, are not consistent with the most recent TCM planning, or generally now appear to be illogical or non-implementable, then the first year action in the TIP may consist of a re-evaluation of any such TCM, rather than an immediate implementation step involving capital expense. The TIP may still be found to conform if it is accompanied by a commitment and a resource plan for the re-analysis, and the second and following years provide for capital and other steps of the TCM implementation process, to be implemented should the TCM(s) remain in the implementation plan after reevaluation.

Should the re-evaluation find a particular TCM no longer appropriate, a revision of the applicable implementation plan is the only mechanism to replace existing commitments to obsolete TCMs with commitments to current and effective measures. For any TCM being re-analyzed, the TIP submission should include new TCM(s) proposed to be implemented through a revision to the applicable implementation plan, evidence of coordination with EPA and appropriate State and local air quality agencies in the development of new measures, and a discussion of the steps being taken to submit a revised implementation plan. This information should be included in each TIP until the TCM portion of the applicable implementation plan is revised. The General Savings Clause (§193 of the Act) requires emissions reductions from any new TCM to be equal to or greater than those attributable to the outdated TCM being replaced in this manner. Only after EPA approval of the implementation plan revision containing the new TCM(s) and deleting the obsolete TCM(s) may subsequent TIP submissions delete obsolete TCMs. The provisions of this paragraph apply only to TCMs eligible for funding under Title 23 U.S.C. or the Urban Mass Transportation Act..

### 5.3.3 Contributions to Annual Emissions Reductions

Section 176(c)(3)(A)(iii) requires TIPs developed in ozone or CO nonattainment areas to "contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7)." The language in the Amendments does not specify a contribution of any particular size, however. Legislative history on the subject is limited and provides no discussion of the details or intended exclusions, if any, needed to develop a workable pass/fail test for specific annual emissions reductions.

The provisions of the Amendments relating to implementation plans give the States up to 36 months to develop and prepare an overall strategy to meet the emission reduction timetables specified in §182(b)(1) and §187(a)(7) for the purpose of achieving the NAAQS for ozone and CO. The States are required to have a completed 1990 inventory available 24 months after enactment; CO and VOC control strategies are required 24 and 36 months, respectively, after enactment. PM<sub>10</sub> plans must be submitted within 12 months of enactment. To support the development of the control strategies, EPA must issue guidance on emission reductions attributable to the new mobile source measures contained in the Amendments. This guidance (in effect, a revision to the mobile source emission factor model) is not anticipated until after the end of Phase 1 of the interim period. As a result, in the interim period, States and MPOs will not be able to use the newly mandated vehicle and fuel controls to demonstrate that aggregate emissions of a TIP conform to a specific, decreasing allowable level of emissions from transportation activities.

Therefore, a finding during Phase 1 that the TIP contributes to reductions consistent with §182(b)(1) and §187(a)(7) may be made if the future emissions that result from implementation of the TIP are less by any amount than the emissions that result in the same future time period from the current situation. The procedure for performing this analysis is described as follows:

- 1. Define the 'New TIP' Scenario:** The 'new TIP' scenario is defined as the future situation that will result from implementation of all federal projects scheduled in the TIP and any non-federal projects which are required to be included in the TIP (i.e., non-federal projects which cannot proceed without endorsement in the form of inclusion in the TIP) as a result of State or local law or agreement. All non-federal projects that have clear funding sources and commitments leading to their implementation and completion by the analysis year should be included in the 'new TIP' scenario (and in the 'baseline' scenario also, since in the absence of an EPA/DOT agreement on whether to treat non-federal projects as subject to conformity, it should be assumed that these would proceed even if the TIP is not approved). The future situation shall reflect the best estimate of future population, employment, travel, and congestion in the area affected by the TIP projects. Any

project which will not be completed by the year of analysis should not be included in the 'new TIP' scenario. Projects which obviously do not impact regional emissions (including those listed in the Appendix to this guidance) need not be included in the 'new TIP' scenario for analysis purposes. MPOs should ensure that the design concept<sup>15</sup> and scope<sup>16</sup> of all projects is described in sufficient detail to perform the emissions analysis described in item 3 below. The 'new-TIP' scenario may not include, for emissions credit relative to the 'baseline' scenario, planned but not yet adopted and/or funded future non-TIP TCMs such as proposed local ordinances. It does include fully adopted regulatory TCMs (e.g., a new mandatory employer ridesharing ordinance) and fully funded non-regulatory TCMs (e.g., funding for ridesharing, or new facilities for transit and HOVs) which will be implemented as part of the TIP program over the course of the TIP period. The 'new-TIP' scenario should also include TCMs adopted since November 15, 1990, and any prior TCMs which have been amended since that date to be more stringent or effective, even if not yet incorporated into the applicable implementation plan. (The 'baseline' scenario excludes these recent changes, so their benefit will be available as an offset to any emissions increase from new projects in the TIP.) MPOs should submit reasonable evidence of the resources available for implementation of all projects in the TIP<sup>17</sup>.

**2. Define the 'Baseline' Scenario:** The 'baseline' scenario is considered to be the future transportation situation that would result from current programs, composed of all in-place facilities and on-going travel demand management (TDM) or transportation system management (TSM) activities, all projects currently under construction,

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<sup>15</sup>The 'design concept' shall mean the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated or mixed-traffic rail, transit, etc.

<sup>16</sup>The 'design scope' shall mean the design aspects which will affect the proposed facility's impact on regional emissions, usually as it relates to vehicle or person carrying capacity and control, e.g., number of lanes to be constructed or added, location and length of project, signalization, access control, preferential treatment for HOVs, etc.

<sup>17</sup>The promulgated criteria and procedures in the final EPA/DOT rule may establish more explicit requirements for the showing that there will be funding for all beneficial projects during Phase 2 and the long-term period.

projects currently contained in the annual or biennial funding element of a conforming TIP which will be completed by the year of analysis, and all non-federal projects that have clear funding sources and commitments leading toward their implementation and completion by the year of analysis, except for those projects so closely related to a new federal project that the local sponsor would not proceed in the absence of the federal project. Projects which obviously do not impact regional emissions (including those listed in the Appendix to this guidance) need not be included in the 'baseline' scenario for analysis calculation purposes.

**3. Perform the Emissions Impact Analysis:** The intent in describing the 'new-TIP' and 'baseline' scenarios in this way is to compare the transportation system as a whole in both cases, to determine the impact of TIP approval. An emissions analysis must be performed to estimate the differences in the area-wide VOC (for all ozone areas) and CO (for CO areas with an area-wide CO problem) emissions between the 'new TIP' and 'baseline' scenarios. The emissions analysis for TIP approval should use the locally available transportation models and tools, and must in all cases be adequate to make a reasoned determination of whether the TIP makes a contribution to emission reductions.<sup>18</sup>

The analysis will be performed in the first milestone year<sup>19</sup> and in the attainment year. The Act does not explicitly require a showing for dates beyond the attainment year, but at least for areas with a 1995 or 1996 attainment deadline, it is advisable to verify that the 'new TIP' scenario does not increase emissions for 5-10 years beyond the attainment date. The difference in emissions should best be determined from detailed scenario-specific estimates of demographic, employment, and transportation variables for the end-point years (e.g., VMT and traffic speeds), followed by application of MOBILE4.

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<sup>18</sup>Readily available improvements to past local practices should be made wherever possible. More rigorous analysis requirements may be developed as part of the EPA/DOT final rule and applied to the remainder of the interim period.

<sup>19</sup>The first milestone year is defined to be 1995 for CO nonattainment areas as described in §187(a)(7) of the Act, or 1996 for ozone nonattainment areas as described in §182(b)(1) of the Act.

**4. Make The Conformity Determination:** The TIP contributes to emissions reductions if emissions with the 'new TIP' scenario are shown to be less than those with the 'baseline' scenario for the two end-point years, and there is a logical basis for expecting that emissions from the 'new TIP' scenario are lower than the 'baseline' scenario for each of the intervening years. The MPO must consider and address any reasons why this expectation might not be valid, for example a project timing problem in which congestion is temporarily increased until completion of a later project.

Any construction-related measures that cause temporary and self-correcting emissions increases or NAAQS violations will not by themselves prevent a conformity determination, but will be subject to standard practices to minimize pollution during construction.

## **6.0 SPECIFIC REQUIREMENTS FOR MAKING CONFORMITY DETERMINATIONS OF TRANSPORTATION PROJECTS**

### **6.1 General Discussion**

For the purposes of determining conformity, a project is defined<sup>20</sup> according to §111(f) of 23 CFR 771. This section requires actions evaluated under the National Environmental Policy Act to: (1) connect to 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 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.

Projects which received all necessary approvals by DOT, the MPO, or a State or local transportation agency prior to enactment may proceed toward completion without further conformity determinations under the

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<sup>20</sup>This definition of a project would also apply to a project as it appears in discussions of plans and programs.



Amended Act. All segments<sup>21</sup> of such projects which were considered in the pre-enactment approval are also included, if the segmentation was for purposes of funding or construction only. DOT approval for this purpose is defined as a Final Environmental Impact Statement (FEIS) with record of decision issued, a Finding Of No Significant Impact (FONSI), or a categorical exclusion.

During Phase 1, all other federal projects, and non-federal projects which require action by an MPO due to State or local law or agreement must be found to conform under the new Act using the criteria and procedures in this guidance. Projects requiring conformity determinations may be categorized as those that do not impact regional emissions, those that come from conforming TIP's, and those that are not in a TIP for any reason. It should be noted that the project-level conformity determination may not by itself remove the last obstacle to implementation, since in most cases DOT cannot fund projects that do not come from an approved and conforming TIP.

## 6.2 Projects That Do Not Impact Regional or Local Emissions

EPA and DOT agree that certain types of projects (listed in the Appendix to this guidance) obviously have no impact, either negative or positive, on regional CO and VOC emissions and therefore do not require analysis of regional impacts. Most also have no local CO impact, so CO analysis is also not a requirement, except as otherwise noted for three of the project types<sup>22</sup>. Despite their lack of emissions impacts, during Phase 1 these projects must be formally found to conform to the applicable implementation plan in accordance with §176(c)(3) if from a grandfathered pre-enactment TIP, or (optionally) with §§176(c)(2)(C)-(D) provided the area has a currently conforming TIP. However, the previous sentence notwithstanding, DOT may make a categorical conformity finding for project types on this list, except for the three identified as possible contributors to new local CO violations. The NPRM for Phase 2 of the interim period and the control strategy period

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<sup>21</sup>In the FEIS or FONSI, a project is defined in its entirety so that its total impacts may be determined. As the project proceeds toward implementation, it is often split into smaller segments or TIP line items for funding and construction purposes. However, there is no requirement to analyze these segments beyond the analysis for the project as defined in the FEIS or FONSI.

<sup>22</sup>These projects may be excluded from emissions analysis when located in an urban planning area and included in a transportation plan or TIP (see sections 4.2 and 5.3.3 of this guidance).

will seek public comment on a categorical exclusion from conformity review for at least some of these projects unless contrary indications exist in specific cases.

### **6.3 Projects in TIPs**

This category encompasses all federally assisted or approved projects that are included in TIPs found to conform during Phase 1 according to the procedures described elsewhere in this guidance. These can be further sub-categorized to include projects in grandfathered TIPs (as defined in section 6.3.1 below) and projects in TIP's found to conform since enactment (as described in section 6.3.2 below).

In order to make a conformity determination for projects in this category, the design concept and scope of such projects must not have changed significantly since the TIP from which they were derived was found to conform. Projects which are located in a CO nonattainment area must also be accompanied by an analysis showing they eliminate or reduce the number and severity of CO NAAQS violations in the area substantially affected by the project.<sup>23</sup> This analysis should extend at least through the attainment deadline for that area. Projects may not cause or contribute to any new CO violations in an area to which conformity applies for CO; a seemingly new CO violation in a CO nonattainment area can be considered to be merely a relocation and reduction of an existing violation, but only if it is reasonably close to the site(s) of previous violations that will be reduced in number or severity as a result of the project.<sup>24</sup>

#### **6.3.1 Projects In TIPs Grandfathered Under Section 176(c)(3)(B)(i)**

This sub-category includes those projects which are grandfathered as part of TIP's found to conform within three years prior to enactment (as described in section 5.2 of this guidance). Section 176(c)(3)(B)(i) clearly allows these projects to proceed during Phase 1. All projects

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<sup>23</sup>The CO analysis has in the past usually been completed at the EIS stage of project development, following approval of the TIP. The Act now allows, but does not require, this analysis to be completed prior to TIP approval, and approved along with the TIP. As the criteria are the same in either case, it will be necessary to have the project defined with adequate specificity if the analysis is completed prior to TIP approval.

<sup>24</sup>Possible further mitigation of the relocated violation should be addressed in the EIS process.

included in the TIP are grandfathered, even if not included in the annual or biennial funding element. This may be beneficial in areas experiencing delays in adoption of a new conforming TIP. The grandfathering provision expires November 15, 1991, after which time all projects which have not yet received a DOT conformity finding and NEPA approval must come from a TIP found to conform under the new statutory criteria.

#### **6.3.2 Projects In TIPs Found to Conform After Enactment**

This sub-category includes all projects in TIPs which are found to conform after enactment using the criteria and procedures described in section 5.3 of this guidance or any criteria and procedures promulgated after this date.

#### **6.4 Projects Not in a TIP For Any Reason**

This category encompasses all projects that are within the nonattainment area but are not included in a conforming TIP for any reason. This category can be further sub-categorized to include any project outside the urban planning area but within the nonattainment area (as defined in section 6.4.1 below), and projects within the urban planning area that have been newly proposed since the last TIP was found to conform (as defined in section 6.4.2 below). It also includes any project within an urban planning area that has no conforming TIP (as defined in section 6.4.3 below), although this may be an empty sub-category during Phase 1 since all areas should have at least a grandfathered pre-enactment TIP.

Section 176(c)(2)(D) is the only statutory provision that explicitly addresses conformity criteria for projects not from a conforming TIP, but the general provisions of §176(c)(1) also apply, and the provisions of §176(c)(3)(B) may be used as a guide to statutory intent. Since projects in this category are not included in conforming TIPs, they require analysis similar to that of both TIPs (TCM implementation and area-wide emissions analysis) and projects (localized hot-spot CO analysis) on a project-by-project basis during Phase 1 in order to make a conformity determination. All such projects must therefore be accompanied by a finding that they do not adversely affect the implementation of TCMs from the applicable implementation plan, and an analysis (resembling that for TIPs as described in section 5.3.3 of

this guidance) of their effect on regional emissions. Criteria for regional emissions impacts are discussed below by sub-category. Projects which are located in CO nonattainment areas must also be accompanied by an analysis showing they eliminate or reduce the number and severity of CO NAAQS violations in the area substantially affected by the project. These projects may not cause or contribute to new CO violations in an area to which conformity applies for CO, unless the new violation is demonstrated to be merely a relocation and reduction of an existing violation and it is reasonably close to the site(s) of previous violations that will be reduced in number or severity as a result of the project.<sup>25</sup> MPOs and project sponsors should take note that project-by-project approvals may not be much different in analytical requirements or criteria than a TIP amendment since §176(c)(2)(D) requires such projects to be considered together with all other projects in a conforming plan and program. Therefore, the long-term approach requiring the least effort may be to include in the TIP as many projects of the types described below as possible.

#### 6.4.1 Projects Outside The Urban Planning Area But Within The Nonattainment Area

This sub-category of projects does not require MPO action under existing federal law or DOT regulations. As a result, few if any such projects have been included in past TIPs, and therefore such projects usually cannot be grandfathered. The Act does not address a process by which to determine the conformity of these projects during the interim period. Since there is no reason not to allow projects with favorable regional and local emissions impacts to proceed toward implementation, EPA and DOT agree during Phase 1 to interpret §176(c)(2)(D)<sup>26</sup> (which most directly addresses project-by-project approvals during the control strategy period, since it refers to implementation plan projections and schedules that exist only in that period) such that conformity determinations may be made on a project-by-project basis by DOT using the concept of the interim criteria for TIPs and projects specified in §176(c)(3). That is, each project must

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<sup>25</sup>See Footnote 23.

<sup>26</sup>EPA and DOT also interpret §176(c)(2)(D) to require the existence of a conforming TIP and transportation plan in order for projects to be found to conform individually under that section. Strictly speaking, the portion of the nonattainment area outside the urban planning area is not now covered by a TIP, conforming or otherwise. For Phase 1 of the interim period the concept of project-by-project approvals may be applied outside the urban area, provided that the urban area itself has a conforming TIP.

not interfere with TCMs, must contribute to regional emissions reductions, and must reduce local CO violations.

#### 6.4.2 Projects in an Urban Area But Not In The Most Recent Conforming TIP

This sub-category includes projects which, for whatever reason, require approval (and therefore conformity determinations) prior to the next TIP submission or formal TIP amendment but were not included in the most recent conforming TIP. EPA and DOT agree to interpret §176(c)(2)(D) during Phase 1 such that conformity determinations may be made on a project-by-project basis by the recipient of funds and DOT using the concept of the interim criteria for TIP's and projects specified in §176(c)(3).<sup>27</sup> This applies only to new projects in urban areas where the most recent conforming TIP is a new one found to conform after enactment using the criteria and procedures in section 5.3 of this guidance.

The above approval criteria do not apply to new federal projects in urban areas where the most recent 'conforming' TIP is still the one treated as conforming by way of the grandfathering provision (section 5.2) of this guidance. To allow such projects to proceed individually toward implementation during Phase 1 would undermine the Act's intent that a new round of comprehensive planning be completed soon. They must therefore be processed in a TIP revision subject to the full criteria for TIP conformity determinations after enactment (section 5.3 of this guidance), unless they fall into the criteria for projects that do not impact air quality as listed in the Appendix to this guidance. Since federal funding in an urbanized area usually requires that projects come from an accepted TIP, for them this restrictive policy has a practical additional impact only for projects requiring DOT approval but not funding action.

#### 6.4.3 Projects In Urban Areas With No Conforming TIP

This sub-category includes projects in urban areas which do not have a current conforming TIP. This could occur in Phase 1 if an MPO's draft TIP has not been found to conform after enactment and the most recent pre-enactment TIP was found to conform prior to November 15, 1987. It is possible, even likely, there are no areas so affected during Phase 1.

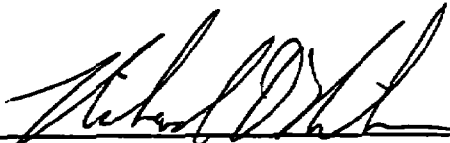
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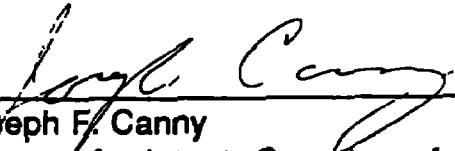
<sup>27</sup>See Footnote 25.

During Phase 1, no project in this sub-category may be found to conform, even in light of the project-by-project provision in §176(c)(2)(D), because this provision requires there to be a conforming plan and TIP at the time of project approval. Therefore, these projects must be held for inclusion in the next TIP submission or amendment and be analyzed in the aggregate with all other projects in the area.

DATE:

June 7, 1991

  
Richard D. Wilson  
Director, Office of Mobile Sources  
Environmental Protection Agency

  
Joseph F. Canny  
Deputy Assistant Secretary for  
Policy and International Affairs  
Department of Transportation

# APPENDIX

## PROJECTS THAT DO NOT IMPACT REGIONAL EMISSIONS, AND PROJECTS THAT ALSO DO NOT REQUIRE LOCAL CO IMPACT ANALYSIS

Certain transportation projects eligible for funding under Title 23 U.S.C. or the Urban Mass Transportation Act have no impact on regional, emissions. These are 'neutral' projects that, because of their nature, will not affect the outcome of any regional emissions analyses and add no substance to those analyses. As a result, DOT and EPA agree that, during Phase 1, such projects may be excluded from the regional emissions analyses required in order to determine conformity of TIPs (as described in section 5.3.3 of this guidance). With the exception of those projects marked with an asterisk on the following list, DOT and EPA also agree that project level analysis of local CO impacts is not necessary. Projects eligible for this treatment include:

### **SAFETY**

Railroad/highway crossing  
Pavement marking demonstration  
Hazard elimination program  
Safer off-system roads (non-Federal-aid system)  
Emergency relief (23 U.S.C. 125)

Also specific projects for:

*intersection channelization projects\**

shoulder improvements

truck size and weight inspection stations

safety improvement program

*intersection signalization projects\**

railroad/highway crossing warning devices

*changes in vertical and horizontal alignment\**

increasing sight distance

guardrails, median barriers, crash cushions

pavement resurfacing and/or rehabilitation

widening narrow pavements or reconstructing bridges (less than one travel lane)

noise attenuation

fencing

skid treatments

safety roadside rest areas

other traffic control devices

truck climbing lanes

lighting improvements

adding medians

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\* These project types require consideration of possible new local CO violations.

## **MASS TRANSIT**

Purchase of office, shop, and operating equipment for existing facilities  
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)  
Construction or renovation of power, signal, and communications systems  
Operating assistance  
Rehabilitation of transit vehicles  
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)  
Construction of small passenger shelters and information kiosks  
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way  
Noise attenuation  
Purchase of support vehicles (e.g., autos, vans)  
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet to provide new service  
Construction of new bus and rail storage and maintenance facilities which meet the conditions for categorical exclusion specified in 23 CFR 771

## **AIR QUALITY**

Continuation of ride-sharing and van-pooling promotion activities at current levels  
Bicycle projects  
Pedestrian facilities

## **OTHER**

Engineering to define elements of proposed action or alternatives to assess social, economic, and environmental effects  
Advance land acquisitions as prescribed in 23 CFR 771  
Acquisition of scenic easements  
Plantings, landscaping, etc.  
Sign removal