

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

**RULE 221 - TRANSPORTATION CONFORMITY**

*(Adopted 09/12/95, Revised 08/11/98, 06/08/99)*

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

<u>Section</u>	<u>Title</u>
93.100	Purpose.  Most Recent Revision (62FR43802, Aug. 15, 1997)
93.101	Definitions.  Most Recent Revision (62FR43802, Aug. 15, 1997)
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.  (b) Geographic Applicability. The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related

Section

Title

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 (NO<sub>2</sub>), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).
- (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<sub>x</sub>) in ozone areas;
  - (ii) NO<sub>x</sub> in NO<sub>2</sub> areas; and
  - (iii) VOC, NO<sub>x</sub>, and PM<sub>10</sub> in PM<sub>10</sub> 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 PM<sub>10</sub> 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 subpart 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.

(c) 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

Section

Title

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.

93.103

Priority.

Most Recent Revision (62FR43802, Aug. 15, 1997)

93.104

Frequency of conformity determinations.

Most Recent Revision (62FR43802, Aug. 15, 1997)

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 Ventura County Air Pollution Control District, the Ventura County Transportation Commission, the Southern California Association of Governments, the California Air Resources Board, the California Department of Transportation, the Environmental Protection Agency, the Federal Highway Administration, and the Federal Transit Administration, and dated 9/7/95, 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. All the requirements stated in the Memorandum of Understanding shall apply to all parties which develop, approve, adopt, or implement transportation projects, programs, or plans, regardless of whether they are signers of the Memorandum of Understanding.

93.106

Content of transportation plans.

Most Recent Revision (62FR43802, Aug. 15, 1997)

93.107

Relationship of transportation plan and TIP conformity with the NEPA process.

Most Recent Revision (62FR43802, Aug. 15, 1997)

93.108

Fiscal constraints for transportation plans and TIPs.

Most Recent Revision (62FR43802, Aug. 15, 1997)

<u>Section</u>	<u>Title</u>
93.109	Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.110	Criteria and procedures: Latest planning assumptions.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.111	Criteria and procedures: Latest emissions model.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.112	Criteria and procedures: Consultation.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.113	Criteria and procedures: Timely implementation of TCMs.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.114	Criteria and procedures: Currently conforming transportation plan and TIP.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.115	Criteria and procedures: Projects from a plan and TIP.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.116	Criteria and procedures: Localized CO and PM10 violations (hot spots).
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.117	Criteria and procedures: Compliance with PM10 control measures.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.118	Criteria and procedures: Motor vehicle emissions budget.
	Most Recent Revision (62FR43802, Aug. 15, 1997)
93.119	Criteria and procedures: Emission reductions in areas without motor vehicle emissions budget.
	Initial Promulgation (62FR43802, Aug. 15, 1997)

<u>Section</u>	<u>Title</u>
93.120	<p>Consequences of control strategy implementation plan failures.</p> <p>Initial Promulgation (62FR43802, Aug. 15, 1997)</p>
93.121	<p>Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.</p> <p>(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:</p> <p>(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</p> <p>(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).</p> <p>(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:</p> <p>(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</p> <p>(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</p>

Section

Title

§§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.”

93.122

Procedures for determining regional transportation-related emissions.

- (a) General requirements.
- (1) The regional emissions analysis required by §§93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by §93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
  - (2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

Section

Title

- (3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:
  - (i) The regulatory action is already adopted by the enforcing jurisdiction;
  - (ii) The project, program, or activity is included in the applicable implementation plan;
  - (iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of §93.118 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or
  - (iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
- (4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.
  - (i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.
  - (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.
- (5) A regional emissions analysis for the purpose of satisfying the requirements of §93.119 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline

Section

Title

volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

- (6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to §93.105 to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
  - (7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
- (b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.
- (1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by §93.105. Network-based travel models must at a minimum satisfy the following requirements:
    - (i) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;



Section

Title

- (ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;
  - (iii) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;
  - (iv) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;
  - (v) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and
  - (vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.
- (2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.
- (3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the

Section

Title

modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of §93.105.

- (c) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.
- (d) PM<sub>10</sub> from construction-related fugitive dust.
  - (1) For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
  - (2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.
- (e) Reliance on previous regional emissions analysis.
  - (1) The TIP may be demonstrated to satisfy the requirements of §§93.118 ("Motor vehicle emissions budget") or 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:
    - (i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

Section

Title

- (ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and
- (iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of §§93.118 or 93.119 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

- (i) not regionally significant; or
- (ii) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

93.123 Procedures for determining localized CO and PM10 concentrations (hot-spot analysis).

Most Recent Revision (62FR43802, Aug. 15, 1997)

93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

Most Recent Revision (62FR43802, Aug. 15, 1997)

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 Act, 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

Section

Title

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 for conformity determinations for projects.

93.126	Exempt projects.		
	Most Recent Revision	(62FR43802,	Aug. 15, 1997)
93.127	Projects exempt from regional emissions analyses.		
	Most Recent Revision	(62FR43802,	Aug. 15, 1997)
93.128	Traffic signal synchronization projects.		
	Initial Promulgation	(62FR43802,	Aug. 15, 1997)