

amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

**§ 93.125 Enforceability of design concept and scope and project-level mitigation and control measures.**

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub> or CO impacts. Before a conformity determination is made, 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 are 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 must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained

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prior to a positive conformity determination, and that 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 applicable requirements of §§ 93.118 and/or 93.119 and that the project still satisfies the requirements of § 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in § 93.105(e) for conformity determinations for projects.

### § 93.126 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2—EXEMPT PROJECTS

#### *Safety*

Railroad/highway crossing.  
Hazard elimination program.  
Safer non-Federal-aid system roads.

Shoulder improvements.  
Increasing sight distance.  
Safety improvement program.  
Traffic control devices and operating assistance other than signalization projects.  
Railroad/highway crossing warning devices.  
Guardrails, median barriers, crash cushions.  
Pavement resurfacing and/or rehabilitation.  
Pavement marking demonstration.  
Emergency relief (23 U.S.C. 125).  
Fencing.  
Skid treatments.  
Safety roadside rest areas.  
Adding medians.  
Truck climbing lanes outside the urbanized area.  
Lighting improvements.  
Widening narrow pavements or reconstructing bridges (no additional travel lanes).  
Emergency truck pullovers.

#### *Mass Transit*

Operating assistance to transit agencies.  
Purchase of support vehicles.  
Rehabilitation of transit vehicles<sup>1</sup>.  
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.  
Construction of small passenger shelters and information kiosks.  
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).  
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.  
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet<sup>1</sup>.  
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

#### *Air Quality*

Continuation of ride-sharing and van-pooling promotion activities at current levels.  
Bicycle and pedestrian facilities.

#### *Other*

Specific activities which do not involve or lead directly to construction, such as:  
Planning and technical studies.  
Grants for training and research programs.  
Planning activities conducted pursuant to titles 23 and 49 U.S.C.  
Federal-aid systems revisions.  
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.  
Noise attenuation.