

**§ 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 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 sat-

isfy 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.

EFFECTIVE DATE NOTE: At 69 FR 44081, July 1, 2004, § 93.125 was amended by revising the reference “93.119 (“Emissions reductions in areas without motor vehicle emissions budgets”)” to read “93.119 (“Interim emissions in areas without motor vehicle emissions budgets”),” and paragraph (d) is amended by revising the phrase “emission reduction requirements of § 93.119” to read “interim emissions requirements of § 93.119.”, effective Aug. 2, 2004.

**§ 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.