

## Chapter 9 Conformity

### 9.1 General Conformity

General conformity requirements were adopted by Congress as part of the Clean Air Act (CAA) Amendments in 1990, and were implemented by U.S. EPA regulations in 1993. (See Sec. 176 of the CAA (42 U.S.C. § 7506) and 40 CFR Part 93, Subpart B.) General conformity requires that all federal actions must “conform” with the State Implementation Plan (SIP) as approved or promulgated by EPA. The purpose of the general conformity program is to ensure that actions taken by the federal government do not undermine state or local efforts to achieve and maintain the national ambient air quality standards. Before a federal action is taken, it must be evaluated for conformity with the SIP. All “reasonably foreseeable” emissions predicted to result from the action are taken into consideration. These include direct and indirect emissions, and must be identified as to location and quantity. If it is found that the action would create emissions above *de minimis* threshold levels specified in EPA regulations (40 CFR § 93.153(b)), or if the activity is considered “regionally significant” because its emissions exceed 10% of an area’s total emissions, the action cannot proceed unless mitigation measures are specified that would bring the project into conformance.

Since any project that is not in compliance with conformity requirements would clearly have the potential for causing a significant impact on air quality, it is appropriate to require compliance with those requirements before a Negative Declaration can be prepared under CEQA.

**9.1.1 Application of the Conformity Rule.** General conformity applies in both federal non-attainment and federal air quality maintenance areas. Within these areas, it applies to any “Federal action” not specifically exempted by the CAA or EPA regulations, i.e., any non-exempt activity by a federal governmental department, agency or instrumentality, or any activity that such an entity supports in any way, provides financial assistance for, or licenses, permits, or approves. This definition is broad enough to capture purely private projects subject only to local approval where a local agency with any kind of approval authority is the recipient of federal funding for any purpose. Emissions from construction activities are also included. General conformity does not apply to projects or actions that are covered by the Transportation Conformity rule, which is discussed below.

**9.1.2 Compliance with the Conformity Rule.** If a federal action falls under the general conformity rule, the federal agency responsible for the action is responsible for making the conformity determination. In some instances, a state will make the conformity determination under a delegation from a federal agency. Private developers are not responsible for making a conformity determination, but can be directly and seriously affected by a determination.

When an agency makes a conformity decision, it must provide opportunity for comment and review. This public participation requirement means that the agency must:

1. Make its draft conformity determination available for review, along with all supporting documents.
2. Advertise the draft determination in the area affected by the action and provide 30 days for written public comment.
3. Document its response to all comments and make both the comments and responses available to the public within 30 days of the final conformity decision.
4. Advertise a notice of the final conformity determination in the area affected by the action within 30 days of the final determination.

**9.1.3 De Minimis Limits.** EPA regulations (40 CFR § 153(b)(1)) exempt projects in nonattainment and maintenance areas from general conformity requirements if their projected emissions do not exceed specified *de minimis* levels. The only applicable level in El Dorado County, which is applicable only for the Mountain Counties Air Basin (western) portion of the county, is the limit for severe nonattainment areas for ozone: 25 tons/year of ROG or NO<sub>x</sub>. There are also certain exemptions based on project type or size (see 40 CFR § 153).

## **9.2 Transportation Conformity**

Transportation conformity requirements were also added to the CAA in the 1990 amendments, and EPA adopted implementing regulations in 1997. See § 176 of the CAA (42 U.S.C. § 7506) and 40 CFR Part 93, Subpart A. Transportation conformity serves much the same purpose as general conformity: it ensures that transportation plans (TPs), transportation improvement programs (TIPs), and projects that are developed, funded, or approved by the United States Department of Transportation or that are recipients of funds under the Federal Transit Act or from the Federal Highway Administration, conform to the SIP as approved or promulgated by EPA. Federal transportation projects are also reviewed to ensure that they do not cause new air quality violations or impede an area's progress toward attainment of air quality standards. Currently, transportation conformity applies in nonattainment areas and maintenance areas.

Under transportation conformity, a determination of conformity with the applicable SIP must be made by the agency responsible for the project, such as the Metropolitan Planning Organization, the Council of Governments, or a federal agency. The agency making the determination is also responsible for all the requirements relating to public participation. Generally, a project will be considered conforming if it is in the TIP and the TIP is incorporated in the SIP. If an action is covered under transportation conformity, it does not need to be separately evaluated under general conformity.

When a transportation project is evaluated for conformity purposes, the evaluation deals only with the operational emissions associated with that project. Operational emissions are emissions generated after completion of the project. In the case of a new or expanded freeway, for instance, operational emissions are generated by the additional vehicles using the freeway. Emissions from the construction of a transportation project are not dealt with in a transportation conformity analysis, but must be separately evaluated under this Guide for CEQA purposes.

### **9.3 Caveat**

Conformity has burgeoned from a relatively simple concept into a complex, technical regulatory program. Difficult questions can arise as to whether a project is subject to conformity and what agency is responsible for the conformity demonstration. The District has made compliance with federal conformity provisions a requirement for determining that a project will not have a significant impact on air quality under CEQA. Lead agencies and project proponents should seek expert advice on conformity requirements early in the CEQA process.