

## **Air Quality Branch, Division of Transportation Planning, Office of Air Quality and Climate Change**

The Headquarters Air Quality Branch (AQ Branch) meets the 2020-2024 Strategic Management Plan's goals of enhancing and connecting the multimodal transportation network and advancing equity and livability in all communities by aiding in the delivery of a variety of projects on and off the state highway system statewide, while ensuring the regulatory intent of the Federal Clean Air Act is met. As a recipient of federal funds, Caltrans is compelled by federal law to operate in a manner consistent with the State's plan(s) to attain the national ambient air quality standards (NAAQS) for ozone, particulate matter, and carbon monoxide through a well-defined process called "transportation conformity" (40 CFR 93 Subpart A). Transportation conformity (conformity) applies to regional plans (RTPs) and transportation improvement programs (TIPs) developed by the State and by Metropolitan Planning Organizations (MPOs), and to Federal project approval and funding decisions, in areas that are designated "nonattainment", or "attainment" with a Maintenance SIP, for one or more federal criteria air pollutants. In reviewing and approving projects under NEPA, Caltrans is responsible for complying with all applicable federal environmental laws, FHWA, NEPA regulations, policies, and guidance, and is legally responsible and liable for the environmental decisions made on projects under NEPA Assignment.

### **What is the statutory relationship between transportation planning and the conformity rule?**

42 USC 7506 (c)(1) and (2): 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 7410 of this title. No MPO designated under Section 134 of Title 23 shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

Any transportation plan or program developed pursuant to Title 23 or Chapter 53 of Title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency

may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter.

### **Where exactly does conformity apply?**

Conformity applies in areas that are designated nonattainment, or attainment with a maintenance SIP, by U.S. EPA under the Federal Clean Air Act for one or more transportation-related air pollutants. See this [map](#), or consult the U.S. EPA Green Book for area designations. "Transportation-related pollutants" for which EPA has set National Ambient Air Quality Standards include ozone, particulate matter (PM10 and PM2.5), carbon monoxide (CO), and nitrogen dioxide (NO2).

### **How does conformity apply to "Recipients of Federal Funds"?**

The U.S. Environmental Protection Agency (EPA) Transportation Conformity regulations at 40 CFR 93.121 require that all recipients of Federal funds make certain conformity-related findings when approving projects regardless of funding. Findings regarding these provisions are required as part of project approval even if there is no federal involvement. "Recipient of Federal Funds" is defined in 40 CFR 93.101 as "Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of state, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements".

If the project is a regionally significant project, regardless of funding, it must come from a conforming RTP and TIP or otherwise be included in the current regional conformity analysis (40 CFR 93.121). In all cases, the design concept and scope of the preferred alternative must match the design concept and scope used for the regional conformity analysis.

A regionally significant project means a transportation project (other than an exempt project) that is:

- On a facility which serves regional transportation needs
  - Access to and from the area outside of the region,
  - Major activity centers in the region,
  - Major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves
- Would normally be included in the modeling of a metropolitan area's transportation network
- All principal arterial highways

- All fixed guide-way transit facilities that offer an alternative to regional highway travel. (Note: a majority of rail transit projects funded under Title 49 would fit this category)

In MPO Areas: The project must be -

- Listed in the currently conforming RTP and TIP; or
- Included in the regional emission analysis used for the currently conforming RTP and TIP, if not explicitly listed in them; or
- Included in a new regional emission analysis that includes both the project and the rest of the RTP and TIP, that demonstrates continued regional conformity.

In Isolated Rural Areas: These areas have no RTP and TIP conformity determination. Regional conformity is determined only when regionally significant projects, regardless of funding, occur. There are several Isolated Rural ozone and PM10 areas in California. The regionally significant projects must be:

- Included in the most recent regional conformity analysis that covers all current nonattainment and maintenance pollutants; or
- Included in a new regional conformity analysis demonstrating conformity when the project and all other regionally significant projects in the area are considered.

### **What is the difference between regional and project-level conformity?**

The basis for regional conformity/emissions analysis is outlined in the conformity rule and is codified in 40 CFR 93.118-119. All MPOs in nonattainment or maintenance areas must conduct a regional emissions analysis, either a budget test or interim emissions test(s), for their RTP/TIP every four years, or as otherwise needed. The analysis must include all regionally significant projects as defined in the rule 40 CFR 93.101, regardless of funding source, and must include all FHWA/FTA projects. The analysis must cover the transportation planning horizon, generally twenty years, unless the planning horizon is shortened for conformity purposes.

Project-level conformity is an estimation of likely future localized pollutant concentrations of carbon monoxide, PM10, or PM2.5 and a comparison of those concentrations to the national ambient air quality standards (NAAQS). The analysis assesses impacts on a smaller scale than an entire nonattainment or maintenance area. For example, if a project is determined to be a project of air quality concern, a hot-spot analysis could be done on a congested roadway intersection or highway or transit terminal. An air quality dispersion model is used to determine the effects of emissions from the project on local air quality.

### **What is NEPA Assignment?**

Caltrans and FHWA implemented NEPA Assignment, based on provisions of SAFETEA-LU Sections 6004 and 6005, by Memoranda of Understanding (MOUs) signed in June-July 2006. Assignment essentially places Caltrans in the role of FHWA for NEPA actions needed for transportation project approval. FHWA will no longer be directly involved in the NEPA process for most projects. Assignment also places Caltrans in FHWA's role in most mandatory consultation and permit activities related to the NEPA process.

Transportation conformity is affected in different ways, depending on whether the project is a "Section 326" project processed with a NEPA Categorical Exclusions (CE), or a "Section 327" project covered by the "Conformity Pilot Project." Assignment under Section 326 covers all FHWA responsibilities including conformity, so the CE also constitutes the project-level conformity determination or findings that the project is exempt from conformity requirements. Projects covered under Section 327, however, still need a conformity determination by FHWA even though all other NEPA-related responsibilities are delegated/assigned to Caltrans.

### **What are the key products and services of the Headquarters Air Quality Branch?**

The Office of Air Quality and Climate Change (AQCC) staff in Headquarters are tasked with carrying out various aspects of the conformity process, especially regional and statewide interagency consultation (IAC) (see 40 CFR 93.105). Along with EPA, FHWA, FTA, and the California Air Resources Board (CARB), Caltrans is a mandatory partner in both regional and statewide consultation.

As part of the project-level PM hot spot consultation process, AQCC staff are required to review and "concur" in the decisions as to whether a project is exempt from conformity, "not a project of concern," or is a "project of concern" requiring detailed modeling and other analysis. Criteria for these decisions are in EPA regulations and guidance. Due to the project-specific aspects of this process, district and regional environmental engineering staff members participate in the consultation process and provide a project overview for Caltrans Capital projects or local oversight projects.

AQCC staff manage and participate in statewide conformity policy consultation and monitors regional consultation on a time and staff-available basis. AQCC staff members will participate in specific conformity discussions when requested by the districts, regions, and MPOs, but cannot provide "concurrence" in various decisions for Caltrans as part of the regional consultation processes.

Lastly, as of the approval of the 2021 FSTIP and related Federal Planning Findings, AQCC staff are responsible for performing federally mandated quality assurance on all RTP/TIP updates and formal amendments, as well as individual, project-level 23 USC 327 non-CE conformity submittals to FHWA. Without the AQ Branch's recommendation for approval on these materials, FHWA will not move forward with the plans, programs, or projects.

### List of Partners/Customers

- **FHWA and FTA:** These are the approving agencies for conformity determinations. Conformity determinations are required for all federal actions, including MPO RTPs, TIPs, and projects with federal involvement. FHWA and FTA (and Caltrans for projects where NEPA action is assignment under Section 326) need to make or update a conformity determination every time they make a project approval (final NEPA document) or any subsequent funding action (i.e., E76) for projects.
- **EPA:** The rules are EPA's, so specific interpretations of them largely come from EPA. EPA also approves the air quality plans (SIPs) and emission budgets that govern the regional conformity process, and which affect projects in some ways.
- **CARB:** The state air agency – responsible for developing and submitting the SIP to EPA, although in California the air districts do most of the actual air quality modeling and plan development work.
- **Caltrans:** As the state transportation agency- Caltrans is part of the review loop for MPO regional conformity and is responsible for regional conformity analysis in nonattainment areas that are not MPOs. Caltrans prepares conformity analysis for projects and makes conformity findings for non-federal projects. Following the 2021 FSTIP findings, the Air Quality Branch is now responsible for reviewing and recommending approval to FHWA for all the MPOs regional conformity determinations. Also, with the assistance of the Division of Environmental Analysis (DEA), the two offices are now required to perform a joint completeness review for all project-level conformity determinations before submitting the new FHWA Submittal Package Checklist to FHWA for final project-level approval.
- **Metropolitan Planning Organizations (MPOs):** Primarily responsible for regional planning and regional conformity analysis. Must make conformity determination for RTP and TIP. Largely independent of Caltrans for RTP approval, but TIPs generally must be routed through Caltrans to FHWA for approval. Also does a programmatic CEQA document for the RTP.
- **Air Districts (APCDs and AQMDs):** Responsible for air quality planning, and regulation of stationary and some “area” sources but not mobile (such as

on-road vehicle) emission sources. Develop emission budgets used by MPOs for regional conformity analysis.

**What is the role of the Districts?**

In order to meet our responsibilities for the conformity consultation process, the Division of Transportation Planning funds staff positions in Districts 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. These staff members are expected to review conformity analyses prepared as part of the planning and programming processes by the MPOs, to participate in the regional conformity consultation processes set up by the MPOs, and to assist DEA with planning aspects of regional conformity analysis in isolated rural areas.