

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

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule 3745-101-02 of the Administrative Code titled "Incorporation by reference."]

- (A) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 USC or the Federal Transit Act, the FHWA, or FTA shall obtain, from the project sponsor or operator, enforceable 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 PM₁₀ or CO impacts. Before making conformity determinations, enforceable written commitments shall 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 40 CFR 93.118 "Criteria and procedures: Motor vehicle emissions budget" and 40 CFR 93.119 "Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets" or used in the project-level hot-spot analysis required by 40 CFR 93.116.
- (B) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and shall comply with the obligations of such commitments.
- (C) Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and project sponsors shall comply with such commitments.
- (D) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, then 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 40 CFR 93.116, the emission budget requirements of 40 CFR 93.118, and emission reduction requirements of 40 CFR 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under rule 3745-101-04 of the Administrative Code. The MPO and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of 40 CFR 93.118 and/or 40 CFR 93.119, that the project still satisfies the requirements of 40 CFR 93.116, and that the conformity determinations for the transportation plan, TIP, and project are therefore still valid. This finding is subject to the applicable public consultation requirements in paragraph (E) of rule 3745-101-04 of the Administrative Code for conformity determinations for projects.

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