



# Memorandum

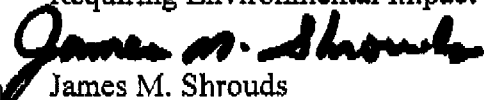
U.S. Department  
of Transportation

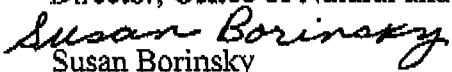
Federal Highway Administration  
Federal Transit Administration

Subject: **INFORMATION:** Clarification of Transportation  
Conformity Requirements for FHWA/FTA Projects  
Requiring Environmental Impact Statements

Date: MAY 20 2003

Reply to: HEPN-40/TPL-30

From:   
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To: FHWA Division Administrators  
Federal Lands Highway Division Engineers  
FTA Regional Administrators

The purpose of this memorandum is to clarify how full compliance with the Clean Air Act transportation conformity requirements is to be achieved for FHWA and FTA projects requiring environmental impact statements (EIS) under the National Environmental Policy Act (NEPA). The Clean Air Act and the Transportation Conformity Rule (40 CFR 93.104) require that proposed projects must be found to conform to the State Implementation Plan (SIP) before they are adopted, accepted, approved, or funded by FHWA or FTA. However, there has been some confusion about whether conformity of a project must be determined prior to approval of the final EIS or prior to the issuance of the record of decision (ROD).

Federal agencies are required by NEPA to prepare an EIS for major Federal actions that significantly affect the quality of the human environment. The EIS process is carried out in two separate phases which result in the preparation of a draft EIS and a final EIS. An EIS is a disclosure document. It details the process through which a transportation project was developed; the potential impacts resulting from the project; and the demonstrated compliance, to the extent possible, with all applicable environmental laws and related requirements. However, approval of the final EIS does not permit a project sponsor to proceed to further actions (such as final design or construction). For those subsequent actions to proceed, FHWA or FTA must issue a ROD.

In accordance with 23 CFR 771.133, the final EIS should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements, including the transportation conformity provisions of the Clean Air Act. However,

the regulations also recognize that if full compliance is not possible by the time the final EIS is prepared, the final EIS can reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met.

In those instances when the final EIS does not document full compliance with the transportation conformity provisions, it should at a minimum:

- Document all pertinent consultation and information that supports the reasonable assurance that all of the transportation conformity requirements will be met.
- Discuss the procedural steps that remain in order for all of the transportation conformity requirements to be met. This discussion should include any interagency consultation that must still occur and information that must be provided, as well as the opportunities for public review and comment that will take place.
- Document hot-spot analyses (40 CFR 93.116) in nonattainment and maintenance areas for carbon monoxide and particulate matter with diameters of 10 micrometers or less (PM-10), including any required quantitative and qualitative analyses, any mitigation measures that are needed, and the enforceability of any such mitigation measures (40 CFR 93.125).
- Document compliance with any PM-10 control measures in the applicable implementation plan (40 CFR 93.117) in PM-10 nonattainment and maintenance areas that are relevant to construction or operation of the project.

In instances when the final EIS does not document full compliance with the transportation conformity provisions, the conformity determination must be made prior to issuance of a ROD. This is consistent with the transportation conformity rule which refers to NEPA process completion as the point at which FHWA or FTA issues a ROD (40 CFR 93.101).

This guidance was prepared in consultation with EPA. This guidance supersedes any previous guidance, including that which is contained on the issue in the FHWA/FTA January 2, 2002, Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity.

cc: Directors of Field Services