

local CO, PM<sub>10</sub>, or PM<sub>2.5</sub> 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 (“Interim emissions 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 interim emissions 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 satisfy 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.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40081, July 1, 2004; 71 FR 12510, Mar. 10, 2006]

### § 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.  
Projects that correct, improve, or eliminate a hazardous location or feature.  
Safer non-Federal-aid system roads.  
Shoulder improvements.  
Increasing sight distance.  
Highway Safety Improvement Program implementation.  
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.  
Emergency relief (23 U.S.C. 125).  
Fencing.  
Skid treatments.  
Safety roadside rest areas.  
Adding medians.  
Truck climbing lanes outside the urbanized area.  
Lighting improvements.  
Widening narrow pavements or reconstructing bridges (no additional travel lanes).  
Emergency truck pullovers.

#### *Mass Transit*

Operating assistance to transit agencies.  
Purchase of support vehicles.  
Rehabilitation of transit vehicles<sup>1</sup>.  
Purchase of office, shop, and operating equipment for existing facilities.  
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).  
Construction or renovation of power, signal, and communications systems.

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- Construction of small passenger shelters and information kiosks.
- Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
- Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet<sup>1</sup>.
- Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

*Air Quality*

- Continuation of ride-sharing and van-pooling promotion activities at current levels.
- Bicycle and pedestrian facilities.

*Other*

- Specific activities which do not involve or lead directly to construction, such as:
    - Planning and technical studies.
    - Grants for training and research programs.
    - Planning activities conducted pursuant to titles 23 and 49 U.S.C.
    - Federal-aid systems revisions.
  - Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
  - Noise attenuation.
  - Emergency or hardship advance land acquisitions (23 CFR 710.503).
  - Acquisition of scenic easements.
  - Plantings, landscaping, etc.
  - Sign removal.
  - Directional and informational signs.
  - Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
  - Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.
- NOTE: <sup>1</sup>In PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[62 FR 43801, Aug. 15, 1997, as amended at 69 FR 40081, July 1, 2004; 71 FR 12510, Mar. 10, 2006; 73 FR 4441, Jan. 24, 2008]

**§ 93.127 Projects exempt from regional emissions analyses.**

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these

projects with respect to CO concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local effects of projects with respect to PM<sub>10</sub> and PM<sub>2.5</sub> concentrations must be considered and a hot-spot analysis performed prior to making a project-level conformity determination, if a project in Table 3 also meets the criteria in §93.123(b)(1). These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis 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 potential regional impacts for any reason. Table 3 follows:

TABLE 3—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

- Intersection channelization projects.
- Intersection signalization projects at individual intersections.
- Interchange reconfiguration projects.
- Changes in vertical and horizontal alignment.
- Truck size and weight inspection stations.
- Bus terminals and transfer points.

[58 FR 62235, Nov. 24, 1993, as amended at 71 FR 12511, Mar. 10, 2006]

**§ 93.128 Traffic signal synchronization projects.**

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this subpart. However, all subsequent regional emissions analyses required by §§93.118 and 93.119 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

**§ 93.129 Special exemptions from conformity requirements for pilot program areas.**

EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of this subpart if these areas are selected to