



NEPA Air Quality Guidance

Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for the Clean Air Act and Transportation Conformity.

The Clean Air Act (42 U.S.C. 7401-7671q) established National Ambient Air Quality Standards (NAAQS) for six priority pollutants to protect public health and the environment. Areas that do not meet the NAAQS are designated as nonattainment areas and, as a result, are subject to transportation conformity. Maintenance areas are geographic regions that were previously designated as nonattainment but are now consistently meeting NAAQS. There are two maintenance areas in Maine. Transportation conformity requires nonattainment and maintenance areas to demonstrate that all future transportation projects will not hinder the area from reaching and maintaining its attainment goals.

On July 20, 2012, the entire State of Maine was designated as attainment for the 2008 8-hour ozone NAAQS. On February 16, 2018, the U.S. Court of Appeals for the District of Columbia vacated major portions of the 2015 rule that established procedures for transitioning from the 1997 Ozone NAAQS to the 2008 Ozone NAAQS. As a result of this decision, the State of Maine is once again subject to transportation conformity requirements for the Portland and Midcoast 8-hour ozone maintenance areas established under the 1997 ozone NAAQS. Orphan maintenance areas were defined in the court decision as areas that were maintenance areas for the 1997 Ozone NAAQS at the time of its revocation and were designated attainment for the 2008 Ozone NAAQS in EPA's original designations. The Portland and Midcoast areas of Maine fall into the category of orphan areas.

Transportation conformity ensures that federally funded or approved transportation plans, programs, and projects conform to the air quality objectives established in the State Implementation Plan (SIP).

Transportation conformity regulations are developed by EPA, with the U.S. Department of Transportation's (DOT's) input and concurrence. The U.S. DOT (through the FHWA and FTA) is responsible for implementing conformity regulation in nonattainment and maintenance areas. EPA has a consultative role in the analysis and findings that are required. In terms of transportation plans and transportation improvement programs (TIPs), FHWA/FTA's joint conformity determination is based on a quantitative demonstration that projected motor vehicle emissions from the planned transportation system do not exceed the motor vehicle emissions budget established in the SIP. The budget provides the upper limits for emissions in specific years that serve as milestones intended to bring the area into attainment of the air quality standards. If the transportation plan or TIP cannot meet the motor vehicle emissions budget, then changes may need to be made to the transportation plan or TIP, or the SIP. Otherwise, if conformity is not determined according to the timeframes established in the regulations, a conformity "lapse" will occur. When conformity lapses, only Federal projects that are exempt from transportation conformity (e.g., safety projects), TCMs in an



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approved SIP, or project phases that have already received funding commitments by FHWA or FTA may proceed.

Transportation Conformity information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Air Quality Project Question and Documentation

The following question is required to be answered by the Environmental Specialist-NEPA:

Is the project contained in an approved Statewide Transportation Improvement Program (STIP)?

Current MaineDOT Approved STIP <https://www.maine.gov/mdot/stip/>

Projects exempt from the requirement to determine conformity (40 CFR93.126 Table 2) will not be called out in the conformity analysis section but will be listed in the STIP under the Project Specific Information section.

Non-exempt projects must be included in a conforming STIP before NEPA can be certified. Non-exempt projects will be listed in the Conformity Analysis Section of the MaineDOT STIP. An approved STIP has similar language to the following:

All the required conformity tests were satisfied in the Portland and Midcoast maintenance areas. A regional emissions analysis is not required in the orphan areas so the remaining criteria were evaluated and satisfied. Since a PM10 hot-spot determination is no longer required, the conditions for the Presque Isle PM10 maintenance area have also been satisfied. Therefore, the 2021-2024 STIP, and the 2021-2024 PACTS and KACTS TIPs, conform to the current SIP and satisfy the conformity requirements of the Clean Air Act Amendments of 1990.

If the Project is not in the STIP, go to 2. If the Project is in the STIP, Air Quality review is complete. All actions will be processed and documented in MaineDOT's ProjEx database and the CPD e-file.

2.0 Project Not in STIP

If the project is not in the STIP, the Environmental Specialist will work with the Program Development Manager in the Office of Results and Information to amend the STIP and get FHWA approval. Once the project is in the STIP the Environmental Specialist can finalize the Air Quality review. NEPA will not be approved for the project in the STIP. All actions will be processed and documented in MaineDOT's ProjEx database and the CPD e-file.

3.0 Links and Agreements

Clean Air Act ([42 U.S.C. 7401-7671q](#))

Exempt Projects (40 CFR [§ 93.126 Table 2](#) and [§ 93.127 Table 3](#))

Transportation Conformity Regulations <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100E7CS.PDF?Dockey=P100E7CS.PDF>

Maine DEP Chapter 139 Transportation Conformity <https://www.epa.gov/sites/default/files/2017->



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[10/documents/2008-me-ch139.pdf](#)

Conformity Analysis [8-Hour Ozone Maintenance Areas](#)

FHWA Air Quality Planning for Transportation Officials

https://www.fhwa.dot.gov/environment/air_quality/publications/air_quality_planning/aqplan00.cfm

AASHTO Practitioner's Handbook

<https://environment.transportation.org/wp-content/uploads/2021/04/ph18-1-ol.pdf>

Midcoast or Portland 8-Hour Ozone Maintenance Areas? (see EPA interactive map

<https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=13231f1bb1344425bb18833668f309a3>)

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