

**Air Pollution Control Board**

Greg Cox	District 1
Dianne Jacob	District 2
Pam Slater	District 3
Ron Roberts	District 4
Bill Horn	District 5

Air Pollution Control Officer

R. J. Sommerville

DATE: March 7, 1995
TO: Air Pollution Control Board
SUBJECT: General and Transportation Conformity SIP Revisions

SUMMARY:

The Board previously considered these items on January 10, 1995, as revisions to the State Implementation Plan (SIP). The Board must consider the proposed SIP revisions again due to inadequate public notice. (State and federal requirements stipulate publication of a public notice at least 30 days prior to a hearing. Due to circumstances beyond the Air Pollution Control District's control, notice of the January 10, 1995, hearing was inadvertently published 27 days prior.)

Pursuant to 1990 amendments of the federal Clean Air Act, the federal Environmental Protection Agency (EPA) issued a General Conformity rule and a Transportation Conformity rule in November 1993. The laws require air management agencies in all nonattainment areas to adopt State Implementation Plan (SIP) revisions specifying procedures (Transportation Conformity) for determining whether transportation plans, programs, and projects undertaken by recipients of federal transportation funds, and non-transportation (General Conformity) actions undertaken by federal agencies, conform to the SIP. Transportation Conformity is shown if projected emissions from the planned future transportation network do not exceed levels established in the SIP as necessary to meet the District's 1999 attainment deadline.

Proposed Rule 1501 adopts, with minor clarifications, the federal General Conformity Rule, 40 CFR 51.850. The General Conformity Rule specifies criteria for determining whether non-exempt federal actions, such as grants, approvals, military relocation projects, and land management activities, cause or contribute to a violation of a federal emissions standard. Where projected emissions exceed a specified threshold, the rule requires the federal agency to either mitigate the emissions, obtain offsetting emissions reductions elsewhere within the County, or obtain a commitment from the District to revise the SIP to account for the increased emissions.

The Transportation Conformity SIP revision consists of two parts. The first part is Proposed Rule 1502, which requires all agencies participating in the Transportation Conformity process, and any future recipients of federal transportation funds, to enter into a Memorandum of Agreement (MOA) specifying criteria and procedures established under the federal Transportation Conformity rule. The second part is the proposed MOA containing the Conformity procedures, to be signed by seven parties: the District, San Diego Association of Governments (SANDAG), California Department of Transportation, District 11 (Caltrans), Air Resources Board (ARB), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and EPA.

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Two SIP revisions are required to be submitted to EPA, one by November 25, 1994 (Transportation), and the other by November 30, 1994 (General). To accommodate a request from SANDAG staff to adopt the Transportation Conformity procedures as an MOA among agencies rather than a rule, as preferred by EPA, the Conformity SIP revision was not submitted in time to meet the deadlines. The decision to delay submission was not discouraged by EPA. The District must submit the SIP by January 24, 1995 to avoid a finding of non-submittal, and triggering an 18-month sanction clock. On November 1, 1994 (Agenda Item 2), the Board determined the Transportation Conformity SIP should consist of an MOA among participating agencies, and a "back up" rule requiring the agencies to join the agreement, which reflected final negotiations among the District, SANDAG and EPA.

The Clean Air Act requires EPA to make a finding of completeness or incompleteness on the Conformity SIP by May 25, 1995, at the latest. However, if all signatures are not obtained on the Transportation Conformity MOA by the time it is submitted, EPA will likely find it incomplete within 60 days, triggering the sanction clock.

SANDAG staff has agreed to take responsibility for obtaining the required signatures, and anticipates no delay at this time. However, regional representatives from two of the federal agencies required to sign the MOA, FHWA and FTA, have indicated the agencies will not sign Conformity MOA's. SANDAG staff have indicated they do not believe there will be a problem. In the event SANDAG is unable to obtain signatures from these agencies in time to avoid sanctions, the Board will have an opportunity to consider adopting a rule encompassing the provisions of the MOA.

If an 18-month clock runs out, 2:1 emission offsets would be automatically required for any new or modified stationary sources, followed six months later by a cut off of federal transportation funding to the region.

Issue

Should the Board adopt Proposed Rule 1501, Conformity of General Federal Actions, Rule 1502, Conformity of Transportation Plans, Programs, and Projects, and authorize the Air Pollution Control Officer to execute a Transportation Conformity Memorandum of Agreement, and submit them to the Air Resources Board and the Environmental Protection Agency as State Implementation Plan revisions?

References

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| November 1, 1994 | Agenda Item 2 – Approved recommended format of the Transportation Conformity SIP revision to consist of a Memorandum of Agreement among relevant agencies and a rule requiring the agencies and any future recipients of federal funds to join the agreement. |
| November 18, 1994 | The SANDAG Board adopted the Transportation Conformity Memorandum of Agreement. |
| January 10, 1995 | Agenda Item No. 2 – Considered proposed Rules 1501 and 1502 and Memorandum of Agreement as revisions to the SIP. |

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Recommendation

AIR POLLUTION CONTROL OFFICER:

In accordance with federal rules, 40 CFR Part 51, adopt resolution adding proposed Rules 1501 and 1502, and authorize the Air Pollution Control Officer to execute the Transportation Conformity Memorandum of Agreement, submit them to ARB and EPA as revisions to the State Implementation Plan, and make appropriate findings:

- (i) that because the Conformity requirements are already in place in federal law, and the adoption of new Rules 1501 and 1502 will merely take the place of the federal requirements, the adoption of the rules will not affect air quality or emissions limitations. Therefore, state law requirements for preparing a socioeconomic impact assessment (H&SC §40728.5) are not applicable; and
- (ii) that there is no reasonable possibility that new Rules 1501 and 1502 may have a significant adverse effect on the environment, and that they are categorically exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Sections 15300 and 15308, as actions taken to assure the maintenance or protection of the environment, where there is no possibility of adverse impacts on the environment.

Advisory Statement

On October 5, 1994, the Air Quality Strategy Development Committee recommended Board approval of the General Conformity and Transportation Conformity SIP revisions.

Fiscal Impact

If approved, the proposed SIP revision would have no fiscal impact on the County.

Alternative

Adopt the Transportation Conformity procedures as a rule, rather than an MOA and a rule requiring participation in the MOA by applicable agencies. Although EPA has stated either format is acceptable, this alternative is not recommended, since SANDAG staff, with whom the District collaborates closely to adopt and implement the Transportation Conformity procedures, expressed a strong preference for the MOA format. The federal Transportation Conformity rule, issued in November 1993, is silent on format, requiring only that the Transportation Conformity SIP revision be enforceable at the state level.

BACKGROUND:

The federal Clean Air Act Amendments of 1990 require air quality management agencies in nonattainment areas to adopt State Implementation Plan (SIP) revisions containing procedures for determining whether proposed federal actions, and actions by recipients of federal transportation funds, conform to the SIP. The SIP revisions implementing these requirements were previously considered by the Board on January 10, 1995. The Board must consider the proposed SIP revisions again due to inadequate public notice. (State and federal requirements stipulate publication of a public notice at least 30 days prior to a hearing. Due to circumstances

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beyond the Air Pollution Control District's control, notice of the January 10, 1995, hearing was inadvertently published 27 days prior.)

The Environmental Protection Agency (EPA) promulgated two rules implementing Conformity requirements in November, 1993. One, Conformity of General Federal Actions (General Conformity), specifies procedures federal agencies must follow in determining whether non-exempt actions, such as grants, approvals, military relocation projects, and land management activities, conform to the SIP. The other, Conformity of Transportation Plans, Programs, and Projects (Transportation Conformity), specifies criteria and procedures for relevant local, state, and federal agencies in determining conformity of regionally-significant transportation plans, projects, and programs. Transportation conformity is shown if projected emissions from the planned future transportation network do not exceed levels established in the SIP as necessary to meet the District's 1999 attainment deadline. General conformity is shown if projected emissions from non-transportation federal actions do not exceed thresholds specified by the federal General Conformity rule.

Two SIP revisions are required to be submitted to EPA, one by November 25, 1994 (Transportation) and the other by November 30, 1994 (General). To accommodate a request from SANDAG staff to adopt the Transportation Conformity procedures as an MOA among agencies, rather than a rule, as preferred by EPA, the Conformity SIP was not submitted in time to meet these deadlines. The decision to delay submission was not discouraged by EPA. The District must submit the SIP revisions by January 24, 1995 to avoid a finding of non-submittal, and the triggering of an 18-month sanction clock. On November 1, 1994 (Agenda Item 2), the Board determined the Transportation Conformity SIP should consist of an MOA among participating agencies, and a "back up" rule requiring the agencies to join the agreement, which reflected final negotiations among the District, SANDAG and EPA.

The Clean Air Act requires EPA to make a finding of completeness or incompleteness on the Conformity SIP by May 25, 1995, at the latest. If all signatures are not obtained on the MOA by the time it is submitted, EPA will likely find it incomplete within 60 days which also triggers an 18-month sanction clock. SANDAG staff has agreed to take responsibility for obtaining the required signatures, and anticipates no delay at this time. However, regional representatives from two of the federal agencies required to sign the MOA, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), have indicated the agencies will not sign Conformity MOA's. SANDAG staff have indicated they do not believe there will be a problem. In the event SANDAG is unable to obtain signatures from these agencies in time to avoid sanctions, the Board will have the opportunity to consider adopting a rule encompassing the provisions of the MOA.

If an 18-month clock runs out, 2:1 emission offsets would be automatically required for any new or modified stationary sources, followed six months later by a cut off of federal transportation funding to the region.

Rule 1501: General Conformity

Proposed Rule 1501, Conformity of General Federal Actions, adopts the federal General Conformity Rule (40 CFR 51.850) verbatim except for minor clarifications suggested by EPA. The rule provides that no federal agency may engage in, support in any way, license, permit, or approve any activity which does not conform to the SIP. The rule applies to any nonexempt action expected to result in emissions exceeding thresholds specified in the federal rule. Exemptions include actions regulated by other District rules; routine maintenance; ongoing program activities, or replacement of those activities with similar activities at the same site(s); environ-

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mental compliance activities, such as toxic cleanup operations; and land transfers, such as reuse of former military facilities.

A federal agency taking an action subject to the rule must first determine whether the total of nonexempt emissions exceed a particular threshold. If so, the agency must prepare and circulate a Draft Conformity Determination for a 30-day comment period. The federal agency must consider and respond in writing to comments received.

The projected emissions from those direct (stationary) and indirect (mobile) sources under its ongoing control must be calculated. For example, leasing a retired military base for commercial air service might require implementing mitigation measures to reduce vehicle emissions, while selling the land for this purpose would not. The difference lies in the degree of federal agency control over future emissions. Other criteria specify the baseline year and future years to be modeled, and a requirement to use latest available planning assumptions and emissions modeling methodology.

Emissions exceeding a threshold value must be mitigated by the federal agency, offset by emissions reductions offsite, accounted for by a SIP revision, or a combination of these. Before determining that an action conforms, the federal agency making the determination must obtain written implementation commitments for mitigation measures identified as conditions for a positive Conformity Determination. Any such mitigation measures become federally enforceable.

Rule 1502: Transportation Conformity and Memorandum of Agreement

Proposed Rule 1502 requires all agencies participating in the Transportation Conformity process, and any future recipients of federal transportation funds, to enter into an MOA with the District which complies with procedures established under the federal Transportation Conformity Rule (40 CFR 51.396). An MOA meeting the requirements will accompany the rule as part of the Transportation Conformity SIP revision. The MOA reflects a collaborative effort with the: San Diego Association of Governments (SANDAG), California Department of Transportation, District 11 (Caltrans), Air Resources Board (ARB), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and EPA.

It requires an emissions budget, or cap, on allowable emissions, established by the SIP. All transportation plans, programs and projects must be modeled to demonstrate that emissions will not exceed the budget. In the case of projects, emissions modeling is performed by the project proponent or Caltrans. In the case of plans or programs, SANDAG performs the required modeling. All regionally significant roadway facilities, including bicycle and pedestrian facilities, and transit projects, must be included in the regional emissions analysis.

Modeling methodology and approval criteria for Transportation Conformity findings for all regionally significant transportation projects, plans, and programs, regardless of their funding source, are specified. As required, this language was taken verbatim from the federal rule, and makes up the bulk of the MOA. Local recipients of federal transportation funds, and/or SANDAG (as the region's Metropolitan Planning Organization), are required to ensure that transportation projects, individually and as a whole, will not cause or contribute to violations of National Ambient Air Quality Standards.

The District, federal, state, and regional air management and transportation agencies are required to produce and adhere to a well-defined interagency consultation process for review of transportation and air quality planning documents. In response to specific requirements in the federal rule, the consultation process includes requirements the responsible agency must follow. These include sharing information on planning methodology, data, and assumptions, and responding to

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comments early in the process of preparing key documents. Examples of applicable documents include transportation-related SIP revisions prepared by the District and Regional Transportation Plans prepared by SANDAG. Agencies responsible for Conformity Determinations are also required to establish proactive public consultation procedures, including solicitation of comments from traditionally underserved segments of the community.

Initially, EPA required the Conformity SIP revisions be in the form of rules. Accordingly, the District was originally prepared to do so; however, SANDAG staff objected to the rule format, and requested an MOA instead. The SANDAG staff preference for pursuing the MOA approach was based on the following points:

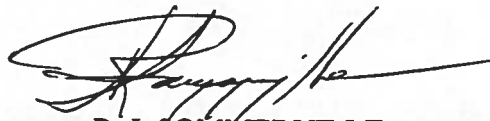
- The San Diego Association of Governments (SANDAG) has performed Conformity Determinations for regional transportation plans for the past 16 years, and will continue to be primarily responsible for the Conformity process. The California Department of Transportation (Caltrans) has conducted Conformity Determinations for applicable state transportation projects, when required.
- An MOA may better meet the Clean Air Act's enforceability requirement.
- The adoption of a rule governing a cooperative interagency process in which the District is both a key participant and an enforcing agency could potentially undermine the cooperative spirit intended by the federal rule.
- It may be inappropriate for the District to regulate the Conformity process by rule. Since the federal rule provides a conflict resolution process for addressing interagency disagreements, and contains no enforcement provisions, the District would not issue a Notice of Violation or levy a fine based on a failure to carry out the process as prescribed. However, a third party lawsuit might argue that the District should be compelled to do so. At the very least, such a third party lawsuit would require a legal defense by the District.

As previously indicated, continued negotiation with EPA resulted in an agreement to adopt Rule 1502 requiring all applicable agencies to enter into the MOA and an MOA meeting EPA requirements.

Concurrence:

DAVID E. JANSSEN
Chief Administrative Officer

Respectfully submitted,



R. J. SOMMERVILLE
Air Pollution Control Officer

**AIR POLLUTION CONTROL BOARD
AGENDA ITEM
INFORMATION SHEET**

SUBJECT: GENERAL AND TRANSPORTATION CONFORMITY SIP REVISIONS

SUPV DIST.: All

COUNTY COUNSEL APPROVAL: Form and Legality Yes N/A
 Standard Form Ordinance Resolution

D 2/8/95

CHIEF FINANCIAL OFFICER/AUDITOR REVIEW: Yes N/A
4 VOTES: Yes No

CONTRACT REVIEW PANEL: Approved N/A

CONTRACT NUMBER(S): N/A

PREVIOUS RELEVANT BOARD ACTION: 1/10/95 (APCB #2) - Considered proposed Rules 1501 and 1502, and Memorandum of Agreement as revisions to the SIP.

11/1/94 (APCB #2) - Approved recommended format of Transportation Conformity SIP: Memorandum of Agreement and a rule requiring their participation in the MOA.

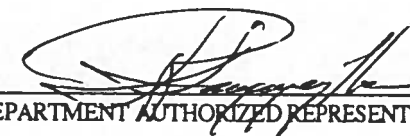
BOARD POLICIES APPLICABLE:

CITIZEN COMMITTEE STATEMENT: On October 5, 1994, the Air Quality Strategy Development Committee recommended Board approval of the General Conformity and Transportation Conformity SIP revisions.

CONCURRENCES:

ORIGINATING DEPARTMENT: Air Pollution Control District

CONTACT PERSON: R. J. Sommerville, Air Pollution Control Officer (S50) 694-3300 MS: 0-176



 DEPARTMENT AUTHORIZED REPRESENTATIVE

_____ MARCH 7, 1995 _____
 MEETING DATE

FINDINGS OF THE SAN DIEGO COUNTY AIR POLLUTION
CONTROL BOARD IN RESPECT TO ADOPTION OF
NEW RULES 1501 (CONFORMITY OF GENERAL FEDERAL ACTIONS)
AND 1502 (CONFORMITY OF TRANSPORTATION
PLANS, PROGRAMS, AND PROJECTS)

- A. Pursuant to section 40727 of the Health and Safety Code, the Air Pollution Control Board of the San Diego County Air Pollution Control District makes the following findings:
1. (Necessity) The adoption of the proposed new District Rules 1501 and 1502 is necessary for the District to satisfy the requirements of section 176 of the federal Clean Air Act and Title 40 Code of Federal Regulations Part 51, Subpart T and Part 93, Subpart A, that the District adopt (1) rules assuring conformity of general federal actions to the state implementation plan, and (2) criteria and procedures for assessing the conformity to the state implementation plan of any plan, program, or project developed, funded or approved under Title 23 of the United States Code or the Federal Transit Act.
 2. (Authority) The adoption of the new proposed rules is authorized by Health and Safety Code sections 40001 and 40702.
 3. (Clarity) The proposed new rules are written so that their meaning can be easily understood by persons directly affected by the rules.
 4. (Consistency) The proposed rules are in harmony with, and not in conflict with or contrary to, existing statutes, court decisions, and State law and Federal regulations.
 5. (Nonduplication) The proposed rules do not impose the same requirements as existing state or federal regulations.
 6. (Reference) The adoption of the proposed new rules implements section 176 of the federal Clean Air Act [42 U.S.C. section 7506], and Title 40 Code of Federal Regulations Part 51, Subpart T and Part 93, Subpart A.
- B. The Air Pollution Control Board further finds that adoption of the proposed rules will not significantly affect air quality or emissions limitations, and therefore an assessment of socioeconomic impacts of the proposed rules was not required by Health and Safety Code section 40728.5.
- C. The Air Pollution Control Board further finds that there is no reasonable possibility that the proposed rules may have a significant effect on the environment, and that the adoption of the proposed rules is categorically exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, title 14, sections 15300 and 15308, as an action taken to assure the protection of the environment which will not have a significant effect on the environment and where the regulatory process involves procedures for protection of the environment.
- D. The Air Pollution Control Board further finds in accordance with Health and Safety Code section 40001 that the adoption of the proposed rules is necessary to satisfy federal and state law, and that the proposed rules will promote the attainment of state and federal ambient air quality standards.

Document No. 762166-A

APCD Meeting 3/7/95
Agenda Item #2

APCD Meeting 3/7/95
Agenda Item #2

FILED

Board of Supervisors

THOMAS A. PETERSON

Clerk of the Board of Supervisors

By Bruce Kersay

DEPUTY

NEW ADDED RULES

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County)

RESOLUTION NO. 95-97
TUESDAY, MARCH 7, 1995

RESOLUTION ADDING REGULATION XV AND
RULES 1501 AND 1502
TO THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

On motion of Member Roberts, seconded by Member Slater
the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

1. Proposed Rule 1501 is to read as follows:

REGULATION XV. FEDERAL CONFORMITY

RULE 1501. CONFORMITY OF GENERAL FEDERAL ACTIONS

§1551.850 - PROHIBITION

(a) The purpose of Rule 1501 is to assure that Federal Agencies do not take or support actions which are in any way inconsistent with the efforts of the San Diego Air Pollution Control District (the District) to achieve the National Ambient Air Quality Standards (NAAQS), and that federal agencies do not fail to take advantage of opportunities to assist in the achievement of the NAAQS. Under the Clean Air Act Section 176(c), as amended (42 U.S.C. 7506(c) et. seq.) and regulations under 40 CFR part 51 Subpart W, 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 applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

(c) The preceding sentence does not include Federal actions where either:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final Environmental Assessment (EA), Environmental Impact Statement (EIS), or Finding of No Significant Impact (FONSI) that was prepared prior to the effective date of this rule, or

(2) (i) Prior to the effective date of this rule, an EA was commenced or a contract was awarded to develop the specific environmental analysis,

(ii) Sufficient environmental analysis was completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under Section 176(c) of the Clean Air Act (Act), and

(iii) A written determination of conformity under Section 176(c) of the Act was made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of Rule 1501, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

§1551.851- STATE IMPLEMENTATION PLAN (SIP) REVISION

(a) The Federal conformity rules under 40 CFR part 51. Subpart W and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. Following EPA approval of the conformity provisions (or a portion thereof) in a revision to the SIP, the approved (or approved portion of the) criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the District's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the SIP is revised to specifically remove them from the SIP and that revision is approved by EPA.

§1551.852 - DEFINITIONS

Terms used but not defined in this part shall have the meaning given them by the federal Clean Air Act ("Act") and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under 42 U.S.C. 7472 of the Act that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under Section 110 of the Act, or promulgated under Section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

- (1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or
- (2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a National Ambient Air Quality Standard ("NAAQS") at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emission offsets, for purposes of Section 1551.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the time frame specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the United States Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal

undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of an existing violation of a standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable, and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency, including, but not limited to, (i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility; (ii) emissions related to the activities of employees of contractors or Federal employees; (iii) emissions related to employee commutation; (iv) emissions related to the use of Federal facilities under lease or temporary permit; (v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under Section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of Section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. The San Diego Association of Governments is the designated MPO in San Diego County.

Milestone has the meaning given in Sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to Section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀), and sulfur dioxide (SO₂).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment Area (NAA) means an area designated as nonattainment under Section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

- (1) For ozone, nitrogen oxides (NO_x), unless an area is exempted from NO_x requirements under Section 182(f) of the Act, and volatile organic compounds (VOC), and
- (2) For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable SIP as significant contributors to the PM₁₀ levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under Section 1551.853, paragraph (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted.

§1551.853 - APPLICABILITY

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in Rule 1501.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAAs):

	<u>Tons/Year</u>
Ozone (VOCs or NOx)	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region	
VOC	50
NOx	100
Carbon monoxides	
All NAAs	100
SO₂ or NO₂	
All NAAs	100
PM₁₀	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	<u>Tons/Year</u>
Ozone (NOx), SO₂ or NO₂	
All Maintenance Areas	100
Ozone (VOCs)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxides	
All maintenance areas	100
PM₁₀	
All maintenance areas	100
Pb	
All maintenance areas	25

(c) The requirements of Rule 1501 shall not apply to:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

- (ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
- (iii) Rulemaking and policy development and issuance.
- (iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
- (v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
- (vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
- (vii) The routine, recurring transportation of materiel and personnel.
- (viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.
- (ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
- (x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
- (xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
- (xii) Planning, studies, and provision of technical assistance.
- (xiii) Routine operation of facilities, mobile assets and equipment.
- (xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
- (xv) The designation of empowerment zones, enterprise communities, or viticultural areas.
- (xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to

banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Individual Actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(d) Notwithstanding the other requirements of Rule 1501, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (Section 173 of the Act) or the prevention of significant deterioration (PSD) program (Title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section;

(3) Research, investigations, studies, demonstrations, or training [other than those exempted under Section 1551.853(c)(2)], where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under Section 1551.853(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under Section 1551.853(d)(2) are exempt from the requirements of Rule 1501 only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of Rule 1501, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform, the basis for the presumptions, and the means for obtaining access to documentation of the analysis, assumptions, emission factors, and criteria used as the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under Section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of Rule 1501, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of Section 1551.850 and Sections 1551.855-860 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of Section 1551.850 and Sections 1551.855-860 shall apply for the Federal action.

(k) The provisions of Rule 1501 shall apply in all nonattainment and maintenance areas.

§1551.854 - CONFORMITY ANALYSIS

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to Rule 1501 must make its own conformity determination consistent with the requirements of Rule 1501. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§1551.855 - REPORTING REQUIREMENTS

(a) A Federal agency making a conformity determination under Section 1551.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Act and the MPO a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under Section 1551.858.

§1551.856 - PUBLIC PARTICIPATION

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under Section 1551.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under Section 1551.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under Section 1551.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under Section 1551.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§1551.857 - FREQUENCY OF CONFORMITY DETERMINATIONS

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under Section 1551.855, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under Section 1551.855.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in section 1551.853(b), a new conformity determination is required.

§1551.858 - CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS

(a) An action required under Section 1551.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Section 1551.853, paragraph (b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis, or

(ii) meet the requirements of paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM₁₀,

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to the District's attainment or maintenance demonstration after 1990 and the District makes a determination as provided in paragraph (A) or where the District makes a commitment as provided in paragraph (B):

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the District to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the District to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the California Air Resources Board makes a written commitment to EPA which includes the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination.

(C) Where a Federal agency made a conformity determination based on a District commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a District commitment is automatically deemed a call for a SIP revision by EPA under Section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the District commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years [described in paragraph (d) of Section 1551.859] do not increase emissions with respect to the baseline emissions;

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990,

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81, or

(3) The year of the baseline inventory in the PM₁₀ applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of Section 1551.859] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with Section 1551.859(a).

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in Section 1551.859, and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to Rule 1501 may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§1551.859 - PROCEDURES FOR CONFORMITY DETERMINATIONS OF GENERAL FEDERAL ACTIONS

(a) The analyses required under Rule 1501 must be based on the latest planning assumptions.

(1) All current planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under Rule 1501 must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA, or an alternative model approved by EPA for use in California, and available for use in the preparation or revision of SIPs in California must be used for the conformity analysis as specified below:

(i) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under Rule 1501 must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under Rule 1501, except Section 1551.858, paragraph (a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

- (3) Any year for which the applicable SIP specifies an emissions budget.

§1551.860 - MITIGATION OF AIR QUALITY IMPACTS

- (a) Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measure and the tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.
- (b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (a).
- (c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (a) of this section.
- (e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with Sections 1551.858 and 1551.859, and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of Section 1551.856 and the public participation requirements of Section 1551.857.
- (f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.
- (g) After the State SIP is revised to include this rule and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

2. Proposed Rule 1502 is to read as follows:

RULE 1502. TRANSPORTATION OF PLANS, PROGRAMS, AND PROJECTS

(a) No future recipient of federal funds (as defined at 40 CFR 93.101) designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project unless such recipient has executed a memorandum of agreement with the District and the San Diego Association of Governments, the metropolitan planning organization, which binds such recipient to adhere to conformity criteria and procedures which comply with federal Clean Air Act section 176(c) [42 U.S.C. 7506(c)] and 40 CFR Part 51, Subpart T and 40 CFR Part 93.

(b) Each federal agency which participates in determinations of conformity to state and federal implementation plans shall execute a memorandum of agreement with the District and the San Diego Association of Governments, the metropolitan planning organization, which binds such federal agency to adhere to conformity criteria and procedures which comply with federal Clean Air Act section 176(c) [42 U.S.C. 7506(c)] and 40 CFR Part 51, Subpart T and 40 CFR Part 93.

IT IS FURTHER RESOLVED AND ORDERED that the subject addition of Regulation XV, Rules 1501 and 1502, shall take effect and be in force on the date of approval by the U.S. Environmental Protection Agency.

PASSED AND ADOPTED by the Air Pollution Control Board of the San Diego County Air Pollution Control District, State of California, this 7th day of March, 1995 by the following votes:

AYES: Cox, Jacob, Slater, Roberts, Horn
NOES: None
ABSENT: None

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY H. Outter
DEPUTY

This is a true certified copy of the original document on file or of record in my office. It bears the seal of the County of San Diego and signature of the Clerk of the Board of Supervisors, imprinted in purple ink.

Thomas J. Pastuszek

Clerk of the Board, San Diego County, California

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Date: 3-11-95 By Deputy: [Signature]



Rules 1501 and 1502
Resolution No. 95-97
3/7/95 (APCD-2)