



U.S. Department
of Transportation
**Federal Transit
Administration**

Memorandum

Federal Highway
Administration

Subject: INFORMATION: Analyzing Exempt Projects
in the Conformity Process

Date:

FEB 3 1995

From: Director, Office of Planning, FTA
Director, Office of Environment
and Planning, FHWA

Reply to
Attn. of:

To: Regional Federal Transit Administrators
Regional Federal Highway Administrators

Recently, several of our field offices have raised the issue of whether it is permissible to estimate the emissions effects of highway or transit projects which are listed as exempt projects in the transportation conformity rule and use the results of this analysis in determining conformity of the transportation plan and TIP. The issue also involves whether the projects listed in 40 CFR 51.460 lose their exempt status if an area decides to take emissions reduction credit for them in the plan/TIP conformity analysis.

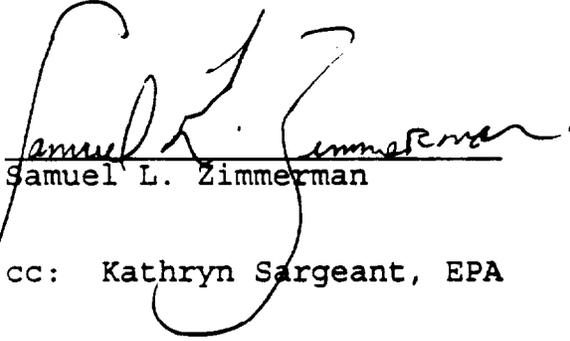
EPA's conformity rule does not address this issue directly, but there is nothing in the rule that would preclude it. While we continue to believe that exempt projects will have minimal emissions effects relative to the regional emissions burden, this issue has gained importance in a number of areas because of the very small differential between the emissions estimates for the 'build' and 'no-build' cases. For these areas, even minor emission reductions can be consequential.

We discussed this issue with EPA staff responsible for the conformity rule and they agreed that it is permissible to estimate the emissions effects of exempt projects and use the results in determining conformity of the plan and TIP. The rule itself notes that the air quality benefits of some small projects--particularly TCMS--may not be captured in the travel demand modeling which underlies the regional emissions estimate for the plan and TIP (40 CFR 51.452(a)). Thus, it allows 'off-model' emissions estimates for such projects in accordance with reasonable professional practice. These separate emissions estimation techniques can be used for exempt projects as well. Alternatively, exempt projects may be folded into the MPO's network modeling depending on whether the models are sensitive enough to register any changes in travel due to the project.

Concerning the issue of whether projects lose their exempt status if an area chooses to do this, DOT and EPA agree that the projects remain exempt and can proceed in the absence of a conforming plan and TIP. The strictures in the conformity rule

prohibit regionally significant projects from advancing in order to prevent uncontrolled increases in transportation emissions when conformity cannot be demonstrated. The justification for exempting certain highway and transit projects from the adverse consequences of the conformity process is based on a judgment that these projects have negligible effects and there is no air quality benefit to be gained by blocking them in the event the plan and TIP cannot be found to conform. The concept of exemptions grew out of an understanding that there are projects which are very important for maintaining the viability of the existing system but have very little air quality impact. Thus, the rationale for exempting such projects exists regardless of whether or not they are analyzed in the context of plan/TIP conformity.

We have asked EPA staff to inform their regional offices about this position and have also asked that they address this subject in the next set of questions and answers dealing with interpretations of conformity rule provisions. If you have any questions about this, please contact Mike Koontz at (202) 366-0639 or Abbe Marner at (202) 366-0096.


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cc: Kathryn Sargeant, EPA