

Summary of Conformity Determination Requirements After 2006 PM2.5 Designations Become Finalized

Before SIPS are submitted and new motor vehicle emissions budgets are established

Conformity applies for an air quality standard one year after the effective date of EPA's nonattainment designation for that standard. Section 93.119 of the conformity rule provides direction for how the regional emissions analysis must be done before budgets are available. During this time period, these areas must use the interim emissions test or tests: the build/no-build test, and/or the baseline year test.

A conformity determination for a transportation plan, TIP, or project not from a plan or TIP must be based on a regional emissions analysis that covers the entire nonattainment area, to satisfy the statute and regulations. Section 93.122(a)(1) of the conformity rule states: "the regional emissions analysis required by §§93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area." There must be a regional emissions analysis for the entire nonattainment area, whether the nonattainment area includes one MPO or more than one MPO, a donut area, portions of more than one state, or any combination of these jurisdictions.

For all nonattainment areas without adequate or approved SIP budgets, the MPO(s) must coordinate their plan/TIP conformity determinations together, pursuant to §93.124(d) of the final conformity rule. In the November 24, 1993, final rule, EPA stated: "Where a nonattainment area includes multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area." Once DOT receives all plan/TIP conformity determinations for a given nonattainment area, DOT will make its conformity determinations at the same time. In order for one MPO to update or revise its plan and TIP, a DOT conformity determination for each plan and TIP in that nonattainment area must be made at the same time, according to §93.124(d) of the rule. That is, before SIP budgets are available, in order to determine that transportation activities will not cause a new air quality violation, increase the frequency or severity of a violation, or delay timely attainment or any other milestone in the nonattainment area, it is necessary to consider emissions from the entire area in one regional emissions analysis, and for DOT to make all plan/TIP conformity determinations at the same time.

Agencies involved in the conformity process in a nonattainment area where there is more than one MPO must use the consultation process required by §93.105 of the conformity rule to decide how best to meet this requirement, regardless of whether the area is within one state or is a multi-state area. The consultation process would be used to decide which interim emissions tests apply and what analysis years are used. MPOs must use the same tests and analysis years for the entire nonattainment area. In nonattainment areas where there is more than one MPO, the MPOs can develop the regional emissions analysis for the area in either one of two ways:

1. by separate modeling by each MPO that is combined into one regional analysis; or
2. by one modeling analysis for the entire nonattainment area.

If MPOs in the nonattainment area want to model their emissions separately, each MPO would do a regional emission analysis that includes the existing transportation system in its part of the nonattainment area as well as all new projects in its plan and TIP. Each MPO would show that the applicable interim emissions test(s) are met for each analysis year under the regulations. These results would then be compiled in one regional emissions analysis for the entire nonattainment area that would accompany each plan/TIP conformity determination. The MPOs in the nonattainment area can work independently to complete the regional emissions analysis for their own parts of the area, but a single analysis would be compiled for the entire nonattainment area to satisfy conformity requirements for an MPO's plan/TIP. Alternatively, the regional emissions analysis could be completed by showing that the emissions in each analysis year for the entire nonattainment area meet the applicable interim emissions test(s). The MPOs in the area would work together to carry out a regional emissions analysis for the entire nonattainment area that includes all of their plans and TIPs. Again, these modeling results would be presented in one regional emissions analysis for the entire nonattainment area that would accompany the conformity determinations for new or revised plans/TIPs in the nonattainment area.

All MPOs must use the same test and the same analysis years for the regional emissions analysis. MPOs in one nonattainment area may want to coordinate their plan and TIP update cycles as well as the length of their plans. New or revised plans and TIPs, as well as significant changes to projects, could require a new regional emissions analysis (see §§93.104 and 93.122(g) of the conformity rule). Coordination of plan and TIP update cycles among MPOs in the same nonattainment area may minimize the number of new regional emissions analyses and conformity determinations that have to be completed.

Different transportation plan lengths within one nonattainment area would require additional analysis years, because according to §93.119(g), an analysis must be performed for the last year of each plan. For example, if one MPO's plan ends in 2025 and another MPO's plan ends in 2030, both years would have to be analyzed in the regional analysis for the entire nonattainment area. Coordination of plan lengths may minimize the number of analysis years that have to be examined in any one regional emissions analysis.

Conformity determination requirements after an initial conformity determination has been made for a new standard by all MPOs within a non-attainment area and prior to new SIP mobile emissions budgets have been found adequate or approved by EPA

After the initial conformity determination for a new standard has been completed for a non-attainment area which involves multiple MPOs, the requirement to demonstrate conformity within the entire non-attainment area can be met without requiring a new regional emissions analysis by every MPO within the same non-attainment area in the same timeframe. If one MPO is revising or updating its TIP/Plan which requires a new regional emissions analysis, the other MPOs may be able to rely upon their previous regional emissions analyses for their respective conformity determinations, provided that each MPO can meet the requirements of 40 CFR 93.122(g). 40 CFR 93.122(g) of the conformity rule specifically applies to individual plan and TIP conformity determinations, and not to the entire nonattainment area. As a result, MPOs within a multiple-MPO area can rely upon their portion of the previous regional emissions analysis for the entire nonattainment area provided they are not changing their plans and TIPs in a manner that would trigger a new analysis per 40 CFR 93.122(g). Section 93.122(g) of the conformity rule allows MPOs to rely on a previous emissions analysis for plan and TIP conformity determinations so long as the plan and TIP do not include additions or deletions of regionally significant projects, significant changes in the design concept and scope of existing regionally significant projects, or changes to the time frame of the transportation plan. Section 93.122(g)(iv) also requires that previous emissions analysis must be consistent with 40 CFR 93.118 and/or 40 CFR 93.119 requirements, as applicable.

There is an additional requirement under this scenario which affects the public involvement requirement. If a one MPO wants to update its Plan/TIP to add a new project (a change that would require a new regional emissions analysis) and the other MPOs are only making new conformity determinations by relying on a previous regional emissions analysis and are not making any changes to their plans and TIPs, the minimum public involvement requirements specified under §93.105(e) of the conformity rule would apply; requirements under DOT's transportation planning requirements, 23 CFR 450.316(a), would not apply in this case. Section 93.105(e) of the conformity rule states, "Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plan and TIPs, consistent with these requirements and those of 23 CFR 450.316(a)." This provision requires every conformity determination to provide for public involvement that, at a minimum, allows for public review and comment. However, for conformity determinations that are not accompanied by a transportation planning action, an MPO would not need to satisfy the public involvement requirements under §450.316(a) of the planning regulations (including the requirement to hold a public hearing). Such transportation planning actions would include any change to

a transportation plan, TIP, or project. In cases where MPOs are not conducting transportation planning actions, the MPO must satisfy only the minimum public involvement requirements stated in 40 CFR 93.105(e).

Conformity determinations requirements once SIP budgets are adequate/approved

Section 93.124(d) covers SIPs developed in areas where there is more than one MPO:

“If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire area.”

Once budgets have been found adequate or approved, the conformity determination(s) and regional emissions analysis is done for the geographic area that is addressed by the budgets in the SIP. This general principle applies in all situations, although there is flexibility in how the regional emissions analysis is developed, and in coordinating conformity determinations, when several MPOs are involved. The following describes the requirements for doing conformity determinations under the assumption that subarea budgets are established during the SIP process

When subarea budgets are created for each MPO, the sum of the subarea budgets equals the total amount of emissions the area can have from the transportation sector and still make progress toward, attain, or maintain the standard. Therefore, if each MPO meets its subarea budgets for a pollutant and standard in accordance with the requirements of §93.118, then the entire area meets the total SIP’s purpose for that pollutant and standard. As EPA noted in the January 11, 1993, conformity proposal, page 20 “subarea budgets provide additional assurance that through future conformity determinations transportation plans and TIPs will produce emission patterns that will achieve attainment” (58 FR 3780). When the SIP for an area establishes subarea budgets for conformity purposes, these subarea budgets must be met for plans and TIPs in the area to conform, as required in §93.124(c) and (d) of the conformity rule. Section 93.124(c) states: “If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.” The MPOs can make independent conformity determinations for their plans and TIPs as long as all of the other subareas in the nonattainment or maintenance area have conforming transportation plans and TIPs in place at the time of each MPO’s and DOT’s plan/TIP determination.

The SIP must specifically state that it creates subarea budgets. County-by-county emissions projections in a SIP inventory are not subarea budgets unless they are specifically labeled as such. Section 93.124(c) of the conformity rule states, plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless

the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.” If county level emissions projections are included in a SIP but not explicitly defined as subarea budgets for the purposes of conformity, the SIP is considered to have budgets for the entire area and MPOs must work together to have plan/TIP conformity determinations for the entire nonattainment or maintenance area approved by DOT at the same time. According to §93.124(d), “If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.” If MPOs within one nonattainment or maintenance area would prefer to have subarea budgets, they should communicate their preference to the state and local air agencies within the interagency consultation process during the development of the SIP. Section 93.105(c) of the conformity rule requires interagency consultation on the development of SIPs, as well as transportation plans, TIPs, and conformity determinations