

Summary of the Conformity and CMAQ Provisions in the Transportation Bill September 21, 2005

Conformity with the Clean Air Act – Section 6011

EPA has two years to revise the conformity rule to address the following Clean Air Act amendments contained in the transportation bill.

Conformity Redeterminations

Nonattainment and maintenance areas are provided two years to redetermine conformity after EPA finds motor vehicle emissions budgets adequate or approves them or promulgates a federal implementation plan that establishes or revises motor vehicle emissions budgets.

Currently, the conformity rule allows areas 18 months to redetermine conformity after any of these actions.

Metropolitan planning organizations (MPOs) continue to be required to redetermine conformity before they change their transportation plan or transportation improvement program (TIP).

Frequency of Conformity Determinations

The frequency of conformity determinations is decreased from every three years to every four years unless an MPO:
chooses to update a transportation plan or TIP more frequently; or
is required to redetermine conformity because a new or revised emissions budget that has been found adequate or has been approved.

Conformity Time Horizon for Transportation Plans

MPOs may elect to shorten the time period covered by a conformity determination after consultation with the state air agency and after a public comment period.

The time period covered by a conformity determination may be shortened to the longest of:

- 1) 10 years;
- 2) the latest year that the state implementation plan (SIP) contains a motor vehicle emissions budget; or
- 3) one year after the completion of a regionally significant project if the project is included in the TIP or requires approval before the subsequent conformity determination.

If an MPO elects to shorten the time period covered by the conformity determination, the MPO must complete an informational regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emissions budgets by a prior informational regional emissions.

MPOs in maintenance areas with either adequate or approved emissions budgets from a second maintenance plan may similarly elect to shorten the time period covered by a conformity determination to the last year of the section 175A(b) maintenance plan.

Lapse of Conformity

A 12-month grace period is established before the consequences of a conformity lapse apply.

The bill incorporates the conformity rule's definition of a conformity lapse into the Clean Air Act. "Lapse" means that "the conformity determination for a transportation plan or transportation improvement program has expired and, thus there is no currently conforming transportation plan or transportation improvement program."

During the 12-month grace period, only transportation projects in the most recent conforming plan and TIP can be funded or approved until the required conformity determination is made.

Conformity SIPs

The existing requirement that states incorporate the entire transportation conformity rule in to their SIPs is modified.

This provision allows states to incorporate only the sections of the transportation conformity rule that address consultation and the enforceability and enforcement of commitments for emission reduction or mitigation measures.

Substitution of Transportation Control Measures (TCMs)

EPA will need to revise existing guidance on TCM substitutions but will not need to revise the conformity rule to address this provision.

Nonattainment and maintenance areas are allowed to either replace TCMs in approved SIPs with new TCMs or to add new TCMs to approved SIPs without the need for the state to go through notice and comment rulemaking.

CMAQ - Congestion Mitigation and Air Quality Funds – Sections 1101(a)(5) and 1808

Apportionment - Section 1101(a)(5)

The CMAQ apportionment formula was revised to include a weighting factor of 1.0 for subpart 1 8-hour ozone nonattainment areas.

The formula maintains the previous weighting factors for 8-hour ozone areas classified as marginal, moderate, serious, severe and extreme.

The formula was revised to change the weighting factor for ozone and CO maintenance areas from 0.8 to 1.0.

The formula was also revised slightly so that for areas that are nonattainment and/or maintenance for both ozone and CO only the population in the designated areas is included in the calculation.

PM2.5 and PM10 are not included in the apportionment formula; however, funds can be spent in PM2.5 and PM10 areas.

Eligible Projects - Section 1808

This section sets out a priority to states and metropolitan planning organizations for the use of diesel retrofits and other cost-effective projects for CMAQ monies.

Former 1-hour ozone nonattainment and maintenance areas that are attainment for the 8-hour ozone standard are eligible to use CMAQ funds but are not included in the apportionment formula.

The DOT secretary and EPA administrator are required to consult on whether or not TCMs listed in Clean Air Act section 108(f)(1)(A) are likely to contribute to attainment or maintenance of the relevant air quality standard, but also if the measure is likely to have a “high level of effectiveness” in reducing air pollution based on information in the database that is required by section 1808(f).

Improved Interagency Consultation

The DOT secretary shall encourage states and MPOs to consult with state and local air agencies in nonattainment and maintenance areas on estimated emission reductions from proposed CMAQ projects.

Evaluation and Assessment of CMAQ Projects

The DOT Secretary in consultation with the EPA Administrator will evaluate a representative sample of CMAQ projects to determine the impact of the projects and to ensure effective implementation of the program.

The Secretary will maintain a database describing the impacts of the projects.