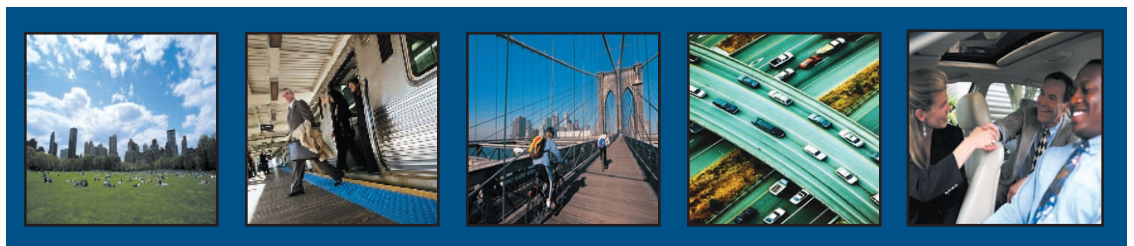


# Guidance for the Use of Latest Planning Assumptions in Transportation Conformity Determinations

Revision to January 18, 2001 Guidance Memorandum





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## Revision to January 18, 2001 Guidance Memorandum

Transportation and Regional Programs Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency

Office of Natural and Human Environment  
Federal Highway Administration  
U.S. Department of Transportation

Office of Planning and Environment  
Federal Transit Administration  
U.S. Department of Transportation

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## **Executive Summary**

The Clean Air Act requires that transportation investments be based on the most recent information that is available in order to protect public health over the long-term. As such, conformity determinations must be based upon the most recent planning assumptions in force at the time the conformity analysis begins (40 CFR 93.110(a)). The Environmental Protection Agency (EPA) and Department of Transportation (DOT) encourage state and local agencies to review and update their planning assumptions regularly. Areas are strongly encouraged to review and update planning assumptions at least every five years, especially population, employment, and vehicle registration assumptions. Areas with network-based travel models should review their assumptions and data used in model validation through the consultation process, and newer assumptions and data must be used whenever available. Conformity determinations that are based on assumptions that are older than five years should include written justification for not reviewing and updating assumptions at least every five years. For areas where updates are appropriate, the conformity determination should include an anticipated schedule for updating assumptions for future conformity determinations. Air quality and transportation agencies should use the consultation process to ensure that the latest available planning assumptions are used in conformity determinations and state implementation plan (SIP) development.

## **Section 1: Introduction**

### **1.1 Why are EPA and DOT providing this guidance now?**

This update is necessary because the July 1, 2004 final conformity rule changed the requirements regarding the use of the latest planning assumptions (69 FR 40052-40056). Some examples of planning assumptions include population, employment, and vehicle fleet information. This guidance supersedes the January 18, 2001 guidance memorandum<sup>1</sup> to address changes in the July 2004 conformity rule. All other aspects related to conformity requirements and SIP development are consistent with the 2001 guidance.

In the July 2004 conformity rule, EPA changed 40 CFR 93.110(a) to allow a conformity determination to be based on the latest planning assumptions in force at the time the conformity analysis begins, rather than at the time of DOT's conformity determination<sup>2</sup>. EPA changed this provision so it is more workable for implementers while remaining consistent with Clean Air Act requirements. Allowing conformity determinations based on the latest information available at the time the conformity analysis begins provides certainty for implementers and is a reasonable approach to ensuring that conformity determinations are based on accurate and available information.

EPA and DOT are issuing this guidance jointly to clarify our expectations for implementing the transportation conformity rule's latest planning assumptions requirements. This guidance also reiterates EPA's expectations for using latest planning assumptions in the development of motor vehicle emissions budgets in SIPs.

### **1.2 What is transportation conformity?**

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. Under this statute, conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards. EPA's transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation plans, transportation improvement programs (TIPs), and projects conform to the SIP. Transportation conformity applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas")

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<sup>1</sup> "Use of Latest Planning Assumptions in Conformity Determinations," memorandum from Robert Perciasepe, Assistant Administrator for EPA's Office of Air and Radiation, Kenneth Wykle, FAA Administrator and Nuria Fernandez, FTA Acting Administrator to FHWA Division Administrators, Federal Lands Highway Division Engineers, FTA Regional Administrators, and EPA Regional Administrators, Region I-X, January 18, 2001.

<sup>2</sup> It is important to note that in certain situations, the previous requirements still apply. See Question 1.4 for further details.

for transportation-related criteria pollutants: carbon monoxide, ozone, nitrogen dioxide, PM<sub>2.5</sub>, and PM<sub>10</sub>.

### 1.3 What conformity requirements are covered by this guidance?

This guidance document clarifies the implementation of the latest planning assumption requirements in 40 CFR 93.110, which must be met at the time conformity analysis begins as described later in this guidance. There are other transportation conformity requirements that are not covered by the latest planning assumption requirements that continue to be required to be met on the date of DOT's conformity determination.

EPA discussed some examples of requirements that are not considered part of latest planning assumption requirements in the preamble to the July 1, 2004, final rule (69 FR 40054-40055). For example, DOT's conformity determination must be based on whatever adequate or approved SIP motor vehicle emissions budgets apply at that time, even if such budgets became available after the MPO's conformity determination (40 CFR 93.109 and 93.118). In addition, DOT's conformity determination must be based on a regional emissions analysis that accurately reflects control measures in the SIP, transportation plan/TIP, or through written commitments (40 CFR 93.122(a)(1)-(4)), as described further in Question 2.10.

### 1.4 What latest planning assumption requirements apply in my nonattainment or maintenance area?

The latest planning assumption requirements for a conformity determination in a given nonattainment or maintenance area can vary depending upon whether a state has an EPA-approved conformity SIP<sup>3</sup>, and if so, when it was approved:

- If a state does not have an approved conformity SIP or if it has an approved conformity SIP based on the July 2004 final rule, transportation planners and DOT are required to meet the current conformity rule's requirement (40 CFR 93.110(a)) that latest planning assumptions be determined at the time the conformity analysis begins.
- If a state has an approved conformity SIP based on the previous conformity rule, transportation planners and DOT are required to meet that previous requirement.

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<sup>3</sup> A conformity SIP contains the state's criteria and procedures for interagency consultation. Unlike a reasonable further progress SIP, an attainment demonstration, or maintenance plan, a conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations, or control measures. A conformity SIP can be developed as a state rule, a memorandum of understanding (MOU), or a memorandum of agreement (MOA). In general, once approved, the conformity SIP governs the conformity process instead of the federal conformity rule for any provisions included in the conformity SIP.

In such a case, conformity determinations would be required to be based on the latest planning assumptions available at the time of DOT's final conformity determination.

Section 51.390(b) of the conformity rule requires conformity determinations in a given nonattainment or maintenance area to meet any applicable requirements in an EPA-approved conformity SIP. Any out-dated requirements, such as the previous rule's latest planning assumptions requirements, would no longer apply when the state either withdraws or updates such requirements, and EPA approves the revised conformity SIP. Section 3 of today's guidance document does not apply to areas operating under approved conformity SIPs that include the previous latest planning assumptions requirements.

#### 1.5 Who can I contact for more information?

For specific questions concerning a particular nonattainment or maintenance area, please contact the transportation conformity staff person responsible for your state at the appropriate EPA regional office, Federal Highway Administration (FHWA) division office or Federal Transit Administration (FTA) regional office:

- A listing of EPA regional offices, the states they cover, and contact information for conformity staff can be found at the following website: <http://www.epa.gov/otaq/stateresources/transconf/contacts.htm>,
- Contact information for FHWA division offices can be found at: <http://www.fhwa.dot.gov/field.html>, and
- Contact information for FTA regional offices can be found at: [http://www.fta.dot.gov/regional\\_offices.html](http://www.fta.dot.gov/regional_offices.html).

General questions about this guidance can be directed to:

- Patty Klavon of EPA's Office of Transportation and Air Quality, [klavon.patty@epa.gov](mailto:klavon.patty@epa.gov) or at (734) 214-4476,
- Cecilia Ho of FHWA's Office of Natural and Human Environment, [cecilia.ho@dot.gov](mailto:cecilia.ho@dot.gov) or at (202) 366-9862, or
- Abbe Marner of FTA's Office of Planning and Environment, [abbe.marner@dot.gov](mailto:abbe.marner@dot.gov) or at (202) 366-4317.

Readers can also find this guidance document, the complete transportation conformity regulation, and other materials on the EPA's website at: <http://www.epa.gov/otaq/stateresources/transconf/conf-regs.htm>

#### 1.6 Does this guidance create any new requirements?

No, this guidance is based on the requirements for latest planning assumptions contained in Clean Air Act section 176(c) and 40 CFR 93.110, and does not create any new requirements. This guidance merely explains how to implement the latest planning assumption provisions and related requirements.



The statutory provisions and the EPA regulations described in this document contain legally binding requirements. This document is not a substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, DOT, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and DOT retain the discretion to adopt approaches on a case-by-case basis that may differ from this guidance, but still comply with the statute and conformity and SIP regulations. Any decisions regarding a particular area's use of the latest planning assumptions will be made based on the statute and regulations, after appropriate public input and rulemaking procedures where applicable. This guidance may be revised periodically without public notice.

## **Section 2: Latest Planning Assumption Requirements**

### **2.1 What are the conformity requirements for use of latest planning assumptions?**

Section 176(c)(1)(B)(iii) of the Clean Air Act states that "[t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates as determined by the MPO or other agency authorized to make such estimates." The Clean Air Act requires that transportation investments be based on the most recent information that is available, in order to protect public health over the long-term.

The conformity regulations at 40 CFR 93.110 provide the requirements for using the latest planning assumptions in transportation conformity determinations. The requirements apply to all assumptions used in demonstrating conformity, including assumptions that are used in transportation demand and emissions modeling. Examples of assumptions are land use, vehicle age and fleet mix, and the most recent information regarding the implementation of control measures in approved SIPs (e.g., inspection and maintenance (I/M), fuels programs, and transportation control measures). Section 93.110(a) of the transportation conformity rule requires conformity determinations to be based on the "most recent planning assumptions in force at the time the conformity analysis begins." Section 93.110(a) of the conformity rule also requires that, "New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation." See Section 3 of this guidance for further discussion on when a "conformity analysis begins," and for what may be considered "a significant delay."

As applicable, specific latest planning requirements are further outlined in 40 CFR 93.110 (b)-(f):

"(b) Assumptions 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 and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the transportation control measures (TCMs) and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by §93.105.”

EPA, DOT, and state and local transportation and air quality agencies participate in the interagency consultation process to review and comment on assumptions (40 CFR 93.105), and the latest planning assumption requirements must be met before DOT can make a conformity determination (40 CFR 93.109(b)).

As assumptions are expected to change over time, it is important that state, local, and federal transportation and air quality planners evaluate on a regular basis existing assumptions and new information as it becomes available. Conformity determinations that are based on assumptions that are older than five years should include written justification for not using more recent information. See Question 2.3 for more details on when latest planning assumption updates are needed.

## 2.2 What do we mean by "latest" planning assumptions?

Using the "latest" planning assumptions means that the conformity determination is based on the *most current* information *that is available* to state and local planners (e.g., the MPO or other agency can obtain the information from another agency, the information is appropriate for the current conformity determination, the information is readily transferable for use in transportation and/or emissions modeling, etc.).

Latest planning assumptions must be derived from the population, employment, travel, and congestion estimates that have been *most recently developed* by the MPO (or other agency authorized to make such estimates), and approved by the MPO (40 CFR 93.110(b)). Once approved, these estimates must be used for determining the latest planning assumptions (40 CFR 93.110(a)). In areas using network-based travel models, scenarios of land development and use must be consistent with the future transportation system for which emissions are being estimated, and the distribution of employment and residences for the transportation system must be reasonable (40 CFR 93.122(b)(1)(iii)).

The interagency consultation process must be used to determine which planning assumptions are considered the latest and best assumptions for conformity determinations. The conformity rule specifically requires that the interagency consultation process be used to evaluate and choose assumptions to be used in conformity analyses (40 CFR 93.105(c)(1)(i)).

The consultation process should be used to evaluate assumptions for quality and accuracy as needed prior to use in conformity. Whenever Highway Performance Monitoring System (HPMS) data is used for current and future years in conformity analyses, the most recently available HPMS estimates of vehicle miles traveled (VMT) must be used (40 CFR 93.110(a)). Historical trends and other factors should be considered as a primary source of information from which planning assumptions should be evaluated (e.g., population, employment). If assumptions are used that contradict historical trends, the conformity determination should include an explanation regarding why the assumptions are appropriate. This explanation should be included when the conformity determination is provided for public comment. The consultation process should not be used to unduly delay or exclude the use of new information or to selectively employ it for the convenience of the conformity process.

Areas that rely on the U.S. Census for certain planning assumptions must use the *most recent estimates available* from the Census Bureau (40 CFR 93.110(a)). Areas that are using assumptions based on data collected through local or state surveys or other mechanisms should use the consultation process to determine whether older state or local data is more appropriate than the most recently available U.S. Census.

### 2.3 When should planning assumptions be updated? What process should be used for updates?

EPA and DOT encourage nonattainment and maintenance areas to review and update their planning assumptions on a regular basis. Although regular updates of assumptions are not required by the transportation conformity rule, areas are strongly encouraged to review and update planning assumptions at least every five years, especially for population, employment, and vehicle registration assumptions, or to justify in the conformity determination why planning assumptions have not been reviewed and updated at least every five years.

As planning assumptions are expected to change over time, it is important that state, local, and federal transportation and air quality planners evaluate, on a regular basis, existing assumptions and new information as it becomes available. *This may be especially important in areas that are experiencing higher population and employment growth than is reflected in current planning assumptions.* Conformity determinations that are based on information that is older than five years should include written justification for not using more recent information. For areas where future updates are determined to be necessary, the conformity determination should include an anticipated schedule for updating assumptions.

Planning assumptions must be reviewed through the interagency consultation process to determine whether they are adequate for conformity purposes (see 40 CFR 93.105(c)(1)(i)). The review of latest planning assumptions typically occurs in conjunction with transportation plan and TIP conformity determinations. The results of

the review of the planning assumptions and consultation process would be documented in the conformity determination. The interagency consultation process is also the forum for evaluating and choosing assumptions that are used in conformity determinations in isolated rural nonattainment and maintenance areas (40 CFR 93.105(c)(1)(vi)).

EPA and DOT should be proactively involved in the interagency consultation process in all nonattainment and maintenance areas so that potential issues and problems can be identified and addressed early on in the conformity process. If it is determined through interagency consultation that certain planning assumptions need to be updated, state and local transportation and air quality agencies should commit to a schedule to update those assumptions for future conformity determinations. Different schedules can be established for updating different assumptions. The level of resources dedicated to updating assumptions may vary depending upon planning priorities in a given area. State and local agencies can prioritize these updates along with other planning needs. See below for specific information regarding our expectations for vehicle registration assumptions.

Areas required to use network-based travel models for conformity purposes should also review their assumptions and data used in model development and validation through the consultation process, and the latest assumptions and data must be used whenever available (40 CFR 93.110). Since emission estimates are sensitive to vehicle speed changes, EPA and DOT recommend that areas using network-based travel models compare the speeds estimated in the validation year with speeds empirically observed during the peak and off-peak periods. The significant sensitivity of emissions to highway speeds emphasizes the need to monitor and maintain the ability of the transportation model to provide accurate speed estimates. Nonattainment and maintenance areas using network-based travel models are encouraged to establish criteria for updating the observed speed data that are used to validate the speeds predicted by the transportation model. The criteria should identify the schedule on which speed data will be collected given the pace of growth in the urban area, the magnitude of changes to the highway system, and any fundamental changes in speed-related conditions such as a change in the federal or the state's maximum speed limit.<sup>4</sup>

#### 2.4 What vehicle registration assumptions must be used in emissions modeling for conformity determinations? What process should be used to update these assumptions?

As stated above, MPOs must use the most recent vehicle registration data that is available for conformity analyses at the time the conformity analysis begins (40 CFR 93.110(a)). State and local transportation and air quality agencies should make an effort to obtain recent registration data files and should establish a schedule for updating local vehicle registration data on a regular basis.

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<sup>4</sup> In December 1995, the federal speed limit law was changed to remove the mandatory 55 mph speed limit and allow states to set limits using their own discretion.

The composition of vehicle fleets can vary significantly over time and from area to area. It is critical for areas to use the interagency consultation process to examine new vehicle registration data (i.e., vehicle type and age) as it becomes available and consider whether the current data and assumptions are still appropriate for conformity purposes. *It is especially important for areas to update assumptions if the characteristics of the fleet have significantly changed from the assumptions that are currently being used for conformity.*

As a general rule, local data should be used whenever available. If local data is not currently available and cannot reasonably be made available for use in impending conformity determinations, areas may rely on the national defaults related to vehicle registration data in the latest EPA-approved motor vehicle emissions factor model. However, areas should explore whether more recent local vehicle registration data can be made available in a useable format for the next conformity determination. Once such data becomes available before a conformity analysis begins, it must be used in the conformity analysis (40 CFR 93.110(a)). When EPA releases a new motor vehicle emissions factor model and associated guidance for use in conformity determinations, some areas will need to use the interagency consultation process to determine whether older local data should be used instead of newer national defaults.

EPA also notes that the SIP process can be a valuable source for vehicle registration data for conformity determinations, and many state and local air agencies play a lead role in reviewing this type of data. Another example may be when the state air agency has quality assured newer vehicle registration data from what is included in a currently approved SIP.

2.5 If a state government or other agency collects vehicle registration data on a regular basis, should the most recent year of collected data be considered the "latest" planning assumptions for the current conformity determination?

Yes, if that information is *available* for conformity purposes at the time the conformity analysis begins (40 CFR 93.110(a)). However, most state governments collect information, such as vehicle registration data, on an annual basis for purposes other than conformity. This data includes information about vehicle age and fleet mix, for example, which are important inputs for emissions modeling. Although this information may be sufficient for some state government purposes not related to air quality (e.g., state tax or insurance purposes), the most recent year of collected raw data may not necessarily be the best available information for use in the current conformity analysis. Of course, if the latest state or local vehicle registration data has been quality-assured and is being used for emissions modeling, then it must also be considered the latest data for conformity (40 CFR 93.110(a)).

The interagency consultation process should be used to determine whether the most recent vehicle registration data is available for conformity. State and local transportation and air quality agencies should consider whether the data are accurate

and appropriate for conformity purposes, as well as whether the data are readily transferable for use in emissions modeling for the specific nonattainment or maintenance area.

If the most recent vehicle registration data are not available for use in the current conformity determination, the consultation process should be used to determine whether such vehicle registration data should be reviewed and used for the next determination. The conformity determination should include an explanation of why recent state or local vehicle registration data was not considered available for conformity purposes, if concerns are raised during the consultation or public involvement processes. EPA and DOT recommend that if the new data can be quality assured and/or formatted for emissions modeling purposes, it should be used.

## 2.6 What are the planning assumption requirements for SIP development, and how do they relate to the conformity rule's requirements?

Motor vehicle emissions budgets in SIPs must be based on the most current information available at the time that the SIP is developed (see Clean Air Act section 172(c)(3)). As such, planning assumptions, including VMT, socioeconomic variables, and emissions modeling inputs (including vehicle registration by age and type) must be based on the latest information available at the time that the SIP is developed and be consistent with SIP inventory and emissions modeling requirements.

As stated in the July 2004 final rule, state and local agencies should consider the availability of new planning assumptions when determining their conformity schedules (69 FR 40054). The consultation process would be used to determine the most recent planning assumptions available for SIP development, since the conformity rule provides for such consultation in SIP development (40 CFR 93.105). If a new SIP budget is found adequate or approved prior to the MPO or DOT's conformity determination, conformity to the new budget is required. In this case, transportation planners should use the more recent planning assumptions that are in the new budget. State and local air agencies should inform transportation agencies of new planning assumptions as they become available.

Transportation planners are encouraged to review and comment on motor vehicle emissions budgets as well as share more current assumptions with air quality agencies so that they can be included in the SIP. This is especially important since air quality and transportation agencies usually provide different types of planning assumptions to SIP and conformity processes. For example, transportation planners are more likely to have the latest VMT estimates for a given nonattainment or maintenance area while air agencies are more likely to have the latest available vehicle registration data. It is critical that transportation and air agencies exchange information on a regular basis so that the latest assumptions are used in SIP and conformity processes.

2.7 What if the assumptions used in a submitted or approved SIP are not the most current and best information for conformity determinations?

As described above, the Clean Air Act and conformity regulations require the latest planning assumptions to be used in conformity determinations, even if they differ from those used in the SIP (40 CFR 93.110(a)). In many cases, the MPO may have developed more recent assumptions for the conformity process than those included in a submitted or approved SIP. For example, the MPO may have adopted new population, employment, and/or socioeconomic projections or updated transportation models since the SIP was submitted. In this case, an MPO would use the latest planning assumptions based on the newer projections and model improvements for conformity. The interagency consultation process should be used to ensure that air quality and transportation planning processes anticipate such changes in planning assumptions. It is expected that planning assumptions in the conformity process will change over time from those used in the SIP.

For further information, see the preamble to the July 1, 2004, final rule (69 FR 40053) and the November 24, 1993, final rule (58 FR 62210).

2.8 What are the requirements for periodic emissions inventory updates, and how do they relate to the conformity rule's requirements for latest planning assumptions?

Clean Air Act section 172(c)(3) requires that periodic emissions inventories be done in nonattainment areas. There are also specific requirements for periodic inventories under individual subparts to part D of Title 1, such as section 182(a)(3) for ozone and section 187(a)(5) for carbon monoxide (CO). According to Clean Air Act section 172(c)(3), periodic inventory updates for SIPs must be based on the most current information available at the time that the inventory is developed. Examples of assumptions used in both inventory updates and conformity are VMT, socioeconomic variables, and vehicle fleet characteristics. Although periodic inventory updates do not establish motor vehicle emissions budgets, they can be a valuable source of more recent and better planning assumptions for use in the conformity process.

Air quality and transportation agencies should work together to ensure that the latest planning assumptions are used in SIP inventory updates and conformity determinations. As discussed above, transportation planners should share more current assumptions with air quality agencies so that they can be included in the SIP. Air quality agencies should also provide more recent assumptions to transportation planners for conformity determinations. The interagency consultation process required by 40 CFR 93.105 should be used to determine whether the assumptions used in periodic SIP inventory updates are more recent and better than the assumptions used previously for conformity determinations.



2.9 Are there any assumptions used in conformity analyses that must be consistent with those in the SIP?

Yes. The transportation conformity rule (40 CFR 93.122(a)(6)) requires that ambient temperatures in conformity analyses must be consistent with those used in the SIP's motor vehicle emissions budgets. Other assumptions - or factors - that must be consistent with those used in the SIP's motor vehicle emissions budget could also include humidity, altitude, the fraction of travel in a hot stabilized engine mode and annual mileage accumulation rates over the time frame of the transportation plan (40 CFR 93.122(a)(6)). These types of factors do not typically change in future years and could significantly impact emissions; EPA generally believes that it is appropriate to require such factors to be consistent between conformity analyses and the SIP budgets.

However, under certain circumstances, it may be appropriate to use alternative factors instead of certain SIP assumptions, if it is determined through the interagency consultation process that these factors should be modified. For example, such modifications in these types of factors may be appropriate where additional or more geographically specific information is incorporated or a logically estimated trend in such factors beyond the period considered in the SIP is represented. EPA does not expect changes in the SIP's factors to occur often, and they could only occur after consultation among all local, state, and federal agencies. All planning assumptions used in a conformity analysis must be documented in the conformity determination that is released for public comment (40 CFR 93.105(e)); see the July 1, 2004, final rule for further information (69 FR 40056).

2.10 What are the requirements for taking credit in conformity analyses for approved SIP control measures, such as I/M programs and TCMs? What should be considered when determining the latest planning assumptions in conformity regarding the implementation of approved SIP control measures?

There are several conformity requirements that apply when reflecting approved SIP control measures in conformity determinations. First, DOT's conformity determination must be based on a regional emissions analysis that reflects the actual implementation of approved SIP control measures (40 CFR 93.122(a)). For example, section 93.122(a)(2) of the conformity rule states:

"The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emission reduction credit."

If a control measure in an approved SIP is delayed or changed in whole or in part (e.g., the legislative authority of a program has changed), then conformity determinations must reflect such a delay or change including situations in which a measure is cancelled or changed after the conformity analysis begins. Section 93.122(a)(3) also requires that DOT's conformity determination be made only when regulatory control programs have been assured and will be implemented as described in the SIP.

In addition, regional emissions analyses must be based on the latest information available at the time the analysis begins regarding the effectiveness of SIP programs that are being implemented. Section 93.110(e) of the conformity rule states, "[t]he conformity determination must use the latest existing information regarding the effectiveness of TCMs and other implementation plan measures which have already been implemented." See EPA's July 1, 2004, final rule for further information on 40 CFR 93.110 and 93.122 requirements (69 FR 40054-40055).

The interagency consultation process should be used to determine the latest planning assumptions regarding implementation of approved SIP measures. It is critical that all parties understand the impacts of altering the implementation of approved SIP measures. State and local air agencies or other agencies that are responsible for air quality planning should inform transportation planners and provide technical assistance in quantifying the impact when the implementation of approved SIP measures could alter the emission reduction benefits assumed in previous conformity determinations. In addition, state and local air agencies should consider how SIP implementation issues can be addressed. They should immediately discuss how to make up for the emissions shortfalls and remedy the SIP, possibly through addressing implementation delays. The interagency consultation process should also be used to consider whether delays in the SIP's control measures necessitate a SIP revision to incorporate other measures. EPA commits to share information through the interagency consultation process as appropriate when the implementation of an approved SIP measure changes and to address the implementation issues through the SIP process.

Local, state, and federal agencies are also encouraged to be proactive in considering the impacts on the conformity process before the implementation of an approved SIP measure is changed. It is generally expected that air quality agencies would assist transportation agencies in quantifying the impacts of a change in approved SIP measures. The details of how this is accomplished should be determined through the interagency consultation process.

2.11 Can an area that does conformity for several different pollutants rely on different planning assumptions in its conformity determination?

Planning assumptions that are applicable to conformity determinations for different pollutants must be consistent (40 CFR 93.110)). For example, local estimates of population, employment, travel, and congestion must be consistent among analyses for different pollutants and precursors. Of course, there may be assumptions that would vary due to the inherent differences in analyzing pollutants (e.g., temperatures may be different for ozone and CO analyses due to the seasons in which these pollutants are formed). Where there are differences in planning assumptions for different pollutants, these differences should be explained in the documentation for the conformity determination.

2.12 Does a revision in latest planning assumptions trigger a new conformity determination?

No. A new regional emissions analysis and conformity determination would not be required *solely* to incorporate revised planning assumptions (40 CFR 93.122(g)). Although revisions to planning assumptions would not trigger a conformity determination, future conformity determinations and supporting analyses must include the revised assumptions (40 CFR 93.110(a)).

2.13 Can an MPO rely on a previous regional emissions analysis even if planning assumptions have changed?

Yes. MPOs can rely on a previous emissions analysis if the requirements for 40 CFR 93.122(g) are met (e.g., no regionally significant projects have changed, no more than four years have elapsed since the last regional emissions analysis). An MPO can rely on the previous analysis when no new transportation or emissions modeling is otherwise required (e.g., when a TIP is updated and the transportation plan has not changed) (58 FR 3778). Conformity determinations that rely on a previous analysis do not restart the four-year conformity requirement (40 CFR 93.122(g)(3) and 69 FR 40060).<sup>5</sup>

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<sup>5</sup> It is important to note that the conformity rule requires a new transportation plan and TIP conformity determination and regional emissions analysis at least every four years (40 CFR 93.104(b)(3) and (c)(3)). These determinations are done in many areas when the transportation plan is updated. The regional emissions analysis must be based on a new planning horizon of at least 20 years and the latest planning assumptions.

2.14 How do the latest planning assumption requirements apply to project-level conformity determinations and hot-spot analyses?

In general, section 93.109(b) of the conformity rule requires project-level conformity determinations to meet the latest planning assumptions requirements, but there are some additional requirements and considerations that also need to be taken into account when a hot-spot analysis is required. Hot-spot analysis assumptions for individual projects must be consistent with those assumptions used in the regional emissions analysis for those inputs which are required for both analyses (40 CFR 93.123(c)(3)). However, a future transportation plan and TIP update and conformity determination which incorporates revised planning assumptions in the regional emissions analysis would not trigger a new hot-spot analysis for a project included in the prior transportation plan and TIP unless there has been a significant change in the project's design concept and scope; three years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. See section 40 CFR 93.104(d) of the conformity rule for more details. The interagency consultation process must be used to determine what planning assumptions are appropriate for hot-spot analyses (40 CFR 93.105(c)(1)(i)).

### **Section 3: Implementation of the Latest Planning Assumption Requirements**

#### **3.1 How should state and local agencies define the “time the conformity analysis begins”?**

As described previously, the conformity rule requires conformity determinations to be based on the latest planning assumptions available at the time the conformity analysis begins. Section 93.110(a) of the conformity rule states, “[t]he ‘time the conformity analysis begins’ is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions.” Any information and assumptions that become available before actual modeling for a conformity determination has commenced would be required to be considered in that conformity determination (69 FR 40053). In addition, section 93.110(a) of the conformity rule requires that “New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.”

Section 93.105(c)(1)(i) requires the interagency consultation process to be used to decide which planning assumptions and models are available for use by the MPO or other designated agencies responsible for conducting conformity analyses. This point should be defined through interagency consultation and used consistently for all future conformity determinations. EPA encourages the MPO or other designated agency to use the interagency consultation process to inform other involved agencies of when a conformity analysis has started for a given conformity determination. The interagency consultation process would also be used to determine whether a significant delay has occurred and whether new data that becomes available during a delay should be incorporated.

The preamble to the July 1, 2004, final rule (69 FR 40053) provides several examples for when the conformity analysis begins including:

- The point at which travel demand modeling begins to generate the VMT and speed data that will be used to calculate emissions estimates for the conformity determination.
- For smaller MPOs and rural areas that do not use a travel demand model the point at which VMT projections necessary to run the emissions model are calculated based on the most recent HPMS, population and employment data that are available at that time.

The preamble to the July 1, 2004, final rule also provides several examples for when the conformity analysis does not begin including:

- When the initial list of projects for the plan and TIP have been developed or before those projects have been coded into the transportation network;

- If travel or emissions modeling is conducted to preliminarily examine the impact of several potential projects or project alternatives on travel or emissions in the area; or,
- When an initial schedule for completing an analysis is developed during an interagency consultation meeting.

### 3.2 To support a valid conformity determination, what planning assumption information should be documented?

When an MPO or other designated agency conducts a conformity determination, it should document in its determination the “time the conformity analysis begins” as determined by interagency consultation, the date on which the analysis was started, and the planning assumptions that were used.

To support a valid conformity determination, the MPO or other appropriate agency should document the following specific information:

- How the “time the conformity analysis begins” has been defined through interagency consultation;
- The calendar date that the conformity analysis began; and,
- The planning assumptions used in the conformity analysis.

Documenting this information in the actual conformity determination informs the public of decisions regarding the use of latest planning assumptions, and will record when an analysis has begun, so that commenters can address any issues related to these decisions (40 CFR 93.105(e)). See the July 1, 2004 final rule preamble for more information (69 FR 40054).

### 3.3 If new data becomes available after the analysis begins, should it be included in the conformity determination?

New data (e.g., population or fleet data) that becomes available after the conformity analysis begins is not required to be incorporated into the current analysis if the analysis is on schedule, although an area could voluntarily include the new information at any time, as appropriate. Section 93.110(a) of the conformity rule requires that new data that becomes available after an analysis begins be used in the conformity determination only if a *significant delay* in the analysis has occurred, as determined through interagency consultation. An example of a significant delay in the conformity analysis would include the case where an MPO starts a conformity analysis and begins generating VMT estimates from the travel demand model and the MPO’s analysis is then delayed for six months (69 FR 40054). In such cases where a significant delay occurs, EPA believes that it is reasonable to expect that the MPO must incorporate new planning information that became available during the six-month delay period (40 CFR 93.110(a)).

In cases when there has not been a significant delay in the analysis, interagency consultation parties have discretion to decide if data available after the analysis begins should be incorporated, and should base this decision on whether substantial work has been completed. Although including new data that becomes available after the analysis begins is not automatically required, EPA and DOT encourage agencies to include such data if the schedule of the conformity determination can accommodate it.

3.4 Must an area wait to start the conformity analysis until anticipated changes in planning data become available?

The Clean Air Act and transportation conformity rule do not require state and local planners to delay their conformity analyses to incorporate anticipated data that is not yet available for conformity purposes (69 FR 40056). Section 93.110(a) requires conformity determinations to incorporate the only most recent planning information available at the time the conformity analysis begins although the consultation process should not be used to unduly delay or exclude the use of new information or to selectively employ it for the convenience of the conformity process.