

Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period

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

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1. What is the purpose of this guidance?

This guidance explains when transportation conformity requirements end for maintenance areas. This subject is timely as areas are now approaching the end of the 20 year maintenance period for certain national ambient air quality standards (NAAQS). In general, transportation conformity requirements apply for a NAAQS through the end of the second maintenance plan, which is typically 20 years from redesignation to attainment (40 CFR 93.102(b)(4)). This guidance applies to areas with maintenance plans, including those with limited maintenance plans.

The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), EPA's federal partners in implementing the transportation conformity rule, assisted in the development of this guidance.

2. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that federally funded or approved highway and transit activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. EPA's transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether metropolitan transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects conform to the purpose of the SIP.

3. Where does transportation conformity apply?

Transportation conformity requirements apply in nonattainment and maintenance areas for transportation-related criteria pollutants: ozone, particulate matter (PM₁₀ and PM_{2.5}), carbon monoxide (CO), or nitrogen dioxide (NO₂).¹ Nonattainment areas are areas that EPA has designated nonattainment because at the time designations were made they were not

¹ Transportation conformity does not apply for a pollutant and NAAQS after the effective date of the revocation of that NAAQS by the EPA. To date EPA has revoked the 1-hour ozone NAAQS for all purposes and the 1997 ozone NAAQS for transportation conformity purposes.

meeting the relevant NAAQS; maintenance areas are those areas that were nonattainment that have been redesignated to attainment with a CAA section 175A maintenance plan. Areas may be nonattainment and/or maintenance for more than one NAAQS.

The conformity regulation at 40 CFR 93.101 defines “nonattainment area” and “maintenance area” as follows:

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

4. What is a maintenance plan?

Once an area has attained the NAAQS for a criteria pollutant, the state may request that EPA redesignate the area to attainment for that pollutant. For primary health-based NAAQS, at the time of the redesignation request the state is also required to submit a revision of the applicable SIP to provide for the maintenance of that primary NAAQS.² This maintenance plan must address a period of at least 10 years after the redesignation (*i.e.*, the “first 10-year maintenance plan”). The plan must contain contingency measures necessary to ensure such maintenance.

CAA section 175A(b) also requires that eight years after EPA approves the original redesignation request, the state must submit a revision to the applicable SIP to provide for the maintenance of the primary NAAQS for an additional 10 years following the first 10-year period (*i.e.*, the “second 10-year maintenance plan,” per CAA section 175A(b)).

The conformity regulation at 40 CFR 93.101 defines “maintenance plan” as follows:

Maintenance plan means an implementation plan under section 175A of the CAA, as amended.

² CAA section 175A does not apply to secondary NAAQS, which are established to protect against welfare effects such as damage to crops or materials. Areas designated nonattainment for a secondary NAAQS can be redesignated to attainment, but a CAA section 175A maintenance plan is not required.

5. What is a limited maintenance plan?

The conformity regulation at 40 CFR 93.101 defines a “limited maintenance plan” as follows:

Limited maintenance plan is a maintenance plan that EPA has determined meets EPA’s limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

EPA currently has limited maintenance plan policies for the CO and PM₁₀ NAAQS. Areas with adequate or approved limited maintenance plans for a NAAQS do not have to satisfy the requirement for a regional emissions analysis for that NAAQS. However, a conformity determination that meets the other applicable criteria in Table 1 of 40 CFR 93.109(b) for transportation plans, TIPs, and non-exempt FHWA/FTA projects continue to be required, including hot-spot requirements for projects in CO and PM₁₀ areas. See the conformity regulation at 40 CFR 93.109(e) for more information.

6. How long does transportation conformity apply for maintenance areas?

In general, transportation conformity applies for a NAAQS during the CAA section 175A maintenance planning period. Most often, this period extends 20 years from the effective date of EPA’s approval of the first 10-year maintenance plan and redesignation of the area to attainment for that NAAQS, based on CAA section 175A(a). This is regardless of the type of maintenance plan the area has for the first and second maintenance periods: a maintenance plan that establishes a motor vehicle emissions budget (“budget”) or a limited maintenance plan. According to the conformity regulation at 40 CFR 93.102(b)(4)), conformity could apply for a longer period of time if “the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.” EPA clarified this provision in a final rule published January 24, 2008 (73 FR 4434-5) to account for cases where a state submits a second maintenance plan that establishes a budget for a year that is more than 20 years beyond the effective date of EPA’s approval of the area’s redesignation request and first maintenance plan. In these cases, conformity would continue to apply until that budget year, ending on the month and day of that maintenance plan’s effective date. For example, an area was redesignated to attainment and its first 10-year maintenance plan was approved for a NAAQS effective April 4, 1993 and the area has a second maintenance plan, effective October 23, 2003, that establishes a budget for 2015. In this example, conformity would apply until October 23, 2015. Please consult with the relevant EPA Regional Office with any questions regarding when conformity no longer applies.

7. How does the end of the maintenance period affect transportation conformity determinations?

Actions on metropolitan transportation plans, TIPs, and FHWA/FTA projects taken on or after the date that when conformity requirements no longer apply (as described under Question 6) will not require a conformity determination for the applicable pollutant and NAAQS. However, conformity requirements for other transportation-related pollutants for which the area is nonattainment or maintenance (if any), including a different NAAQS of the applicable pollutant, will still apply.

Example Scenarios:

Scenario A: EPA approved the first 10-year CO maintenance plan for the Scenario A area and redesignated the area to attainment, effective September 15, 1993. On September 15, 2013, the area reached the end of the 20-year period after the effective date of EPA's approval of the original redesignation request. The CO maintenance period, as documented in the SIP, ended in 2013; the SIP did not include any CO budgets beyond 2013. On October 1, 2013, the Scenario A MPO updated its transportation plan and TIP. CO is the only pollutant for which EPA ever designated the area nonattainment; the area is attainment for all other transportation-related criteria pollutants. In this scenario the update to the transportation plan and TIP did not require a conformity determination because conformity was no longer required for the Scenario A area as of September 15, 2013.

Scenario B: EPA approved the first 10-year PM₁₀ maintenance plan and the redesignation request for the Scenario B area, effective October 20, 1995. The PM₁₀ maintenance period, as documented in the SIP, ends in 2015; the SIP did not include any PM₁₀ budgets beyond 2015. On October 20, 2015, the area reaches the end of the 20-year maintenance period after EPA's approval of the original redesignation request. On January 12, 2016, FHWA signs a Record of Decision (ROD) for a highway project in the area. The area is nonattainment for ozone at the time of the ROD. A project-level conformity determination is required at the time of the ROD for ozone because in this example the area is nonattainment for ozone (a project-level conformity determination requires there to be a currently conforming transportation plan and TIP in place, and that the project is from that plan and TIP; no hot-spot analysis is required in ozone areas. Refer to Table 1 of 40 CFR 93.109(b). Project-level conformity for PM₁₀ (including a hot-spot analysis) is not required because conformity requirements for PM₁₀ no longer applied as of October 20, 2015.

Scenario C: EPA approved the first 10-year CO maintenance plan for the Scenario C area and redesignated the area to attainment, effective September 15, 1993. The area's second maintenance plan, which was approved by EPA and had an effective date of June 16, 2004, established a CO budget for 2015. In this scenario, conformity applies until June 16, 2015: the SIP specifies that conformity applies until 2015 by establishing a budget for 2015, and the SIP establishing that budget went into effect on June 16. In this scenario, the MPO for the area must continue to make conformity determinations when adopting transportation plans, TIPs, or

projects through June 16, 2015. On or after June 17, 2015, transportation conformity would no longer apply.

8. How can EPA document that an area has reached the end of the maintenance planning period for a NAAQS and transportation conformity no longer applies for that NAAQS?

When an area is approaching the end of its 20-year maintenance period for a particular NAAQS, the appropriate EPA Regional Office could send a letter to the interagency consultation group specifying the date transportation conformity no longer applies for this NAAQS. The MPO could then reference this letter in future conformity determinations for other transportation-related NAAQS or, if the area is not required to demonstrate conformity for other NAAQS, in future transportation plan or TIP updates and amendments, if desired.

Alternatively, in situations where EPA has yet to take action on an area's second maintenance plan, i.e., the maintenance plan fulfilling the requirement of CAA section 175A(b), EPA could include the date conformity ceases to apply for that NAAQS in its *Federal Register* notice approving that second maintenance plan. When the area approaches the end of its second maintenance plan, the EPA Regional Office could remind the interagency consultation group of this *Federal Register* notice and the MPO could then reference the notice in future conformity determinations and/or future transportation plan or TIP updates, as appropriate.

9. Do transportation control measures (TCMs) in the maintenance plan continue to apply after the end of the 20-year maintenance period?

Yes, all of the control measures in the maintenance plan, including TCMs, remain in effect and all measures and requirements contained in the plan must be complied with until the state submits, and EPA approves, a revision to the state plan consistent with the anti-backsliding requirements of CAA section 110(l) and CAA section 193, if applicable. Furthermore, the maintenance requirement in CAA section 110(a)(1) remains in place for all areas, including attainment areas.

Areas that have questions about continuing control measures in their SIP should contact their [EPA Regional Office](#).

10. Who can I contact for more information?

For questions concerning a particular maintenance area, please contact the transportation conformity staff person responsible for this area at the appropriate EPA Regional Office.

Contact information for EPA Regional Offices can be found on EPA's website at:
www.epa.gov/otaq/stateresources/transconf/contacts.htm

General questions about this guidance can be directed to EPA's Office of Transportation and Air Quality: Laura Berry, berry.laura@epa.gov , or Rudy Kapichak, kapichak.rudolph@epa.gov.

Additional information regarding the transportation conformity rule and associated guidance can be found on EPA's website at:
<http://www.epa.gov/otaq/stateresources/transconf/index.htm>

11. Does this guidance create any new requirements?

No, this guidance is based on CAA requirements and existing associated regulations and does not create any new requirements. This guidance explains when conformity ceases to apply in maintenance areas.

The CAA and EPA's regulations at 40 CFR Parts 51 and 93 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, the U.S. Department of Transportation (DOT), states, or the regulated community, and may not apply to a particular situation based upon the circumstances. This guidance may be revised periodically without public notice.