10 CSR 10-6.300 Conformity of General Federal Actions to State Implementation Plans

(1) General.

(A) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of 10 CSR 10-2.390 and 10 CSR 10-5.480 in lieu of the procedures set forth in this rule.

(B) For federal actions not covered by subsection (1)(A) of this rule, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (1)(B)1. or paragraph (1)(B)2. of this rule.

1. For purposes of subsection (1)(B) of this rule, the following rates apply in nonattainment areas (NAAs):

	Tons/ Year
Ozone (VOC or NO_x):	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Other ozone NAAs inside an ozone transport region:	
VOC	50
NO_x	100
Carbon monoxide: All NAAs	100
SO_2 or NO_2: All NAAs	100
PM_{10}:	
Moderate NAAs	100
Serious NAAs	70
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_x (unless determined not to be significant precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAAs	25

2. For purposes of subsection (1)(B) of this rule, the following rates apply in maintenance areas:

	Tons/ Year
Ozone (NO_x, SO_2, or NO_2):	
All Maintenance Areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All Maintenance Areas	100
PM_{10}: All Maintenance Areas	100
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_x (unless determined not to be significant precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All Maintenance Areas	25

(C) The requirements of this rule shall not apply to the following federal actions—

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection (1)(B) of this rule;

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

A. Judicial and legislative proceedings;

B. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted;

C. Rulemaking and policy development and issuance;

D. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

E. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

F. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;

G. Routine, recurring transportation of material and personnel;

H. Routine movement of mobile assets, such as ships and aircraft, in-home port reassignments, and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul;

I. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

J. Actions with respect to existing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

K. Granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

L. Planning, studies, and provision of technical assistance;

M. Routine operation of facilities, mobile assets, and equipment;

N. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

O. Designation of empowerment zones, enterprise communities, or viticultural areas;

P. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States;

Q. Actions by the Board of Governors of the Federal Reserve System or any federal reserve bank to effect monetary or exchange rate policy;

R. Actions that implement a foreign-affairs function of the United States;

S. Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties;

T. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants;

U. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States; and

V. Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable State Implementation Plan (SIP) or Tribal Implementation Plan (TIP). Where the applicable SIP or TIP does not specify a mixing height, the federal agency can use the three thousand feet (3,000') above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the federal action is *de minimis*;

3. Actions where the emissions are not reasonably foreseeable, such as the following:

A. Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level; and

B. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy; and

4. Actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan.

(D) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

1. The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (section 110 (a)(2)(c) and section 173 of the Clean Air Act (CAA)) or the prevention of significant deterioration (PSD) program (Title I, part C of the CAA);

2. Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (1)(E) of this rule;

3. Research, investigations, studies, demonstrations, or training other than those exempted under paragraph (1)(C)2. of this rule, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the department;

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions); and

5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (1)(D)2. of this rule and which are to be taken more than six (6) months after the commencement of the response to the emergency or disaster under paragraph (1)(D)2. of this rule are exempt from the requirements of this rule only if—

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six (6) months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

2. For actions which are to be taken after those actions covered by paragraph (1)(E)1. of this rule, the federal agency makes a new determination as provided in paragraph (1)(E)1. of this rule and—

A. Provides a draft copy of the written determinations required to affected U.S. Environmental Protection Agency (EPA) regional office(s), the affected state(s) and/or air pollution control agencies, and any federal recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed fifteen (15) days from the beginning of the extension period to comment on the draft determination; and

B. Within thirty (30) days after making the determination, publishes a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action; and

3. If additional actions are necessary in response to an emergency or disaster under paragraph (1)(D)2. of this rule beyond the specified time period in paragraph (1)(E)2. of this rule, a federal agency can make a new written determination as described in paragraph (1)(E)2. of this rule for as many six (6)-month periods as needed, but in no case shall this exemption extend beyond three (3) six (6)-month periods except where an agency provides information to EPA and the state or tribe stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

(F) Notwithstanding other requirements of this rule, actions specified by individual federal agencies that have met the criteria set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule and the procedures set forth in subsection (1)(H) of this rule are presumed to conform, except as provided in subsection (1)(J) of this rule. Actions specified by individual federal agencies as presumed to conform may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in paragraph (1)(B)1. or (1)(B)2. of this rule.

(G) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule.

1. The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not—

A. Cause or contribute to any new violation of any standard in any area;

B. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

C. Increase the frequency or severity of any existing violation of any standard in any area; or

D. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of—

(I) A demonstration of reasonable further progress;

(II) A demonstration of attainment; or

(III) A maintenance plan.

2. The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in subsection (1)(B) of this rule, based, for example, on similar actions taken over recent years.

3. The federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the state, local, or tribal air quality agencies responsible for the SIP(s) or TIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

(H) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (1)(G)1. through (1)(G)3. of this rule, the following procedures must also be complied with to presume that activities will conform:

1. The federal agency must identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the basis for the presumptions. The notice must clearly identify the type and size of the action that would be presumed to conform and provide criteria for determining if the type and size of action qualifies it for the presumption;

2. The federal agency must notify the appropriate EPA regional office(s), state, local, and tribal air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the Metropolitan Planning Organization (MPO) and provide at least thirty (30) days for the public to comment on the list of proposed activities presumed to conform. If the presumed-to-conform action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in subsection (1)(B) of this rule in more than one (1) of EPA's regions), the federal agency, as an alternative to sending it to EPA regional offices, can send the draft conformity determination to U.S. EPA, Office of Air Quality Planning and Standards;

3. The federal agency must document its responses to all the comments received and make the comments, responses, and final list of activities available to the public upon request; and

4. The federal agency must publish the final list of such activities in the *Federal Register*.

(I) Emissions from the following actions are presumed to conform:

1. Actions at installations with facility-wide emission budgets meeting the requirements in subsection (3)(H) of this rule provided that the state or tribe has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget;

2. Prescribed fires conducted in accordance with a smoke management program which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy; and

3. Actions that the state or tribe identifies in the EPA-approved SIP or TIP as presumed to conform.

(J) Even though an action would otherwise be presumed to conform under subsection (1)(F) or (1)(I) of this rule, an action shall not be presumed to conform and the requirements of section (4), subsection (1)(L), subsections (3)(A) through (3)(G), and subsections (3)(I) through (3)(K) of this rule shall apply to the action if EPA or a third party shows that the action would—

1. Cause or contribute to any new violation of any standard in any area;

2. Interfere with provisions in the applicable SIP or TIP for maintenance of any standard;

3. Increase the frequency or severity of any existing violation of any standard in any area; or

4. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or TIP for purposes of—

A. A demonstration of reasonable further progress;

B. A demonstration of attainment; or

C. A maintenance plan.

(K) The provisions of this rule shall apply in all nonattainment and maintenance areas except conformity requirements for newly-designated nonattainment areas are not applicable until one (1) year after the effective date of the final nonattainment designation for each National Ambient Air Quality Standards (NAAQS) and pollutant in accordance with section 176(c)(6) of the Act.

(L) State Implementation Plan Revision. The federal conformity rules under 40 CFR 51, Subpart W and 40 CFR 93, Subpart B, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this rule is approved by EPA as an implementation plan revision. Following EPA approval of this rule as a revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) state criteria and procedures will govern conformity determinations and the federal conformity regulations contained in 40 CFR 93 will apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously-applicable implementation plan requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(2) Definitions. Terms used in this rule shall have the meaning given to them by the CAA, EPA regulations, and 10 CSR 10-6.020, in that order of priority.

(3) General Provisions.

(A) Prohibition.

1. No department, agency, or instrumentality of the federal government shall engage in, support in any way, or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

2 A federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.

3. Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the CAA.

4. If an action would result in emissions originating in more than one (1) nonattainment or maintenance area, the conformity must be evaluated for each area separately.

(B) Federal Agency Conformity Responsibility. Any department, agency, or instrumentality of the federal government taking an action subject to this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must follow the requirements in section (4), subsections (3)(C) through (3)(G), and subsections (3)(I) through (3)(L) of this rule and must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency or develop its own analysis in order to make its conformity determination.

(C) Public Participation.

1. Upon request by any person regarding a specific federal action, a federal agency must make available, subject to the limitation in paragraph (3)(C)5. of this rule, for review its draft conformity determination under subsection (3)(B) of this rule with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

2. A federal agency must make public its draft conformity determination under subsection (3)(B) of this rule by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing thirty (30) days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in subsection (1)(B) of this rule in three (3) or more of EPA’s regions), the federal agency, as an alternative to publishing separate notices, can publish a notice in the *Federal Register*.

3. A federal agency must document its response to all the comments received on its draft conformity determination under subsection (3)(B) of this rule and make the comments and responses available, subject to the limitation in paragraph (3)(C)5. of this rule, upon request by any person regarding a specific federal action, within thirty (30) days of the final conformity determination.

4. A federal agency must make public its final conformity determination under subsection (3)(B) of this rule for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within thirty (30) days of the final conformity determination. If the action would have multi-regional or national impacts, the federal agency, as an alternative, can publish the notice in the *Federal Register*.

5. The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, or executive orders concerning the release of such materials.

(D) Re-evaluation of Conformity.

1. Once a conformity determination is completed by a federal agency, that determination is not required to be re-evaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (3)(D)2. of this rule; or any modification to the action does not result in an increase in emissions above the levels as specified in subsection (1)(B) of this rule. If a conformity determination is not required for the action at the time NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

2. The conformity status of a federal action automatically lapses five (5) years from the date a final conformity determination is reported under section (4) of this rule, unless the federal action has been completed or a continuous program to implement the federal action has commenced.

3. Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under section (4) of this rule.

4. If the federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in subsection (1)(B) of this rule and changes to the action would result in the total emissions from the action being above the limits in subsection (1)(B) of this rule, then the federal agency must make a conformity determination.

(E) Criteria for Determining Conformity of General Federal Actions.

1. An action required under section (1) of this rule, to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in subsection (1)(B) of this rule, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3)(E)3. of this rule, and meets any of the following requirements:

A. For any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP in accordance with subsection (3)(H) of this rule;

B. For precursors of ozone, nitrogen dioxide, or particulate matter (PM), the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action) through a revision to the applicable SIP or a similarly-enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

C. For any directly-emitted criteria pollutant, the total of direct and indirect emissions from the action meet the requirements—

(I) Specified in paragraph (3)(E)2. of this rule, based on area-wide air quality modeling analysis and local air quality modeling analysis; or

(II) Specified in subparagraph (3)(E)1.E. of this rule and, for local air quality modeling analysis, the requirement of paragraph (3)(E)2. of this rule;

D. For carbon monoxide or directly emitted PM—

(I) Where the department determines that an area-wide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (3)(E)2. of this rule, based on local air quality modeling analysis; or

(II) Where the department determines that an area-wide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (3)(E)2. of this rule, based on area-wide modeling, or meet the requirements of subparagraph (3)(E)1.E. of this rule; or

E. For ozone or nitrogen dioxide, and for purposes of parts (3)(E)1.C.(II) and (3)(E)1.D.(II) of this rule, each portion of the action or the action as a whole meets any of the following requirements:

(I) Where EPA has approved a revision to the applicable implementation plan after the area was designated as nonattainment and the state or tribe makes a determination as provided in subpart (3)(E)1.E.(I)(a) of this rule or where the state or tribe makes a commitment as provided in subpart (3)(E)1.E.(I)(b) of this rule.

(a) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP.

(b) The total of direct and indirect emissions from the action (or portion thereof) is determined by the department to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable implementation plan and the department makes a written commitment to EPA which includes the following:

I. A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

II. Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

III. A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

IV. A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

V. Written documentation including all air quality analyses supporting the conformity determination.

(c) Where a federal agency made a conformity determination based on a state's or tribe's commitment under subpart (3)(E)1.E.(I)(b) of this rule and the state has submitted a SIP or TIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP or TIP within eighteen (18) months of the conformity determination, the state commitment is automatically deemed a call for a SIP or TIP revision by EPA under section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within eighteen (18) months or any shorter time within which the state or tribe commits to revise the applicable SIP;

(d) Where a federal agency made a conformity determination based on a state or tribal commitment under subpart (3)(E)1.E.(I)(b) of this rule and the state or tribe has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within eighteen (18) months of the conformity determination, the state or tribe must, within eighteen (18) months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision;

(II) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 10 CSR 10-2.390 or 10 CSR 10-5.480;

(III) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action) through a revision to the applicable SIP or an equally-enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(IV) Where EPA has not approved a revision to the relevant SIP since the area was designated or reclassified, the total of direct and indirect emissions from the action for the future years (described in paragraph (3)(F)4. of this rule) do not increase emissions with respect to the baseline emissions, and—

(a) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during—

I. The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year;

II. The emission budget in the applicable SIP; or

III. The year of the baseline inventory in the PM_{10} applicable SIP; and

(b) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in paragraph (3)(F)4. of this rule) using the historic activity levels (described in subpart (3)(E)1.E.(IV)(a) of this rule) and appropriate emission factors for the future years; or

(V) Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

2. The area-wide and local air quality modeling analyses must—

A. Meet the requirements in subsection (3)(F) of this rule; and

B. Show that the action does not—

(I) Cause or contribute to any new violation of any standard in any area; or

(II) Increase the frequency or severity of any existing violation of any standard in any area.

3. Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

4. Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

(F) Procedures for Conformity Determinations of General Federal Actions.

1. The analyses required under this rule must be based on the latest planning assumptions.

A. All planning 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, where available.

B. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area.

2. The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate, the federal agency may obtain written approval from the appropriate EPA regional administrator for a modification or substitution, of another technique on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

A. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and made available for use in the preparation or revision of SIPs in the state must be used for the conformity analysis as specified below—

(I) The EPA must publish in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

(II) A grace period of three (3) months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the *Federal Register*. Conformity analyses for which the analysis was begun during the grace period or no more than three (3) years before the *Federal Register* notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

B. For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors" (AP-42, http://www.epa.gov/ttn/chiefs/efpac) must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

3. The air quality modeling analyses required under this rule must be based on the applicable air quality models, databases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models" (40 CFR 51, Appendix W), unless—

A. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

B. Written approval of the EPA regional administrator is obtained for any modification or substitution.

4. The analyses required under this rule must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

A. The attainment year specified in the SIP or, if the SIP does not specify an attainment year, the latest attainment year possible under the Act;

B. The last year for which emissions are projected in the maintenance plan;

C. The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

D. Any year for which the applicable SIP specifies an emissions budget.

(G) Mitigation of Air Quality Impacts.

1. Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

2. Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

3. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

4. In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

5. When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of section (4) of this rule and the public participation requirements of subsection (3)(C) of this rule.

6. Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

7. After a state or tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(H) Conformity Evaluation for Federal Installations with Facility-Wide Emission Budgets.

1. The state, local, or tribal agency responsible for implementing and enforcing the SIP or TIP can, in cooperation with federal agencies or third parties authorized by the agency that operate installations subject to federal oversight, develop and adopt a facility-wide emission budget to be used for demonstrating conformity under subparagraph (3)(E)1.A. of this rule. The facility-wide budget must meet the following criteria:

A. Be for a set time period;

B. Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

C. Include specific quantities allowed to be emitted on an annual or seasonal basis;

D. The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

E. Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the federal agency is taking an action that would otherwise require a conformity determination;

F. Be submitted to EPA as a SIP revision; and

G. The SIP revision must be approved by EPA.

2. The facility-wide budget developed and adopted in accordance with paragraph (3)(H)1. of this rule can be revised by following the requirements in paragraph (3)(H)1. of this rule.

3. Total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget adopted pursuant to paragraph (3)(H)1. of this rule are “presumed to conform” to the SIP and do not require a conformity analysis.

4. If the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted pursuant to paragraph (3)(H)1. of this rule, the action must be evaluated for conformity. A federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

5. If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

(I) Emissions Beyond the Time Period Covered by the SIP. If a federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the federal agency can—

1. Demonstrate conformity with the last emission budget in the SIP; or

2. Request the state or tribe to adopt an emissions budget for the action for inclusion in the SIP. The state or tribe must submit a SIP or TIP revision to EPA within eighteen (18) months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision. No such commitment by a state or tribe shall restrict a state's or tribe's ability to require Reasonably Available Control Technology (RACT), Reasonably Available Control Measures (RACM), or any other control measures within the state's or tribe's authority to ensure timely attainment of the NAAQS.

(J) Timing of Offsets and Mitigation Measures.

1. The emissions reductions from an offset or mitigation measure used to demonstrate conformity must occur during the same calendar year as the emission increases from the action except as provided in paragraph (3)(J)2. of this rule.

2. The state or tribe may approve emissions reductions in other years provided—

A. The reductions are greater than the emission increases by the following ratios:

(I) Extreme nonattainment areas	1.5:1
(II) Severe nonattainment areas	1.3:1
(III) Serious nonattainment areas	1.2:1
(IV) Moderate nonattainment areas	1.15:1
(V) All other areas	1.1:1

B. The time period for completing the emissions reductions must not exceed twice the period of the emissions; and

C. The offset or mitigation measure with emissions reductions in another year will not—

(I) Cause or contribute to a new violation of any air quality standard;

(II) Increase the frequency or severity of any existing violation of any air quality standard; or

(III) Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

3. The approval by the state or tribe of an offset or mitigation measure with emissions reductions in another year does not relieve the state or tribe of any obligation to meet any SIP or CAA milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the state or tribe, and they are not required to approve an alternate schedule.

(K) Inter-Precursor Mitigation Measures and Offsets. Federal agencies must reduce the same type of pollutant as being increased by the federal action except the state or tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a state or tribe in a SIP- or TIP-approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

(L) Early Emission Reduction Credit Programs at Federal Facilities and Installations Subject to Federal Oversight.

1. Federal facilities and installations subject to federal oversight can, with the approval of the state or tribal agency responsible for the SIP or TIP in that area, create an early emissions reductions credit program. The federal agency can create the emission reduction credits in accordance with the requirements in paragraph (3)(L)2. of this rule and can use them in accordance with paragraph (3)(L)3. of this rule.

2. Creation of emission reduction credits.

A. Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the federal agency must receive approval from the state or tribal agency responsible for the implementation of the SIP or TIP and from EPA’s regional office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented but must be quantified before the credits are used in the general conformity evaluation.

B. The emission reduction methods must be consistent with the applicable SIP or TIP attainment and reasonable further progress demonstrations.

C. The emissions reductions cannot be required by or credited to other applicable SIP or TIP provisions.

D. Both the state or tribe and federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

E. The emissions reductions must be permanent or the time frame for the reductions must be specified.

F. The federal agency must document the emissions reductions and provide a copy of the document to the state or tribal air quality agency and the EPA regional office for review. The documentation must include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of subparagraphs (3)(L)2.A. through (3)(L)2.E. of this rule.

3. Use of emission reduction cedits. The emission reduction credits created in accordance with paragraph (3)(L)2. of this rule can be used, subject to the following limitations, to reduce the emissions increase from a federal action at the facility for the conformity evaluation.

A. If the technique used to create the emission reduction is implemented at the same facility as the federal action and could have occurred in conjunction with the federal action, then the credits can be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in section (1) of this rule and as offsets or mitigation measures required by subsection (3)(E) of this rule.

B. If the technique used to create the emission reduction is not implemented at the same facility as the federal action or could not have occurred in conjunction with the federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in section (1) of this rule, but can be used to offset or mitigate the emissions as required by subsection (3)(E) of this rule.

C. Emissions reductions credits must be used in the same year in which they are generated.

D. Once the emission reduction credits are used, they cannot be used as credits for another conformity evaluation. However, unused credits from a strategy used for one (1) conformity evaluation can be used for another conformity evaluation as long as the reduction credits are not double counted.

E. Federal agencies must notify the state or tribal air quality agency responsible for the implementation of the SIP or TIP and EPA Regional Office when the emission reduction credits are being used.

(4) Reporting and Record Keeping.

(A) A federal agency making a conformity determination under section (4), subsections (3)(B) through (3)(G), and subsections (3)(I) through (3)(K) of this rule must provide to the appropriate EPA regional office(s), state and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO, a thirty (30)-day notice which describes the proposed action and the federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in subsection (1)(B) of this rule in three (3) or more of EPA's regions), the federal agency, as an alternative to sending it to EPA regional offices, can provide the notice to EPA's Office of Air Quality Planning and Standards.

(B) A federal agency must notify the appropriate EPA regional office(s), state and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected federal land managers, the agency designated under section 174 of the CAA and the MPO, within thirty (30) days after making a final conformity determination under this rule.

(C) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and state representatives who have received appropriate clearances to review the information.

(5) Test Methods. *(Not Applicable)*

EPA Rulemakings

CFR: 40 C.F.R. 52.1320(c)
FRM: 78 FR 57267 (9/18/2013)
PRM: 78 FR 57335 (9/18/2013)
State Submission: 8/12/2011
State Final: 10 C.S.R. 10-6.300 (7/31/11) [note July effective date is incorrect we will issue a correction notice changing effective date to 8/30/11].
APDB File: MO-308; EPA-R07-OAR-2013-0511
Description: This amendment to the Missouri SIP will update the general conformity rule in its entirety to bring the SIP into compliance with the federal general conformity rule. The federal rule was updated on April 5, 2010 (75 FR 17277). General conformity regulations prohibit federal agencies from taking actions that may cause or contribute to violations of the National Ambient Air Quality Standards. This rule applies to non-attainment and maintenance areas of the state.

CFR: 40 C.F.R. 52.1320(c)
FRM: 72 FR 68072 (12/04/2007)
PRM: 72 FR 68118 (12/04/2007)
State Submission: 09/17/2007
State Final: 10 C.S.R. 10-6 (08/31/2007; effective 09/30/2007)
APDB File: MO-265; EPA-R07-OAR-2007-1055
Description: This rule revision updates the tables to be consistent with the revised Federal rule by adding de minimis emissions levels for particulate matter 2.5 ($PM_{2.5}$).

CFR: 40 C.F.R. 52.1320(c)(97)(i)(A)
FRM: 62 FR 26395 (5/14/97)
PRM: 62 FR 26460 (5/14/97)
State Submission: 11/20/96
State Proposal: 21 MR 1799 (8/1/96)
State Final: 10 C.S.R. 10-6 (8/31/96)
APDB File: MO-117
Description: The EPA granted final full approval to the SIP for the purpose of meeting the requirements of the EPA s general conformity rule. This rulemaking fulfills the conditions of the conditional approval granted on March 11, 1996.

CFR: 40 C.F.R. 52.1320(c)(93)(i)(A)
FRM: 61 FR 9642 (3/11/96)
PRM: 61 FR 9661 (3/11/96)
State Submission: 2/14/95
State Proposal: 19 MR 2579 (11/1/94)
State Final: 10 C.S.R. 10-6 (4/28/95)
APDB File: MO-117
Description: The EPA approved a new regulation which gives conditional approval to the SIP submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPAs General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 C.F.R. 51.852 and 93.151. The state of Missouri commits to change the wording in paragraphs (3)(C)4. and (9)(B) of Missouri rule 10 C.S.R. 10-6.300, and to submit the change to the EPA by December 7, 1996. The change will give the rule the same stringency as the Federal general conformity rule.

Difference Between the State and EPA-Approved Regulation

None.