SUPPORTING STATEMENT FOR

EPA INFORMATION COLLECTION REQUEST NUMBER 2130.03

TRANSPORTATION CONFORMITY DETERMINATIONS FOR FEDERALLY FUNDED AND APPROVED TRANSPORTATION PLANS, PROGRAMS AND PROJECTS

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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title of the Information Collection

This information collection request (ICR) is entitled "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects," ICR number 2130.03. This ICR includes transportation conformity burden anticipated for calendar years 2008-2010.

1(b) Short Characterization/Abstract

Transportation conformity is required under Clean Air Act section 176(c) [42 U.S.C. 7506(c)] to ensure that federally supported transportation activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. 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 (NAAQS or "standards").

Transportation conformity applies under EPA's conformity regulations at 40 CFR Part 93, Subpart A, to areas that are designated nonattainment, and those re-designated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2).

The Environmental Protection Agency (EPA) published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

Transportation conformity determinations are required before federal approval or funding is given to certain types of transportation planning documents as well as non-exempt highway and transit projects.[1] In metropolitan nonattainment and maintenance areas, conformity determinations are required for transportation plan and TIP updates and amendments. A metropolitan transportation plan is at least a 20-year planning document that describes the policies, strategies and facilities that are proposed by state and local decision-makers for future implementation in a metropolitan area. The TIP prioritizes and programs capital highway and transit projects for implementation in a metropolitan area over a four-year period, consistent with the transportation plan.

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[1] [?]Projects that are exempt from all or certain conformity requirements include projects listed in 40 CFR 93.126 (e.g., safety projects, maintenance of current roads), projects that do not impact regional emissions in 40 CFR 93.127, and traffic signal synchronization projects listed in 40 CFR 93.128.

To meet the Clean Air Act's conformity requirements, once a SIP is established for a given pollutant and standard(s), projected regional emissions from a nonattainment or maintenance area's transportation system must be at or below the motor vehicle emissions level or "budget" for on-road mobile sources in the area's SIP. Prior to EPA finding a budget adequate[2] or approving a SIP, the conformity rule provides emissions tests that ensure that Clean Air Act requirements in the interim are met.

EPA considered the following in developing this ICR:

- Burden estimates for transportation conformity determinations in current 8-hour ozone and $PM_{2.5}$ nonattainment and maintenance areas, which made up EPA's previous ICR (ICR #2130.02);

- Burden estimates for conformity determinations for CO, NO_2, and PM_{10}, which were previously included in DOT's ICR for Metropolitan and State-wide Transportation Planning (OMB Control Number 2132-0529);[3]

- Efficiencies associated with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) which was signed into law on August 10, 2005 [42 U.S.C. 7506(c)(2)]. Some provisions of the SAFETEA-LU made the transportation conformity process more efficient in that the minimum frequency for determining conformity for transportation plans and TIPs was reduced from every three and two years, respectively, to every four years for both, thus aligning the transportation plan and TIP update and conformity cycles for many nonattainment and maintenance areas;

- Burden estimates for hypothetical nonattainment areas for the 2006 24-hour $PM_{2.5}$ standard, which EPA promulgated on October 17, 2006 (71 Federal Register 61144)[4];

- Differences in conformity resource needs in large and small metropolitan areas and isolated rural

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[2] Per the transportation conformity rule, submitted SIP budgets are appropriate to use prior to EPA's approval of the SIP when EPA declares them adequate for transportation conformity purposes (40 CFR 93.118(e) and (f)).

[3] EPA, in consultation with DOT, concluded that it would be advantageous to join transportation conformity burden estimates for all pollutants into one ICR. EPA notes that the DOT ICR for Metropolitan and State-wide Planning estimated only the reduction in cost for transportation conformity requirements due to efficiencies resulting from SAFETEA-LU. DOT did not include total burden estimates for transportation conformity in its ICR. Based upon DOT ICR cost estimates, EPA has determined that DOT total annual state and local respondent transportation conformity cost associated with their ICR is approximately $15,089,550.

[4] The effective date for the 2006 24-hour $PM_{2.5}$ standard was December 18, 2006. EPA anticipates making nonattainment designations for the standard no later than December 18, 2008, with a possible extension up to one year (but no later than three years after the effective date of the standard).

areas; and,

- Additional federal burden associated with EPA's adequacy review process for submitted SIP budgets that are to be used in conformity determinations.

This ICR does not include burden associated with the general development of transportation planning and air quality planning documents for meeting other federal requirements.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need/Authority for the Collection

The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP. EPA promulgated the transportation conformity regulations under the authority of Clean Air Act section 176(c). The federal government needs information collected under these regulations to ensure that metropolitan planning organization (MPO)[5] and federal transportation actions are consistent with state air quality goals.

2(b) Practical Utility/Users of the Data

Federal, state, and local transportation agencies use information collected under the conformity regulation to ensure that federally funded or approved transportation actions conform with SIPs for attaining and maintaining clean air throughout the country. Specifically, transportation agencies use information they collect to demonstrate that:

- Regional emissions and/or project-level emissions analysis requirements are satisfied;

- Transportation control measures (TCMs) in approved SIPs are implemented in a timely manner;

- State, local, and federal transportation and air quality agencies consult and resolve issues related to conformity determinations; and,

- Public comments are considered and responses to comments are documented prior to conformity actions.

[5] MPO means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

3. NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Non-Duplication

EPA wrote the transportation conformity regulation and the revisions, in coordination with FHWA and FTA, to avoid duplicating the collection efforts required by other regulatory programs. The conformity regulation integrates existing transportation and air quality planning requirements from the Clean Air Act, Title 23 of United States Code and other federal highway laws, Federal Transit Laws,[6] and the National Environmental Policy Act (NEPA).

The conformity regulation relies on but does not duplicate DOT's transportation planning regulations for developing transportation plans, TIPs, and projects. Many nonattainment and maintenance areas can rely on travel, economic, or other forecasts that are already available for other planning purposes to complete regional conformity analyses. In addition, the conformity regulation does not create any new fiscal constraint or public participation requirements. The regulation simply relies upon existing transportation planning requirements.

Localized emissions analyses (or "hot-spot" analyses) are generated for certain project-level conformity determinations for certain criteria pollutants. When hot-spot analyses are required for both NEPA and conformity approvals, areas can rely on the same analysis, assuming that it meets all necessary requirements. Finally, although transportation actions are compared to SIP budgets for conformity determinations when they are available, SIPs are required to be submitted for other Clean Air Act purposes, and are not required by the conformity provisions.

3(b) Public Notice Required Prior to ICR Submission to OMB

In compliance with the 1995 Paperwork Reduction Act (PRA), any agency developing a non-rule related ICR must solicit public comments for a 60-day period prior to submitting the ICR to OMB. These comments, which are used partly to determine realistic burden estimates for respondents, must be considered when completing the final Supporting Statement that is submitted to OMB.

On July 19, 2007, EPA announced a public comment period for this renewal ICR in the Federal Register under Docket ID No.EPA-HQ-OAR-2007-0269 (72 FR 39620). The comment period closed September 17, 2007 and no public comments were received.

[6] In 2005, SAFETEA-LU was enacted which amended Title 23 of United States Code and Federal Transit Laws. In this ICR, EPA has accounted for changes that generally made the conformity process more efficient.

3(c) Consultations

To prepare this ICR, EPA consulted with and collected information from our regional offices and from FHWA and FTA headquarters and field offices. We relied upon these sources for information on the number of hours required to complete the following:

- Developing transportation plan, TIP, and project conformity determinations;
- Consulting with state, local, and federal agencies on conformity determinations;
- Performing regional and hot-spot emissions analyses;
- Documenting that TCMs in approved SIPs are implemented on time;
- Conducting other miscellaneous activities (e.g., reviewing conformity documents, responding to conformity-related public comments, etc.); and,
- Training new state and local government staff to perform conformity-related duties (for those nonattainment areas without previous conformity experience).

EPA also consulted with FHWA and FTA headquarters and field offices to obtain information on the Data and Supporting Statement for the DOT ICR for Metropolitan and State-wide Planning (OMB Control #2132-0529). Individuals/staff consulted:

- Department of Transportation, Federal Transit Administration, Office of Planning and Environment, (202) 366-2360;
- Cecilia Ho, (202) 366-9862, Department of Transportation, Federal Highway Administration.

EPA also requested information from EPA Regional Offices on burden hours associated with determining adequacy of motor vehicle emission budgets for SIPs.

Finally, EPA relied upon several studies completed on the transportation conformity process that indicated the number of hours associated with doing conformity determinations. See Appendix B – Conformity Related Research Considered for This ICR.

3(d) Effects of Less Frequent Collection

The Clean Air Act, as amended by SAFETEA-LU, requires conformity for transportation plans and TIPs to be determined every four years. This statutory requirement is typically satisfied when an area updates its long-range transportation plan to meet the four-year planning requirement for DOT's transportation planning regulations. SAFETEA-LU and DOT's transportation planning regulations require TIPs to be updated every four years, and as a result, conformity determinations are also done for TIPs every four years. The Clean Air Act, as amended by SAFETEA-LU, also requires conformity for transportation plans and TIPs within two years of a new SIP motor vehicle emission budget being established.

Conformity determinations are required in isolated rural areas only when a new project needs federal funding or approval. The Clean Air Act's minimum four-year frequency requirement for transportation plans and TIPs and two year SIP- related "triggers" do not apply in these areas. Therefore, these areas are not required to demonstrate conformity as often as metropolitan areas. Conformity determinations before project approvals are made in isolated rural areas and are necessary to meet the goals of the Clean Air Act.

3(e) General Guidelines

This ICR adheres to the guidelines stated in the 1995 Paperwork Reduction Act, OMB's implementing regulations, and EPA's Information Collection Request Handbook. None of these reporting or record keeping requirements violate any of the regulations established by OMB in 5 CFR 1320.5.

3(f) Confidentiality

Respondents for the transportation conformity regulation do not submit confidential information for approval. All information collected and submitted in a conformity determination is already publicly available, pursuant to 40 CFR 93.105(e) of the conformity regulation and 23 CFR 450.316(a) of the transportation planning regulations.

3(g) Sensitive Questions

No questions of a sensitive nature are included in any of the information collection requirements for the transportation conformity regulation. Examples of sensitive information include information concerning sexuality or religious beliefs.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) State and Local Respondents/Standard Industrial Classification Codes

In the transportation conformity process, the respondent is either a state or local agency. Depending upon the type of conformity determination and the type of area involved, the state or local agency may vary. For instance, in metropolitan nonattainment and maintenance areas, MPOs are the primary local respondent for transportation plan and TIP conformity determinations. Clean Air Act section 176(c)(1) states that "... No metropolitan planning organization designated under section 134 of Title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title...."

In metropolitan areas, each MPO must formally make a conformity determination on its transportation plan and TIP prior to submitting them to DOT for an independent review and conformity determination. State or local air agencies also provide technical assistance in supplying air quality data or performing emissions factor modeling for transportation plan and TIP regional conformity analyses.

State and local respondents for conformity determinations for projects within metropolitan areas can vary depending upon who the project sponsor is. A project sponsor within a metropolitan area may be the state department of transportation, local transit agency, or other state or local agency, depending upon the individual project. Developing conformity determinations for projects outside metropolitan boundaries is also typically the responsibility of the project sponsor, which is usually the state department of transportation.

The transportation conformity rule also requires that state, local and federal transportation and air quality agencies develop interagency consultation procedures for discussing and resolving issues related to conformity determinations. Such agencies include the MPO, local transit agency, state department of transportation, state and local air agencies, EPA, FHWA, and FTA. Federal respondents for conformity determinations are discussed further in Section 5 of this ICR.

The following is a representative list of Standard Industrial Classification (SIC) codes for the government agencies that would be affected by the transportation conformity regulation:

4111 Local and Suburban Transit
4131 Intercity and Rural Bus Transit
4173 Terminal and Service Facilities for Motor Vehicle Passenger Transportation
9511 Air and Water Resource and Solid Waste Management
9532 Administration of Urban Planning and Community and Rural Development
9621 Regulation and Administration of Transportation Programs

4(b) Information Requested

(i) Data Items, Including Record Keeping Requirements

Section 4(b)(ii) describes the information requested for and roles conducted by state and local respondents for conformity determinations. Some of the information used in conformity determinations is also used for other transportation and air quality planning purposes. Specific roles of state and local agencies will vary from area to area.

(ii) Respondent Activities

Metropolitan Planning Organizations

MPOs are the lead agency in making transportation plan and TIP conformity determinations in metropolitan areas. The level of information collection requirements for completing such determinations will vary with the size of the area and complexity of the air quality problem. The following list includes MPO activities for transportation plan and TIP conformity determinations:

- Conduct regional emissions analyses using the latest planning assumptions and models to determine whether the emissions from the proposed transportation system are consistent with state air quality goals;
- Ensure timely implementation of TCMs in approved SIPs;
- Consult with other state, local, and federal transportation and air quality agencies throughout the conformity process; and
- Circulate draft plan/TIP conformity determinations for interagency review and public comment and respond to any comments on plan/TIP conformity determinations.

State Departments of Transportation

State departments of transportation are typically the lead agency in developing conformity determinations for projects in isolated rural areas. They can also be the lead agency for project-level conformity determinations in metropolitan areas. The following list includes state transportation activities for project-level conformity determinations:

- Conduct regional emissions analyses on projects in isolated rural areas using the latest assumptions and models to determine whether the emissions from the proposed transportation system change is consistent with state air quality goals;
- Ensure timely implementation of TCMs in approved SIPs;

- Conduct hot-spot analyses for projects when required;

- Comment on draft plan and TIP conformity determinations;

- Consult with other state, local, and federal transportation and air quality agencies throughout the conformity process; and

- Circulate draft project conformity determinations for interagency review and public comment and respond to any comments as appropriate.

Local Transit Agencies

Local transit agencies in metropolitan areas are typically the lead agency in developing project-level conformity determinations for transit projects in metropolitan areas. The following list includes local transit agency activities for project-level conformity determinations:

- Conduct hot-spot analyses for transit projects when required;

- Comment on draft plan and TIP conformity determinations;

- Consult with other state, local, and federal transportation and air quality agencies throughout the conformity process; and

- Circulate draft project conformity determinations for interagency review and public comment and respond to any comments as appropriate.

State and Local Air Quality Agencies

State and local air quality agencies may provide technical assistance to transportation agencies in the development of conformity determinations. The following list includes possible state and local air agency activities for conformity determinations:

- Provide air quality data or perform emissions factor modeling for regional emissions analyses for transportation plans and TIPs in metropolitan areas and projects in isolated rural areas;

- Provide similar assistance for hot-spot analyses for projects as appropriate;

- Consult with state, local, and federal agencies throughout the conformity process; and

- Comment on draft conformity determinations.

5. THE INFORMATION COLLECTED–AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

FHWA and FTA Activities

The FHWA division office and the FTA regional office are involved in several aspects of the transportation conformity process:

- Making conformity determinations for transportation plans, TIPs and projects;
- Reviewing the relevant materials that are submitted to support the conformity determinations including comments submitted by the EPA Regional Office;
- Issuing a letter to the appropriate MPO, state department of transportation or project sponsor indicating that they have made a conformity determination.

FHWA Resource Centers and Headquarters provide technical assistance as needed.

FHWA and FTA field offices will also participate in the interagency consultation process for nonattainment and maintenance areas. The interagency consultation process is used to discuss and resolve issues during the development of transportation plan, TIP, and project conformity determinations. The frequency of meetings varies from area to area.

EPA Activities

The EPA Regional Office is involved in several aspects of the transportation conformity process:

- Participating in the interagency consultation process in nonattainment and maintenance areas;
- Reviewing and commenting on conformity determinations for transportation plans, TIPs and projects, including the travel, emissions, or air quality modeling performed to support a conformity determination; and
- Making adequacy findings for submitted SIP motor vehicle emissions budgets. EPA's adequacy review is separate from EPA's review of the SIP for completeness or approval.

5(b) Collection Methodology and Management

Federal agencies review conformity determinations in accordance with the Clean Air Act Section 176(c) and CFR Part 93, Subpart A. The interagency consultation process is used to discuss any outstanding issues on the accuracy or quality of data used in conformity analyses and determinations. The general public reviews MPO conformity determinations for transportation plans and TIPs, and federal agencies review MPO responses to these comments. The federal agencies will need to maintain records of their actions, in accordance with other federal record retention requirements. No special machines or processing technologies are employed in reviewing conformity determinations.

5(c) Small Entity Flexibility

A regulatory flexibility analysis is not required because the rule does not affect a significant number of small entities. However, the rule does affect some isolated rural nonattainment and maintenance areas which are considered to be small entities because they have populations less than 50,000. EPA has taken steps in the conformity rule to reduce the burden placed on these areas. For example, isolated rural areas are required to demonstrate conformity only when they have a new federally funded or approved highway or transit project. In contrast, metropolitan nonattainment and maintenance areas are required to demonstrate conformity at least every four years.

5(d) Collection Schedule

The information collections described in this ICR must be completed before a transportation plan, TIP or project conformity determination is made. DOT's planning regulations require that transportation plans and TIPs be updated at least every four years, and the Clean Air Act, as amended by SAFETEA-LU, requires that a conformity determination on the transportation plan and TIP in metropolitan areas be completed at least every four years. Conformity determinations on projects in metropolitan and isolated rural areas are required on an as-needed basis.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6(a) Estimating State and Local Respondent Burden and Cost

Overview

This section of the ICR includes background information on the number of existing nonattainment and maintenance areas that are subject to transportation conformity regulations as well as metropolitan and isolated rural areas that may be designated nonattainment for the 2006 24-hour

$PM_{2.5}$ standard[7]. For these areas, EPA has estimated potential burden for the following:

- Transportation plan and TIP conformity determinations for existing nonattainment and maintenance areas;
- Project-level conformity determinations for existing metropolitan and isolated rural areas; and,
- Transportation plan, TIP, and project conformity determinations for hypothetical nonattainment areas under the 2006 24-hour $PM_{2.5}$ standard.

Please refer to section 6(b) for assumptions used in estimating respondent cost.

State and Local Respondent Burden and Costs for Existing Nonattainment and Maintenance Areas

Background on Existing Nonattainment and Maintenance Areas

As stated earlier, this ICR includes the burden associated with implementing conformity requirements with respect to existing nonattainment and maintenance areas for transportation-related criteria pollutants: Ozone, CO, nitrogen dioxide, PM_{10} and $PM_{2.5}$. The following table illustrates the number of areas currently subject to transportation conformity requirements:

Table 1:
Number of Areas Subject to Transportation Conformity Requirements[8]

Pollutant	Number of Metropolitan Nonattainment/Maintenance Areas	Number of Isolated Rural Nonattainment/Maintenance Areas
8-hour ozone	90	22
1-hour ozone[9]	3	0
carbon monoxide	75	2
PM_{10}	48	38

[7] ? EPA promulgated a more stringent 24-hour $PM_{2.5}$ NAAQS on October 17, 2006 (71 FR 61144), as described later in this ICR.

[8] Areas may be nonattainment/maintenance for more than one pollutant; therefore, there is some overlap in the number of areas which are nonattainment/maintenance for a pollutant and also nonattainment/maintenance for another pollutant.

[9] The 1-hour ozone standard, as well as designations and classifications for all 1-hour ozone nonattainment and maintenance areas, have been revoked except for the Greensboro, NC; Nashville, TN; and Denver, CO 1-hour maintenance areas, which are participating in the 8-hour ozone Early Action Compact program. These three areas are required to continue to determine conformity for the 1-hour ozone standard. They will remain 1-hour ozone maintenance areas until one year after the effective date of their 8-hour ozone designations.

$PM_{2.5}$[10]	38	1
nitrogen dioxide	1	0

This ICR reflects the burden associated with determining conformity for all of these pollutants; however, EPA estimates reflect efficiencies realized when metropolitan areas are nonattainment or maintenance for two or more pollutants since there is often an overlap of time spent in consultation, regional emissions analysis and other miscellaneous activities for these areas in determining conformity for two or more pollutants.

As discussed further below, EPA has also identified the number of MPOs that are subject to transportation conformity for one or more pollutants, since many metropolitan nonattainment and maintenance areas have more than one MPO (and consequently, more than one transportation plan or TIP conformity determination)[11].

Finally, EPA assumes that conformity burden will differ among:

- Larger metropolitan nonattainment and maintenance areas (urbanized area populations over 200,000);
- Smaller metropolitan nonattainment and maintenance areas (urbanized area populations between 50,000-200,000); and,
- Isolated rural nonattainment and maintenance areas (populations under 50,000).

Since conformity requirements, complexity of air quality issues and geographic size can vary dependent on an area's population, number of MPOs, and number of pollutants involved, EPA believes it is appropriate to account for these differences in calculating conformity burden in existing nonattainment and maintenance areas.

Transportation Plan and TIP Conformity Determinations in Existing Metropolitan Nonattainment and Maintenance Areas

EPA is relying on information from several sources for this ICR's estimated state and local burden hours for conformity determinations:

[10] The $PM_{2.5}$ areas referred to in this table were designated nonattainment for the 1997 $PM_{2.5}$ air quality standards on January 5, 2005.

[11] The number of MPOs estimated in the following tables is based upon information collected from EPA Regional Offices, Federal Register Vol. 67, No. 84, May 1, 2002, Department of Commerce, Bureau of the Census, Qualifying Urban Areas for Census 2000 and Federal Register Vol. 67, No. 130, July 8, 2002, Department of Transportation, Federal Transit Administration/Federal Highway Administration Designation of Transportation Management Areas.

- First, as described in Section 3(c), EPA requested burden information from EPA and DOT field offices that regularly work with state and local organizations responsible for doing conformity determinations for transportation plans and TIPs;

- Second, EPA has reviewed the conformity burden hour estimates that were assumed in DOT's ICR for the transportation planning regulations;

- Finally, EPA reviewed existing conformity research studies and considered whether any information could be used as a proxy for conformity burden in existing nonattainment and maintenance areas. These research studies are listed in Appendix B of this ICR.

The following paragraphs describe estimated state and local burden hours for conformity determinations in experienced metropolitan nonattainment areas. The ICR assumes that all conformity determination work is completed by state and local employees, although in practice some work may be completed by consultants. EPA also notes that transportation plan and TIP burden hour estimates are based on demonstrating conformity for 4-year transportation plan and TIP updates per SAFETEA-LU, rather than more frequent, but not required, plan and TIP revisions or amendments which are not required by SAFETEA-LU. This ICR captures the burden associated with meeting the minimum transportation conformity requirements.

EPA has calculated the burden associated with transportation plan and TIP conformity determinations by considering the number of MPOs that are subject to conformity, the size of these MPOs, and the number of pollutants that apply. To estimate burden hours that MPOs incur to determine conformity for just one pollutant, EPA and DOT field offices were asked for estimated state and local respondent burden for the various tasks involved in a transportation plan or TIP conformity determination. For burden hours associated with each additional pollutant, EPA relied on data from ICR 2130.02 for incremental burden hours associated with performing transportation plan and TIP conformity determinations for each additional pollutant, which was based on survey responses.

For each burden hour estimated, EPA assumed that state and local agencies work only on conformity-related activities. This ICR does not include burden for the general development of transportation plans, TIPs, project, or motor vehicle emissions budgets, since these documents are developed to meet other requirements. However, EPA is assuming that some data collection for transportation planning or SIP purposes could also be used in conformity without additional conformity-related burden.

The following tables illustrate the burden hours and cost associated with meeting the conformity requirements for a transportation plan and TIP update in existing metropolitan nonattainment and maintenance areas that are designated for one or more pollutants. These MPOs and metropolitan areas have experience with the conformity process, have established interagency consultation procedures and have developed models for conducting plan and TIP conformity determinations.

SAFETEA-LU aligns the transportation conformity update cycle for transportation plans and TIPs such that the frequency of making conformity determinations on updated transportation plans and

TIPs may occur at the same time for both, rather than at different times. Previously, frequency of making conformity determinations on updated transportation plans and TIPs was three years and two years, respectively.

While transportation plan and TIP updates are now done with the same frequency, EPA estimates that it is only those MPO's serving smaller populations (50,000-200,000 populations) which will perform conformity determinations for transportation plans and TIPs at the same time, thus leading to efficiencies in burden hours and cost. In contrast, MPOs in larger areas may not align transportation plan and TIP update conformity determinations as regularly, since these areas are expected to have more complex transportation planning considerations.

Therefore, EPA assumes that conformity determinations for transportation plans and TIPs will always occur at different times in large metropolitan areas (Tables 2 through 5) and that conformity determinations for transportation plans and TIPs will occur at the same time in small metropolitan areas (see Tables 6 and 7).

Table 2: State and Local Burden Hours
Each Transportation Plan Conformity Determination
by MPO – Population of 200,000 or More

MPO Demonstrating Conformity For	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
One Pollutant	45	280	45	370
Two Pollutants	60	375	60	495
Three or more Pollutants	75	465	75	615

Table 3: State and Local Annual Cost
Transportation Plan Conformity Determinations
by MPO – Population of 200,000 or More

MPO Demonstrating Conformity For	Burden Hours Per Pollutant	No. of MPOs	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
One Pollutant	370	41	4 years	3,792	$54.93	$208,295
Two Pollutants	495	43	4 years	5,321	$54.93	$292,283
Three or More Pollutants	615	31	4 years	4,766	$54.93	$261,796

Total for All Transportation Plan Actions: 13,879 hours/year x $54.93/hour = $762,374/year

Table 4: State and Local Burden Hours
Each TIP Conformity Determination

by MPO – Population of 200,000 or More

MPO Demonstrating Conformity For	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
One Pollutant	35	280	45	360
Two Pollutants	45	375	60	480
Three or more Pollutants	55	465	75	595

Table 5: State and Local Annual Cost
TIP Conformity Determinations
by MPO – Population of 200,000 or More

MPO Demonstrating Conformity For	Burden Hours Per Pollutant	No. of MPOs	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
One Pollutant	360	41	4 years	3,690	$54.93	$202,692
Two Pollutants	480	43	4 years	5,160	$54.93	$283,439
Three or More Pollutants	595	31	4 years	4,611	$54.93	$253,282

Total for All TIP Actions: 13,461 hours/year x $54.93/hour = $739,413/year

Table 6: State and Local Burden Hours
Each Transportation Plan and TIP Conformity Determination

by MPO – Population Between 50,000-200,000

MPO Demonstrating Conformity For	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
One Pollutant	40	120	30	190
Two Pollutants	52	160	40	252
Three or More Pollutants	65	200	50	315

Table 7: State and Local Annual Cost
Transportation Plan and TIP Conformity Determinations
by MPO – Population Between 50,000-200,000

MPO Demonstrating Conformity For	Burden Hours Per Pollutant	No. of MPOs	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
One Pollutant	190	39	4 years	1,852	$54.93	$101,730
Two Pollutants	252	16	4 years	1,008	$54.93	$ 55,369
Three or More Pollutants	315	7	4 years	551	$54.93	$ 30,266

Total for All Transportation Plan and TIP Actions: 3,411 hours/year x $54.93/hour = $187,366/year

Project-Level Conformity Determinations in Existing Metropolitan Nonattainment and Maintenance Areas

Tables 8 and 9 estimate the burden and cost associated with doing conformity determinations for projects in existing metropolitan nonattainment and maintenance areas. These tables are intended to illustrate burden associated with a typical project-level conformity determination.

To calculate burden for state and local agencies in preparing project-level conformity determinations for these areas, EPA polled its regional offices and DOT which typically work with state and local agencies in project-level conformity determinations. State and local burden hours for consultation, hot-spot analyses and regional emissions analyses in Table 8 reflect averages of the responses received. EPA calculated the average number of annual actions based upon survey responses from EPA Regional Offices and DOT offices that are responsible for working with state and local respondents in making project level conformity determinations.

Conformity determinations for projects in metropolitan ozone and NO_2 nonattainment and maintenance areas are fairly straightforward, because projects only need to come from a conforming

transportation plan and TIP to meet conformity requirements. A hot-spot analysis is not required for project determinations in these nonattainment and maintenance areas. Alternatively, conformity determinations for all non-exempt federal projects in CO areas must include either a qualitative or quantitative hot-spot analysis. In $PM_{2.5}$ and PM_{10} areas, project-level conformity determinations must also include a hot-spot analysis if the project is of local air quality concern.[12] At present, $PM_{2.5}$ and PM_{10} hot-spot analyses, when required, are done qualitatively.[13]

Consultation with other state and local agencies[14] is an important activity that would create only minimal conformity burden. EPA is assuming that conformity-related consultation would be one of many issues discussed through consultation meetings as a project proceeds through the NEPA process.

EPA assumes that the total burden hours for project-level conformity determinations would be approximately the same for larger and smaller metropolitan areas because requirements for project-level conformity determinations do not differ based upon population size served by an MPO. Requirements for project-level conformity determinations are the same for large and small metropolitan nonattainment and maintenance areas.

Many hot-spot analyses would be done to fulfill both NEPA and transportation conformity requirements. Therefore, EPA is assuming that the estimated burden associated with consultation and preparation of hot-spot analyses would be divided equally between NEPA and transportation conformity. Accordingly, the burden estimates in Tables 8 and 9 reflect only the share of the burden attributable to fulfilling transportation conformity requirements for hot-spot analyses (i.e. half of the burden hours associated with hot-spot analyses).

Table 8: State and Local Burden Hours
Each Project-level Conformity Determination

[12]Per the conformity rule (§93.123(b)(1)), projects of local air quality concern include: (i) new or expanded highway projects that have a significant number of or significant increase in diesel vehicles; (ii) projects affecting intersections that are at Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project; (iii) new bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location; (iv) expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and, (v) projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable SIP or SIP submission as appropriate, as sites of violation or possible violation.

[13] EPA and FHWA have provided guidance for those areas required to do qualitative hot-spot analyses for $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas: "Transportation Conformity Guidance for Qualitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas," EPA420-B-06-922.

[14] [?]EPA estimates that seven state and local agencies participate in one consultation meeting on each transportation project.

Regional Emissions and Hot-spot Analysis
Existing Metropolitan Nonattainment and Maintenance Areas

Pollutant	Type of Hot-spot Analysis	Consultation	Hot-spot Analysis	Total Burden Hours
Ozone, NO_2, $PM_{2.5}$ and PM_{10}	None	0.5	--	0.5
$PM_{2.5}$	Qualitative	6	22	28
PM_{10}	Qualitative	6	22	28
CO	Quantitative	3	14	17
CO	Qualitative	3	2	5

Table 9: State and Local Annual Cost
Project-level Conformity Determinations
Regional Emissions and Hot-spot Analyses
Existing Metropolitan Nonattainment and Maintenance Areas

Metropolitan Area		Burden Hours Per Action	Average No. of Actions/year	No. of MPOs	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Project level conformity determination - No Hotspot Analysis	Pop. 200,000+	0.5	65	115	3,738	$54.93	$205,328
	Pop. 50,000-200,000	0.5	15	62	465	$54.93	$25,542
$PM_{2.5}$ - Hot-spot Analyses		28	3	65	5,460	$54.93	$299,918
PM_{10} – Hot-spot Analyses		28	1	41	1,148	$54.93	$63,060
CO -Quantitative Hot-spot Analyses		17	5	76	6,460	$54.93	$354,848
CO – Qualitative Hot-Spot Analyses		5	0.5	76	190	$54.93	$10,437

Total for All Project-level Actions: 17,461/year x $54.93/hour= $959,133/year

Project-Level Conformity Determinations in Existing Isolated Rural Nonattainment and Maintenance Areas

Table 10 includes the state/local government burden estimated with performing hot-spot analyses in CO, $PM_{2.5}$ and PM_{10} isolated rural areas. In general, conformity determinations for projects in isolated rural areas are more extensive than for projects in metropolitan areas, because a regional emissions analysis is also performed when a regionally significant project "not from a conforming transportation plan and TIP" is to receive federal funding or approval.[15]

EPA considered several factors in developing these estimates. EPA assumed that state departments of transportation will continue to be the lead in doing conformity determinations in all isolated rural areas. Some state air quality agencies may also provide emissions modeling assistance to isolated rural areas, as is now done in some areas.

We also retained the assumption made in the July 2004 supporting statement that isolated rural areas that are nonattainment or maintenance for more than one pollutant will have additional burden hours, because these areas may be required to conduct a regional emissions analysis for an additional year and may have additional technical issues to resolve. Therefore, we included more burden hours for consultation, conducting regional emissions analysis, and performing miscellaneous activities in these areas, just as we did in the July 2004 supporting statement.

Consultation between state and local agencies would occur for each project requiring a hot-spot analysis.[16] Like metropolitan projects, EPA is also assuming that conformity-related topics would be one of many issues discussed through consultation meetings as a project proceeds through the NEPA process.

EPA notes that this ICR may overestimate burden associated with determining conformity for projects in isolated rural nonattainment areas, since conformity determinations for non-regionally significant projects may not require that a new regional emissions analysis be completed every time.

Hot-spot analyses would be done to fulfill both NEPA and transportation conformity requirements. Therefore, EPA is assuming that the estimated burden associated with consultation and preparation of these hot-spot analyses would be divided equally between NEPA and transportation conformity. Accordingly, the burden estimates in Table 10 reflect only the share of the burden attributable to fulfilling transportation conformity requirements for hot-spot analyses (i.e., half of the burden hours associated with hot-spot analyses).

Our estimates depart from those we made in the July 2004 supporting statement in two ways.

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[15] ?Isolated rural areas are not required by federal law to develop metropolitan transportation plans or TIPs.

[16] ?EPA estimates that four state and local agencies would participate in one consultation meeting on each transportation project.

First, EPA has eliminated the category of "start-up," because isolated rural areas have had time to understand the conformity process.[17] Second, we have increased the number of hours estimated for preparing CO and $PM_{2.5}$/PM_{10} hot-spot analyses, based on experience to date with these requirements and new information collected from EPA and DOT field offices.

Table 10: State and Local Burden Hours For Each Project-Level Conformity Determination Hot-spot Analysis Existing Isolated Rural Nonattainment and Maintenance Areas

Pollutant	Type of Hot-spot Analysis	Consultation	Hot-spot Analysis	Total Burden Hours
$PM_{2.5}$	Qualitative	6	22	28
PM_{10}	Qualitative	6	22	28
CO	Quantitative	3	14	17
CO	Qualitative	3	2	5

Table 11 shows state and local respondent cost estimated for performing hot-spot analyses in CO, $PM_{2.5}$ and PM_{10} isolated rural areas.

To calculate the total burden hours for state and local respondents in isolated rural areas, EPA assumed that each isolated rural area makes a conformity determination once in a five-year period as we did in the July 2004 supporting statement. Also, the transportation conformity regulation requires a hot-spot analysis for every non-exempt project in a CO nonattainment or maintenance area. Because there are two isolated rural areas that are nonattainment or maintenance for CO, we assumed there would be two CO hot-spot analyses in isolated rural areas over a five year period.

The regulation requires a hot-spot analysis only for projects of air quality concern in PM areas, rather than every non-exempt project. Given that projects of air quality concern, which are generally projects that involve significant numbers of diesel vehicles, are unlikely to occur in isolated rural areas, we assumed there would be only one such project in these areas over a five year period. Based on these assumptions, we arrived at a total of 228 hours of burden per year for state and local respondents in

[17] In the July 2004 supporting statement, we estimated 140 or 160 hours of start-up time (depending on number of pollutants for which the area was nonattainment) to account for training staff people in regulations which at that point were new.

isolated rural areas.

Table 11: State and Local Annual Cost
Project-Level Conformity Determinations
Hot-spot Analyses
Isolated Rural Nonattainment Areas

Metropolitan Area	Burden Hours per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
$PM_{2.5}$ - Hot-spot Analyses	28	1	5 years	6	$54.93	$330
PM_{10} – Hot-spot Analyses	28	38	5 years	213	$54.93	$11,700
CO - Quantitative Hot-spot Analyses	17	2	5 years	7	$54.93	$385
CO – Qualitative Hot-Spot Analyses	5	2	5 years	2	$54.93	$110
Total State and Local Respondent Burden for Project Level Conformity Determinations: 228 hours/year x $54.93/hour = $12,524						

State and Local Respondent Burden and Costs for the 2006 24-hour $PM_{2.5}$ NAAQS

Number of Hypothetical 2006 24-hour $PM_{2.5}$ Nonattainment Areas

EPA is also accounting for some conformity burden for the 2006 24-hour $PM_{2.5}$ NAAQS, since conformity determinations for this standard may be necessary during the time period covered by this ICR. The EPA promulgated a revised 24-hour $PM_{2.5}$ NAAQS on October 17, 2006 (71 FR 61144). The effective date for this revised standard was December 18, 2006. Section 107(d) of the Clean Air Act governs the process for area designations following the establishment of a new or revised NAAQS. The Clean Air Act requires EPA to complete the designation process within two years of the effective date of the standard unless the Administrator has insufficient information to promulgate the designations. In such a case, the date of final designations may be extended up to one year (but no later than three years after the effective date of the standard).

EPA anticipates making nonattainment designations for the 2006 24-hour $PM_{2.5}$ standard by December 18, 2008, with a possible extension up to one year, but no later than December 18, 2009. Under either scenario, transportation conformity would apply for the 2006 24-hour $PM_{2.5}$ standard one year from the effective date of EPA's nonattainment designations, i.e., early 2010 or 2011 respectively, if EPA makes designations in December 2008, conformity will have to be determined for this standard during the timeframe addressed by this ICR.

Since specific $PM_{2.5}$ nonattainment area boundaries have yet to be determined, EPA used the most recently certified $PM_{2.5}$ air quality data (years 2004-2006) to estimate the number of hypothetical 2006 24-hour $PM_{2.5}$ nonattainment areas. EPA grouped counties to determine hypothetical nonattainment areas solely for the purposes of this ICR. Although these hypothetical nonattainment areas are based on the most recently certified air quality data available, they should not be interpreted as either proposed or final nonattainment designations.

State boundary recommendations and EPA's final nonattainment designations may include areas not considered for this ICR and/or may exclude areas considered for this ICR. In addition, final designations may establish different area boundaries from those assumed for this ICR. Final designations will be based on the most recent three years of certified air quality data available at that time.

Boundaries for hypothetical metropolitan areas that are considered in this ICR are based on the total Core Based Statistical Areas (CBSAs)[18] for that area, plus any surrounding counties that contain a monitor that shows a violation of the standard. EPA believes these estimates are conservative since final area boundaries for metropolitan nonattainment areas may not include the entire CBSA for a given area and will also consider States' recommendations and additional air quality data and other relevant factors. Boundaries for isolated rural areas that are assumed to be hypothetical nonattainment areas for the purposes of this ICR consist of an entire county plus any adjacent counties that include a violating monitor.

Tables 12 and 13 show the estimated number of hypothetical new nonattainment areas for the 2006 24-hour $PM_{2.5}$ standard based on 2004-2006 air quality data and potential experience with the transportation conformity regulations. Note that references to $PM_{2.5}$ in this and other tables below are solely for the 2006 24-hour $PM_{2.5}$ standard.

[18] ? For more information on CBSAs, see the U.S. Census Bureau website at: http://www.census.gov/population/www/estimates/aboutmetro.html.

Table 12: Total Hypothetical 2006 24-hour $PM_{2.5}$ Nonattainment Areas For Transportation Conformity ICR Estimates

Pollutant and NAAQS	Number of Hypothetical New Nonattainment Areas	Estimated Number of Existing Nonattainment/Maintenance Areas That May Add One New Pollutant ($PM_{2.5}$)
2006 24-hour $PM_{2.5}$	7	18

Table 13: Possible Level of Conformity Experience For Hypothetical Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS

Level of Conformity Experience	Metropolitan Areas		Isolated Rural Areas	Total
	200,000+ Pop.	50,000-200,000 pop.	<50,000 pop.	
Hypothetical New Areas without Previous Conformity Experience	2	2	3	7
Existing Nonattainment/Maintenance Areas that May Also Demonstrate Conformity for the 2006 24-hour $PM_{2.5}$ NAAQS	11	4	3	18

Transportation Plan and TIP Conformity Determinations in Hypothetical New Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS

Tables 14 through 17 show potential state and local burden hours and costs associated with transportation plan and TIP conformity determinations for the 2006 24-hour $PM_{2.5}$ NAAQS in hypothetical new nonattainment areas without any previous transportation conformity experience.

For these tables, EPA relied on data gathered for the 2004 Supporting Statement used to develop EPA's ICR 2130.02 to generate estimated burden associated with start-up, consultation, regional emissions analysis and other miscellaneous activities for transportation conformity determinations in new nonattainment areas.

EPA has distributed start-up costs for hypothetical new metropolitan nonattainment areas evenly between transportation plan and TIP burden estimates. For these areas with no previous conformity experience, EPA has estimated burden hours associated with start-up issues, such as reading the conformity regulations, attending a conformity training,[19] developing transportation and emissions models and accumulating modeling expertise. Start-up burden for hypothetical new areas also includes the time needed to establish conformity consultation procedures; however, EPA assumes that existing forums for most areas will be used to facilitate development of such procedures, based on DOT and EPA field office feedback.

EPA generally assumes that start-up burden hours will be relatively the same for large and small nonattainment areas, although larger areas are assumed to need some extra time to adapt existing transportation models for conformity purposes. Additional time is also included to integrate transportation models with emissions factor models for regional analyses for all areas.

In these hypothetical new nonattainment areas, consultation meetings would cover other topics in addition to conformity. However, EPA has attempted to capture only the burden associated with conformity in these tables. In addition, EPA has estimated the burden hours associated with conducting a regional emissions analysis and completing other miscellaneous conformity-related activities (e.g., additional consultation and technical assistance, drafting the conformity determination, and responding to state and local public comments that pertain to conformity).

Finally, while EPA assumes that MPOs serving large metropolitan areas would typically conduct conformity determinations separately, because these hypothetical areas are brand new nonattainment areas, they will be subject to transportation conformity for transportation plans and TIPs for the first time within the three year timeframe of this ICR. EPA assumes that these MPOs will conduct conformity determinations and regional emissions analyses for their transportation plans and TIPs at the same time the first time they comply with the transportation conformity requirements.

[19] State and local agency representatives from many new nonattainment areas may attend conformity training courses such as the National Transit Institutes' conformity training course entitled, "Introduction to Transportation/Air Quality Conformity." This three-day course offers an in-depth overview of the criteria and procedures for implementing conformity and is designed for federal, state, and local agencies involved in the conformity process.

Table 14: State and Local Burden Hours For Each Transportation Plan and TIP Conformity Determination in Hypothetical New Metropolitan Nonattainment Areas For the 2006 24-hour $PM_{2.5}$ NAAQS Population – 200,000 or More

Start-up	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
120	40	280	45	485

Table 15: State and Local Annual Cost For Transportation Plan and TIP Conformity Determinations in Hypothetical New Metropolitan Nonattainment Areas For the 2006 24-hour $PM_{2.5}$ NAAQS Population – 200,000 or More

Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
485	2	4 years	242	$54.93	$13,293

Total for All Transportation Plan/TIP Actions: 242 hours/year x $54.93/hour = $13,293/year

Table 16: State and Local Burden Hours For Each Transportation Plan and TIP Conformity Determination in Hypothetical New Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population of 50,000-200,000

Start-up	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
105	40	120	30	295

Table 17: State and Local Annual Cost For Transportation Plan and TIP Conformity Determinations in Hypothetical New Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population of 50,000-200,000

Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
295	2	4 years	148	$54.93	$8,130

Total for All Transportation Plan/TIP Actions: 148 hours/year x $54.93/hour = $8,130/year

Plan and TIP Conformity Determinations in Pre-Existing Metropolitan Nonattainment Areas Possibly Covered By the 2006 24-hour $PM_{2.5}$ NAAQS

Tables 18 through 21 show hypothetical state and local burden hours and cost associated with transportation plan and TIP conformity determinations for the 2006 24-hour $PM_{2.5}$ NAAQS in existing metropolitan nonattainment and maintenance areas that may be subject to transportation conformity for the 2006 24-hour $PM_{2.5}$ NAAQS. These are areas that already have experience with the conformity process and have established interagency consultation procedures. They have also developed models for conducting plan and TIP conformity determinations.

These tables also assume that larger hypothetical metropolitan nonattainment areas will incur more burden in conducting regional emissions analyses for the 2006 standard compared to smaller metropolitan areas, and that transportation plan and TIP conformity determinations and regional emissions analysis are conducted separately in larger MPOs.

For these tables, EPA again relied on data gathered for the 2004 Supporting Statement used for ICR 2130.02 to generate estimated burden associated with consultation, regional emissions analysis and other miscellaneous activities associated with transportation conformity determinations in existing nonattainment and maintenance areas that may be covered by a new nonattainment designation for the 2006 24-hour $PM_{2.5}$ NAAQS.

Consistent with the estimated burden hours associated with brand new nonattainment areas (Tables 14 through 17), Tables 18 through 21 include only the burden associated with making a conformity determination for one additional pollutant and standard in existing nonattainment and maintenance areas that are already subject to the conformity requirements.

No significant new burden is assumed for start-up in these areas. These areas already have experience with the conformity process and have established interagency consultation procedures and the developed models for conducting transportation plan and TIP conformity determinations.

Finally, the following tables assume that larger metropolitan areas will incur more burden in conducting regional emissions analyses for the 2006 24-hour $PM_{2.5}$ standard compared to smaller metropolitan areas**.**

Table 18: State and Local Burden Hours For Each Transportation Plan and TIP Conformity Determination in Hypothetical Pre-Existing Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population – 200,000 or More

Hypothetical Metropolitan Nonattainment Area	Action	Start-up	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
Existing Area that Gains One Additional Pollutant	Plan	10	15	95	15	135
	TIP	10	10	95	15	130

Table 19: State and Local Annual Cost For Transportation Plan and TIP Conformity Determinations in Hypothetical Pre-Existing Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population – 200,000 or More

Hypothetical Metropolitan Nonattainment Area	Action	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Existing Area that Gains One Additional Pollutant	Plan	135	11	4 years	371	$54.93	$20,379
	TIP	130	11	4 years	358	$54.93	$19,665

Total for All Transportation Plan Actions: 729 hours/year x $54.93/hour = $40,044/year

Table 20: State and Local Burden Hours For Each Transportation Plan and TIP Conformity Determination in Hypothetical Pre-Existing Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population of 50,000 to 200,000

Hypothetical Metropolitan Nonattainment Area	Action	Start-up	Consultation	Regional Emissions Analysis	Other Misc. Activities	Total Burden Hours
Existing Area that Gains One Additional Pollutant	Plan and TIP	10	12	40	10	72

Table 21: State and Local Annual Cost For Transportation Plan and TIP Conformity Determinations in Hypothetical Pre-Existing Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Population of 50,000 to 200,000

Hypothetical Metropolitan Nonattainment Area	Action	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Existing Area That Gains One Additional Pollutant	Plan and TIP	72	4	4 years	72	$54.93	$3,955

Total for All Plan and TIP Actions: 72 hours/year x $54.93/hour = $3,955/year

Project-Level Conformity Determinations in Hypothetical Metropolitan Nonattainment Areas for 2006 24-hour $PM_{2.5}$ NAAQS

Table 22 estimates the burden associated with doing conformity determinations for projects in hypothetical metropolitan nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS. This table is intended to illustrate potential burden associated with a typical project-level conformity determination.

In general, EPA based these estimates on the same assumptions that were previously discussed for project-level conformity determinations in existing nonattainment and

maintenance areas. For those estimates, (Tables 8 and 9), EPA calculated the average number of annual actions based upon survey responses from EPA Regional Offices and DOT offices that are responsible for working with state and local respondents in making project-level conformity determinations.

EPA also assumes that there will be a small amount of additional start-up burden hours associated with doing hot-spot analyses as part of project-level conformity determinations in hypothetical 2006 24-hour $PM_{2.5}$ NAAQS areas.

As stated previously, $PM_{2.5}$ hot-spot analyses may be done to fulfill both NEPA and transportation conformity requirements. Accordingly, the burden estimates in Tables 22 and 23 reflect only the share of the burden attributable to fulfilling transportation conformity requirements for $PM_{2.5}$ hot-spot analyses.

Table 22: State and Local Burden Hours For Each Project-level Conformity Determination in Hypothetical Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$

Project Conformity Determinations With or Without Hot-Spot Analysis	Start-up	Consultation	Hot-spot Analysis	Total Burden Hours
No Hot-spot Analysis	0	1	N/A	1
With Qualitative Hot-spot Analysis	0.25	6	22	28.25

Table 23: State and Local Annual Cost For Project-level Conformity Determinations in Hypothetical Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS

Metropolitan Area		Burden Hours Per Action	Average No. of Actions/ Year	No. of Areas	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Project-Level Conformity Determination - No Hot-spot Analysis	Pop. 200,000+	1	65	13	845	$54.93	$46,416
	Pop. 50,000-200,000	1	15	6	90	$54.93	$4,944
Qualitative Hot-spot Analyses		28.25	3	19	1,610	$54.93	$88,437

Total for All Project-level Actions: 2,545 hours/year x $54.93/hour = $139,797/year

Project-Level Conformity Determinations in Hypothetical Isolated Rural Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS

Table 24 includes the burden estimated for doing a conformity determination for a project in a new hypothetical isolated rural nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS. Table 25 shows the burden associated with performing hot-spot analyses in

hypothetical isolated rural nonattainment areas. As with metropolitan areas, some isolated rural areas are expected to have conformity experience, while others will be covered by the conformity rule for the first time.

In general, conformity determinations for projects in isolated rural areas are more extensive than for projects in metropolitan areas, since a regional emissions analysis is also performed when a regionally significant project "not from a conforming transportation plan and TIP" is to receive federal funding or approval.[20]

Table 24: State and Local Burden Hours For Each Project-Level Conformity Determination in Hypothetical Isolated Rural Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Regional Emissions Analysis Component

Level of Transportation Conformity Experience	Start-up	Consultation	Hot-Spot Analysis	Total Burden Hours
No Conformity Experience	140	1	N/A	141
Previous Conformity Experience	10	1	N/A	11

Table 25: State and Local Burden Hours For Each Project-Level Conformity Determination in Hypothetical Isolated Rural Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Hot-Spot Analysis Component

Level of Transportation Conformity Experience	Type of Hot-Spot Analysis	Start-up	Consultation	Hot-Spot Analysis	Total Burden Hours
No Conformity Experience	Qualitative	3	6	22	31

[20] ?Isolated rural areas are not required by federal law to develop metropolitan transportation plans or TIPs.

Previous Conformity Experience	Qualitative	.25	6	22	28.25

EPA considered the same factors in developing these estimates as with similar estimates in this ICR for existing isolated rural nonattainment and maintenance areas.

For isolated rural nonattainment areas that have no previous conformity experience, there would be some additional start-up burden associated with developing an interagency consultation process and a reasonable method for estimating vehicle miles traveled. Based on responses received from DOT and EPA field offices, new isolated rural areas should be able to use existing available resources as starting points for meeting conformity requirements. Therefore, we have assumed some additional work will be needed to modify existing consultative forums and VMT estimation methods for regulatory purposes.

EPA assumes that hypothetical $PM_{2.5}$ areas would incur some additional burden due to hot-spot analysis requirements. Consultation between state and local agencies would occur for each project requiring a hot-spot analysis.[21] Like metropolitan projects, EPA is also assuming that conformity-related topics would be one of many issues discussed through consultation meetings as a project proceeds through the NEPA process.

Again, $PM_{2.5}$ hot-spot analyses would be done to fulfill both NEPA and transportation conformity requirements. Accordingly, the burden estimates in Table 25 reflect only half of the burden attributable to fulfilling transportation conformity requirements for $PM_{2.5}$ hot-spot analyses.

Table 26 shows state and local respondent cost estimated for doing a conformity determination for a typical regionally significant project in a hypothetical 2006 24-hour $PM_{2.5}$ isolated rural nonattainment area averaged over a five-year period. Table 27 shows the cost associated with performing hot-spot analyses in the subject $PM_{2.5}$ areas.

[21] ?EPA estimates that four state and local agencies would participate in one consultation meeting on each transportation project.

Table 26: State and Local Annual Cost For Project-Level Conformity Determinations in Hypothetical Isolated Rural Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS Regional Emissions Analysis Component

Level of Conformity Experience	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
No Conformity Experience	141	3	5 years	85	$54.93	$4,669
Previous Conformity Experience	11	3	5 years	7	$54.93	$385

Total Cost: 92 hours/year x $54.93/hour = $5,054/year

Table 27: State and Local Annual Cost For Project-Level Conformity Determinations in Hypothetical Isolated Rural Nonattainment Areas 2006 24-hour $PM_{2.5}$ NAAQS Hot-Spot Analysis Component

Isolated Rural Area	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
No Conformity Experience	31	3	5 years	19	$54.93	$1,044
Previous Conformity Experience	28.25	3	5 years	17	$54.93	$934

Total Cost: 36 hours/year x $54.93/hour = $1,978/year

6(b) Estimating State and Local Respondent Costs

The following paragraphs describe the assumptions used for estimating state and local respondent costs illustrated in section 6(a):

(i) Estimating Labor Costs

EPA assumed that each state and local burden hour associated with conformity determinations is completed by an experienced technical staff person at a state or local agency or contractor. In addition to salary costs, EPA is also including overhead costs associated with employing an experienced technical staff person, such as paid leave, health insurance, retirement savings, office space, computers, and other business expenses.

EPA is assuming that state and local burden hours would be completed by an experienced technical staff person being paid at a GS-13, Step 3 federal government employee salary of $71,415/year.[22] EPA then divided the annual 2007 GS-13, Step 3 salary rate by 2080 (the number of hours in a work year) and multiplied this number by the standard government overhead factor of 1.6. This calculation results in a state and local cost of $54.93/burden hour.

(ii) Estimating Capital/Start-up and Operations and Maintenance (O&M) Costs

In general, EPA is not expecting that additional computers, software, or other capital investments are needed to do regional conformity analyses. Planners should be able to adapt existing equipment and systems for conformity use.

The transportation conformity regulation does not contain any continuing record keeping or reporting requirements that require additional capital or O&M costs for individual state or local respondent actions. Thus, no capital or O&M cost is included for record keeping and reporting actions.

(iii) Annualizing Costs

EPA has assumed the following in annualizing estimates:

- Estimates for transportation plan and TIP conformity determinations are annualized over a four-year period, to correspond with new SAFETEA-LU requirements that transportation plans and TIPs conform with a new conformity determination and regional emissions analysis every four years. EPA included the cost associated with meeting the minimum requirements, and therefore assumed that only one transportation plan or TIP conformity determination will be done for each MPO every four years in metropolitan nonattainment and

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[22] ? January 2007 U.S. Office of Personal Management, Salary Table 2007-GS, 2007 General Schedule, http://www.opm.gov/oca/07tables/indexGS.asp

maintenance areas. For the purposes of this ICR, EPA is not considering additional burden from MPOs updating or revising transportation plans and TIPs voluntarily on a more frequent basis.

- SAFETEA-LU aligns the transportation conformity update cycle for transportation plans and TIPs such that the frequency of making conformity determinations on updated transportation plans and TIPs now occurs at the same time for both, rather than at different times (previously frequency of making conformity determinations on updated transportation plans and TIPs was three years and two years, respectively). EPA believes that because conformity determinations on transportation plans and TIPs can now be done with the same four-year frequency, MPOs can perform these conformity determinations at the same time to achieve optimal efficiencies and reduce burden. However, since aligning transportation plan and TIP updates may not always occur for MPOs serving large metropolitan areas (populations of 200,000 or more), EPA will continue to assume that those MPOs will continue to determining conformity for transportation plans and TIPs separately subject to conformity requirements. EPA assumes that MPOs serving smaller metropolitan areas (populations of 50,000-200,000) perform transportation plan and TIP updates and conformity determinations simultaneously.

6(c) Estimating Agency Burden and Costs

This section of the ICR shows Agency burden and costs associated with carrying out transportation conformity regulations.

Estimating Federal Labor Costs

EPA estimates that each DOT and EPA federal burden hour associated with conformity determinations is completed by an experienced technical staff person. EPA is also including overhead costs associated with employing an experienced technical staff person, such as paid leave, health insurance, retirement savings, office space, computers, and other business expenses.

EPA assumed that federal burden hours would be completed by an experienced technical staff person being paid at a GS-13, Step 3 federal government employee salary of $71,415/year.[23] EPA then divided the annual 2007 GS-13, Step 3 salary rate by 2080 (the number of hours in a work year) and multiplied this number by the standard government overhead factor of 1.6. This calculation resulted in a federal cost of $54.93/burden hour.

Assuming $54.93 per federal burden hour, Table 28 shows the total federal annualized cost associated with making transportation plan and TIP conformity determinations in metropolitan nonattainment and maintenance areas.

Transportation Plan and TIP Conformity Determinations in Existing Metropolitan

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[23] ? January 2007 U.S. Office of Personal Management, Salary Table 2007-GS, 2007 General Schedule ,http://www.opm.gov/oca/07tables/indexGS.asp, .

Nonattainment/Maintenance Areas – Federal Burden Hours and Cost

Tables 28 through 30 show estimated federal burden hours and cost associated with making conformity determinations for transportation plans and TIPs in existing metropolitan nonattainment and maintenance areas. EPA assumes that federal burden in these existing areas is associated only with conformity-related work prior to an MPO's determination and for reviewing transportation plan and TIP conformity determinations and that MPOs have established interagency consultation procedures with regularly scheduled meetings for discussing conformity issues. Because MPOs serving smaller metropolitan areas (populations between 50,000-200,000) typically do conformity determinations for transportation plans and TIPs at the same time since they are typically on the same four-year update cycle, EPA also assumes that federal burden associated with consulting on and reviewing transportation plan and TIP conformity determinations for these MPOs is done at the same time as well. Therefore, federal burden associated with transportation conformity requirements in smaller metropolitan areas (50,000-200,000) is half the burden associated with transportation plan and TIP conformity determinations in large metropolitan areas.

EPA calculated estimated federal burden hours based upon survey responses from EPA Regional Offices and DOT offices that are responsible for work associated with making conformity determinations for transportation plans and TIPs.

Table 28: Federal Burden Hours For Each MPOs Transportation Plan Conformity Determination

Metropolitan Planning Organization	Activity	FHWA	FTA	EPA	Total
Per Conformity Determination (Includes all areas with populations of 200,000+)	Attending Consultation Meetings	10	10	10	30
	Conformity-Related Work Prior to MPO Submission	12	>0.5	3	15
	Reviewing Plan Conformity Determination	13	2	7	22
Federal Hours Burden For Each Plan Conformity Determination: 67					

Table 29: Federal Burden Hours
Each MPO TIP Conformity Determination

Metropolitan Planning Organization	Activity	FHWA	FTA	EPA	Total
Per Conformity Determination (Includes all areas with populations of 200,000+)	Attending Consultation Meetings	10	10	10	30
	Conformity-Related Work Prior to MPO Determination	12	0[24]	3	15
	Reviewing Plan Conformity Determination	13	2	7	22
Federal Hours Burden For Each TIP Conformity Determination: 67					

Table 30: Federal Annual Cost for MPOs
Transportation Plan and TIP Conformity Determinations

Action	Metropolitan Nonattainment Area	Burden Hours Per Action	No. of MPO's	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Plan	Per Conformity Determination (Pop. 200,000+)	67	115	4 years	1,926	$54.93	$105,795
Total Federal Burden for Plan Actions: 2,965 hours/year x $54.93/hour = $162,867							
TIP	Per Conformity Determination (Pop. 200,000+)	67	115	4 years	1,926	$54.93	$105,795
Total Federal Burden for TIP Actions: 2,965 hours/year x $54.93/hour = $162,867							
Plan/ TIP	Per Conformity Determination (pop. 50,000-200,000)	67	62	4 years	1,038	$54.93	$57,017
Total Federal Burden for Plan and TIP Actions: 4,890 hours/year x $54.93/hour = $268,608							

[24] EPA's survey of federal field offices found that FTA spent minimal time on conformity-related work.

Project-Level Conformity Determinations in Metropolitan Nonattainment Areas – Federal Burden Hours and Cost

Tables 31 and 32 estimate the burden hours and cost that federal agencies incur associated with conformity determinations for projects in metropolitan nonattainment areas. These tables are intended to illustrate burden associated with a typical project-level conformity determination.

To calculate burden for federal agencies associated with consultation and reviewing project-level conformity determinations for metropolitan nonattainment and maintenance areas, EPA polled its regional offices and DOT. The following tables show federal burden associated with consultation and reviewing project-level conformity determinations prepared by state and local respondents. State and local respondents burden hours and cost associated with consultation, hot-spot analysis and regional emissions analysis may be found in Tables 8 through 11.

Table 31: Federal Burden Hours For Each Project-level Conformity Determination in Existing Metropolitan Nonattainment and Maintenance Areas

Pollutant	Type of Hot-spot Analysis	Consultation	Reviewing Project-level conformity determinations	Total Burden Hours
Ozone, NO_2, $PM_{2.5}$ and PM_{10}	None	.25	.25	.5
$PM_{2.5}$	Qualitative	2	6	8
PM_{10}	Qualitative	2	6	8
CO	Quantitative or Qualitative	.25	1.25	1.5

Table 32: Federal Annual Cost For Project-level Conformity Determinations in Metropolitan Nonattainment and Maintenance Areas

Type of Analysis		Burden Hours Per Action	Average No. of Actions/ year	No. of MPOs	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Project level conformity determination - No Hotspot Analysis	Pop. 200,000 +	.5	65	115	3,738	$54.93	$205,328
	Pop. 50,000-200,000	.5	15	62	465	$54.93	$25,542
$PM_{2.5}$ – Qualitative Hot-spot Analyses		8	3	65	1,560	$54.93	$85,691
PM_{10} – Qualitative Hot-spot Analyses		8	1	41	328	$54.93	$18,017
CO -Quantitative Hot-spot Analyses		1.5	5	76	570	$54.93	$31,310
CO – Qualitative Hot-Spot Analyses		1.5	0.5	76	57	$54.93	$3,131

Total for All Project-level Actions: 6,718 hours/year x $54.93/hour= $369,020/year

Project-Level Conformity Determinations in Existing Isolated Rural Nonattainment and Maintenance Areas – Federal Burden Hours and Cost

Table 33 shows federal burden associated with conformity determinations for a typical regionally significant project in an isolated rural nonattainment area. Table 34 shows federal burden associated with interagency consultation and review of hot-spot analyses in isolated rural CO, $PM_{2.5}$. and PM_{10} nonattainment and maintenance areas. Table 35 shows federal annual cost associated with conformity determinations for project-level conformity determinations in isolated rural nonattainment and maintenance areas.

In general, conformity determinations for projects in isolated rural areas are more extensive than for metropolitan areas, since isolated rural areas also need to perform a regional emissions analysis when a regionally significant project is to receive federal funding or approval.

Table 33: Federal Burden Hours For Each Project-Level Conformity Determination in Isolated Rural Nonattainment and Maintenance Areas Regional Emissions Analysis Component

Type of Project	Activity	FHWA	FTA	EPA	Total
Projects in Isolated Rural Area	Attending Consultation Meetings	5	1	1	7
	Conformity-Related Work on Draft Determination	6	0[25]	2	8
	Reviewing Project Conformity Determination	20	3	10	33
Total For Each Isolated Rural Area Project Determination: 48					

Table 34: Federal Burden Hours For Each Project-Level Conformity Determination in Isolated Rural Nonattainment and Maintenance Areas Hot-spot Analysis Component

Pollutant	Type of Hot-spot Analysis	Consultation	Reviewing Project-level conformity determinations	Total Burden Hours
$PM_{2.5}$	Qualitative	2	6	8
PM_{10}	Qualitative	2	6	8
CO	Quantitative	.25	1.25	1.5
CO	Qualitative	.25	1.25	1.5

[25] EPA's survey of federal field offices found that FTA spent minimal time on conformity-related work.

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Table 35: Federal Agency Burden Cost For Project-Level Conformity Determinations Isolated Rural Nonattainment Areas

Regional Emissions and Hot-spot Analyses

Type of Project	Burden Hours per Action	No. of Isolated Rural Areas	Frequency of Action	Total Annual burden hours	Cost Per Hour	Total Annual Cost
Projects in Isolated Rural Areas –No Hot-spot Analysis	48	60	5 years	576	$54.93	$31,640
$PM_{2.5}$ – Hot-spot Analyses	8	1	5 years	2	$54.93	$110
PM_{10} – Hot-spot Analyses	8	38	5 years	61	$54.93	$3,351
CO Hot-spot Analyses	1.5	2	5 years	1	$54.93	$55
Total Federal Agency Burden for Project Level Conformity Determinations: 640 hours/year x $54.93/hour = $35,155						

Adequacy Findings for SIP Motor Vehicle Emissions Budgets – Federal Burden Hours

One component of the federal burden associated with transportation conformity is EPA's role in making adequacy findings for SIPs with new motor vehicle emissions budgets. The conformity regulation requires the motor vehicle emissions budget(s) from a submitted SIP to be used as the measure of conformity once EPA finds such a budget(s) adequate (40 CFR 93.118(e) and (f)).[26] The total burden of the adequacy review process is borne by EPA. No other federal agencies are involved in the adequacy review process. This ICR also does not account for any state or local work associated with developing the SIP because SIPs are developed to meet other non-conformity requirements.

EPA based burden hours associated with each adequacy review on the average amount of

[26] ? EPA will find a budget adequate if the following minimum criteria is met: (i)The submitted SIP is endorsed by the Governor or his/her designee and has been subject to a state public hearing; (ii) Interagency consultation took place and any EPA stated concerns have been addressed; (iii) The budget is clearly identified and precisely quantified; (iv) The budget, when considered with all other emissions sources, is consistent with applicable SIP requirements; (v) The budget is consistent with and is clearly related to the emissions inventory and submitted SIP control measures; and, (vi) Revisions to a previously submitted SIP explain and document any changes to the previous budget and control measures, impacts on point and source emissions, and any changes to established safety margins and reasons for those changes

EPA staff time needed per adequacy determination, EPA staff time includes the time needed to notify the public that a SIP has been submitted and is under adequacy review, the adequacy review of the SIP's budget(s), responding to any public comments, and publishing a Federal Register notice with EPA's finding.

Table 36 illustrates EPA's burden hours for each adequacy finding. These estimates were drawn from a recent survey of EPA Regional Offices, as well as an estimate of the time spent at headquarters.

Table 36: Federal Burden Hours for EPA's Adequacy Findings of SIP Motor Vehicle Emissions Budgets

Activity		Hours to perform
Per Adequacy Finding	Adequacy Review	17
	Federal Register Notice Preparation and Publication	19
	Preparation for and Website Posting	3
Burden hours per Adequacy Finding: 39		

Adequacy Findings – Federal Costs

EPA estimates that each EPA federal burden hour associated with adequacy determinations is completed by an experienced technical staff person. We believe that this will result in a conservative cost estimate. EPA is also including overhead costs associated with employing an experienced technical staff person, such as paid leave, health insurance, retirement savings, office space, computers, and other business expenses.

EPA assumed that federal burden hours would be completed by an experienced staff person being paid at a GS-13, Step 3 federal government employee salary of $71,415/year.[27] EPA then divided the annual 2007 GS-13, Step 3 salary rate by 2080 (the number of hours in a work year) and multiplied this number by the standard government overhead factor of 1.6. This calculation resulted in a federal cost of $54.93/burden hour.

Assuming $54.93 per federal burden hour, Table 37 shows the total federal annualized cost associated with making adequacy determinations for SIP motor vehicle emissions budgets. EPA based the number of adequacy reviews need each year based on the historical average number of SIPs that EPA has processed for adequacy over the past seven years, and responses

[27] ? January 2007 U.S. Office of Personal Management, Salary Table 2007-GS, 2007 General Schedule, http://www.opm.gov/oca/07tables/indexGS.asp.

from EPA regions regarding the anticipated number of SIPs expected to process for adequacy in fiscal year 2007.

Table 37 also shows costs associated with Federal Register notices of adequacy findings. A Federal Register notice of EPA's adequacy determination is always required, but often such notice is given with a proposed or final rulemaking action to approve the submitted SIP which is required due to other non-conformity requirements. Therefore, EPA included in the above table only the cost associated with Federal Register notices that were published separate from a proposed or final rulemaking action to approve the submitted SIP.

Table 37: Federal Annual Cost
Adequacy Findings

Action	**Number of Actions per Region**	**No. of Regions**	**Burden Hours per Action**	**Total Annual Burden Hours**	**Cost Per Hour**	**Total Annual Burden Cost**
Adequacy Finding	5	10	39	1,950	$54.93	$107,114
Action	**Number of Actions**	**No. of Regions**	**Total Federal Register Notice Publications**		**Average cost per Publication**	**Total Annual Burden Cost**
Federal Register Notice – Publication Costs	5	10	50		$413	$20,650
Total Burden For Adequacy Findings: 1,950 hours/year x $54.93/hour =$107,114 + $20,650 = $127,764						

Plan and TIP Conformity Determinations in Hypothetical New Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS – Federal Burden Hours and Cost

Table 38 presents the estimated federal burden hours per transportation plan and TIP conformity determination in new nonattainment areas that have never done transportation conformity before. We used the same estimate of burden hours as we used in the 2004 ICR, as there is no reason to believe the burden associated with meeting federal conformity requirements in new nonattainment areas would have changed. Those estimates were drawn directly from FHWA, FTA, and EPA responses to a request for burden information. DOT and EPA burden associated with plan and TIP conformity determinations includes attending consultation meetings, providing technical and policy assistance prior to an MPO's determination, and reviewing the final plan or TIP conformity documentation.

Note burden hours per conformity determination for the three areas that have never been nonattainment before are higher than in the areas that are already doing conformity for some other pollutant. EPA assumes that the federal agencies will incur more burden from additional review and consultation needed for conformity determinations in areas that have no experience with transportation conformity. In contrast, in areas that already do conformity for another pollutant, no new burden is assumed for consultation as these areas already have established interagency consultation procedures with regularly scheduled meetings for discussing conformity issues.

For these tables, EPA relied on data gathered for EPA's previous ICR (ICR# 2130.02) to generate estimated burden associated with attending interagency consultation meetings, conformity-related work prior to the MPO conformity determination and for reviewing plan and TIP conformity determinations in new nonattainment areas.

As with federal burden incurred for transportation plan and TIP conformity determinations in Tables 28-30, EPA assumes that federal burden associated with transportation plan and TIP conformity determinations for MPOs serving populations large populations of 200,000 or more and between 50,000-200,000 will be done at the same time due to the fact that this is the first time that these areas will be subject to transportation conformity.

Table 38: Federal Burden Hours For Each Transportation Plan and TIP Conformity Determination in Hypothetical New Metropolitan Nonattainment Areas For the 2006 24-hour $PM_{2.5}$ NAAQS

Level of Conformity Experience	Activity	FHWA	FTA	EPA	Total
No Previous Conformity Experience	Attending Consultation Meetings	10	10	10	30
	Conformity-Related Work Prior to MPO Determination	35	1	10	46
	Reviewing Plan and TIP Conformity Determination	40	6	20	66
Total Federal Burden Hours - Each Brand New 2006 24-hour $PM_{2.5}$ Area Transportation Plan & TIP Conformity Determination:					**142**

Table 39: Federal Annual Cost For Transportation Plan and TIP Conformity Determinations in Hypothetical New Metropolitan Nonattainment Areas 2006 24-hour $PM_{2.5}$ NAAQS

Action	Hypothetical Nonattainment Designation of Metropolitan Area	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Plan/TIP (Pop. 200,000+)	2006 24-hour $PM_{2.5}$	142	2	4 years	71	$54.93	$3,900
Plan/TIP (Pop. 50,000-200,000)	2006 24-hour $PM_{2.5}$	142	2	4 years	71	$54.93	$3,900
Total Federal Burden for Plan and TIP Actions – New Nonattainment Areas – 2006 24-hour $PM_{2.5}$: 142 hours/year x $54.93/hour = $7,800							

Plan and TIP Conformity Determinations in Pre-Existing Metropolitan Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ NAAQS – Federal Burden Hours and Cost

Table 40 shows federal burden hours associated with transportation plan and TIP conformity determinations for the 2006 24-hour $PM_{2.5}$ NAAQS in existing nonattainment and maintenance areas that may be gaining one new pollutant as a result of the 2006 24-hour $PM_{2.5}$ NAAQS.

For this table, EPA relied on data gathered for ICR 2130.02 to generate estimated burden associated with the following: Attending interagency consultation meetings, conformity-related work prior to the MPO conformity determination and, for reviewing plan and TIP conformity determinations in existing nonattainment and maintenance areas that are gaining one new pollutant.

Table 40: Federal Burden Hours
Each Transportation Plan and TIP Conformity Determination
Hypothetical Pre-Existing Metropolitan Nonattainment/Maintenance Areas
2006 24-hour $PM_{2.5}$ NAAQS

Metropolitan Nonattainment Area	Activity	FHWA	FTA	EPA	Total
Existing Area That Gains One Additional Pollutant (Includes all areas with populations of 200,000+ and 50,000-200,000)	Attending Consultation Meetings	10	10	10	30
	Conformity-Related Work Prior to MPO Determination	12	0[28]	3	15
	Reviewing Plan Conformity Determination	13	2	7	22
Total For Each Pre-Existing Area With One Additional Pollutant: 67					

[28] EPA's survey of federal field offices found that FTA spent minimal time on conformity-related work

Table 41: Federal Annual Cost
Transportation Plan and TIP Conformity Determinations
Hypothetical Pre-Existing Metropolitan Nonattainment Areas
2006 24-hour $PM_{2.5}$

Action	Hypothetical Metropolitan Nonattainment Area	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Plan (200,000 + pop.)	Pre-Existing Area That Gains One Additional Pollutant	67	11	4 years	184	$54.93	$10,107
TIP (200,000 + pop.)	Pre-Existing Area That Gains One Additional Pollutant	67	11	4 years	184	$54.93	$10,107
Plan/ TIP (50,000-200,000 pop.)	Pre-Existing Area That Gains One Additional Pollutant	67	4	4 years	67	$54.93	$3,680
Total Federal Burden for Plan and TIP Actions – Pre-Existing Nonattainment/Maintenance Areas – 2006 24-hour $PM_{2.5}$: 435 hours/year x $54.93/hour = $23,895							

Project-Level Conformity Determinations in Metropolitan Nonattainment Areas for 2006 24-hour $PM_{2.5}$ NAAQS – Federal Burden Hours and Cost

The following tables show federal burden hours and cost associated with consultation and reviewing project-level conformity determinations prepared by state and local respondents for projects in hypothetical metropolitan areas designated nonattainment for the 2006 24-hour $PM_{2.5}$ standard. EPA assumes that the federal burden hours for project-level conformity determinations and hot-spot analyses would be the same as in existing $PM_{2.5}$ areas. Similarly, EPA assumes that the total number of projects and the number that would need a project-level conformity determination would be the same as in existing $PM_{2.5}$ areas. Therefore, the burden hours per project-level conformity determination in Table 42 are the same as found in Table 31.

Table 42: Federal Burden Hours For Each Project-level Conformity Determination in Hypothetical Metropolitan Nonattainment Areas For 2006 24-hour $PM_{2.5}$

Type of Project	Consultation	Reviewing Project-level conformity determinations	Total Burden Hours
2006 24-hour $PM_{2.5}$ – No Hot-spot Analysis	.25	.25	.5
2006 24-hour $PM_{2.5}$- Qualitative Hotspot Analysis	2	6	8

Table 43 estimates the federal annual cost associated with consultation and reviewing project-level conformity determinations prepared by state and local respondents for projects in hypothetical metropolitan areas designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

Table 43: Federal Annual Cost For Project-level Conformity Determinations in Hypothetical Metropolitan Nonattainment Areas For 2006 24-hour $PM_{2.5}$ NAAQS

Metropolitan Area		Burden Hours Per Action	Average No. of Actions/ year	No. of Areas	Total Annual Burden Hours	Cost Per Hour	Total Annual Cost
Non-attainment for 2006 24-hour $PM_{2.5}$	Pop. 200,000+	.5	65	13	422	$54.93	$23,180
	Pop. 50,000-200,000	.5	15	6	45	$54.93	$2,472
Non-attainment 2006 24-hour $PM_{2.5}$ - Qualitative Hot-spot Analyses		8	3	19	456	$54.93	$25,048

Total Federal cost 2006 24-hour $PM_{2.5}$ Project-level Actions: 923 hours/year x $54.93/hour= $50,700/year

Project-Level Conformity Determinations in Isolated Rural Nonattainment Areas for 2006 24-hour $PM_{2.5}$ NAAQS – Federal Burden Hours and Cost

Table 44: Federal Burden Hours For Each Project-level Conformity Determination in Hypothetical Isolated Rural Nonattainment Areas for the 2006 24-hour $PM_{2.5}$ Regional Emissions Analysis Component

Level of Experience	Activity	FHWA	FTA	EPA	Total
Has Previous Conformity Experience	Attending Consultation Meetings	5	1	1	7
	Conformity-Related Work Prior to State DOT Submission	6	0	2	8
	Reviewing Project Conformity Determination	20	3	10	33
Total For Each new 2006 24-hour $PM_{2.5}$ Isolated Rural Area Project Determination: 48					

Table 45: Federal Burden Hours Each Project-Level Conformity Determination Hot-spot Analysis Hypothetical Isolated Rural Nonattainment Areas 2006 24-hour $PM_{2.5}$

Pollutant	Type of Hot-spot Analysis	Consultation	Reviewing Project-level conformity determinations	Total Burden Hours
2006 24-hour $PM_{2.5}$	Qualitative	2	6	8

Table 46: Federal Annual Cost
Project-Level Conformity Determinations
Regional Emissions and Hot-spot Analyses
Hypothetical Isolated Rural Nonattainment Areas
2006 24-hour $PM_{2.5}$

Nonattainment Designation of Isolated Rural Area	Burden Hours Per Action	No. of Areas	Frequency of Action	Total Annual Burden Hours	Cost Per Hour	Total Annual Burden Cost
2006 24-hour $PM_{2.5}$- Regional Analysis	48	6	5 years	58	$54.93	$3,186
2006 24-hour $PM_{2.5}$ - Hot-spot Analyses	8	6	5 years	10	$54.93	$549
Total For All New Isolated Rural Areas: 68 hours/year x $54.93/hour =$3,735						

6(d) Estimating the Respondent Universe and Total Burden and Costs

EPA estimates that 177 MPOs will conduct transportation plan and/or TIP conformity determinations during the period covered by this ICR and that EPA Regional Offices, the FHWA and FTA will be involved in interagency consultation, and review of any transportation-related conformity determinations performed by MPOs during this process. EPA also estimates that similar consultation will occur for projects in isolated rural and metropolitan areas.

6(e) Bottom Line Burden Hours and Cost Tables

The bottom line annual burden for all State and local respondents is **52,304** hours with a cost of **$2,873,060**.

The bottom line annual burden for Federal agency respondents is **15,766** hours with a cost of **$886,676**[29].

(i) Respondent Tally

The bottom-line annual burden for all State and local agencies in performing transportation conformity determinations for transportation plans and TIPs in existing and new

[29] To obtain bottom-line annual Federal agency cost associated with conformity determinations, EPA multiplied the bottom-line Federal agency annual burden hours by estimated hourly labor costs of $54.93 and then added $20,650 in Federal Register notice publication costs from Table 37 to reach the bottom line Federal agency annual estimated cost of $886,676.

nonattainment areas is **31,942** hours/year with a cost of **$1,754,574**/year.

The bottom-line annual burden for all State and local agencies in performing project level conformity determinations and, where applicable, hot-spot analyses in new and existing metropolitan areas is **20,006** hours/year at a cost of **$1,098,930**/year.

The bottom-line annual burden for all State and local agencies in performing project level conformity determinations and, where applicable, hot-spot analyses in new and existing isolated rural areas is **356** hours/year at a cost of **$19,556**/year.

(ii) Federal Agency Tally

The bottom-line annual burden for Agencies associated with transportation conformity determinations for transportation plans and TIPs in existing and new nonattainment areas is **5,467** hours/year at a cost of **$300,302**/year.

The bottom-line annual burden for Agencies associated with project level conformity determinations and, where applicable, hot-spot analyses in new and existing metropolitan areas is **7,641** hours/year at a cost of **$419,720**/year.

The bottom-line annual burden for all Agencies associated with project level conformity determinations and, where applicable, hot-spot analyses in new and existing isolated rural areas is **708** hours/year at a cost of **$38,890**/year.

The bottom-line annual burden for EPA burden associated with adequacy determinations for motor vehicle emission budgets associated with SIPs is **1,950** hours/year at a cost of **$127,764**/year[30].

Tables 47 and 48 show the total annual estimated burden hours and cost associated with transportation conformity determinations requirements incurred by state, local and federal respondents.

[30] To obtain bottom-line annual cost associated with adequacy determinations for motor vehicle emission budgets, EPA multiplied the total burden hours in Table 37 by estimated hourly labor costs of $54.93 and then added $20,650 in Federal Register notice publication costs to reach the bottom line annual cost of $127,764.

Table 47: Total Annual Burden Hours For Transportation Conformity Determinations

Type of Conformity Determination	Total Annual State and Local Burden Hours	Total Annual Federal Burden Hours	Total Annual Conformity Burden Hours
Transportation Plan & TIP	31,942	5,467	37,409
Projects in Metropolitan Areas- brand new and existing	20,006	7,641	27,647
Projects in Isolated Rural Areas –brand new and existing	356	708	1,064
Adequacy Determinations	N/A	1,950	1,950
Total	52,304	15,766	68,070

BOTTOM LINE BURDEN HOURS: 68,070/ year

Table 48: Total Annual Costs Associated With Conformity Determinations

Type of Conformity Determination	Total Annual State and Local Cost	Total Annual Federal Cost	Total Annual Conformity Costs
Transportation Plan & TIP	$1,754,574	$300,302	$2,054,876
Projects in Metropolitan Areas –brand new and existing	$1,098,930	$419,720	$1,518,650
Projects in Isolated Rural Areas – brand new and existing	$19,556	$38,890	$58,446
Adequacy Determinations	N/A	$127,764	$127,764
Total	$2,873,060	$886,676	$3,759,736

BOTTOM LINE COST: $3,759,736/ year[31]

[31] To obtain bottom-line costs associated with conformity determinations (Table 48), EPA multiplied the bottom-line burden hours in Table 47 by estimated hourly labor costs of $54.93 and then added $20,650 in Federal Register notice publication costs from Table 37 to reach the bottom line annual cost of $3,759,736.

(iii) Variations in the Annual Bottom Line

EPA does not anticipate significant variations in the annual respondent reporting burden or cost over the course of the clearance period.

6(f) Reasons for Change in Burden

The increase in state and local respondent burden since the previous ICR was approved is approximately **22,890** hours. This change is due to the following:

(i) Adjustments for reduced burden associated with the implementation of transportation conformity provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU): Decrease in hours associated with reduced reporting frequency for transportation plans and TIPs.

SAFETEA-LU, which was signed into law on August 10, 2005, revised a number of aspects of the Clean Air Act's section 176(c) transportation conformity provisions including:

- Reducing the three-year conformity update cycle for transportation plans to every four years; and
- Reducing the two-year conformity update cycle for TIPs to every four years.

As a result, EPA estimates that MPO annual burden will be reduced accordingly, since conformity is required less frequently.
Burden hour <u>decrease</u> attributable to these changes: Approximately 25,994 hours

(ii) Adjustment for reduced burden associated with conformity training for those MPOs that had never done transportation conformity prior to $PM_{2.5}$ and 8-hour ozone NAAQS.

EPA ICR 2130.02 included the burden associated with training and start-up costs for MPOs that had never performed conformity determinations for any transportation-related criteria pollutant. This was a significant concern in the last ICR when many new 8-hour ozone and $PM_{2.5}$ nonattainment areas had no previous conformity experience. However, for the purposes of this ICR, start-up costs are no longer relevant for existing nonattainment and maintenance areas that have been doing conformity for some time. However, EPA has accounted for start-up burden costs associated in any hypothetical nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS, for those hypothetical areas that are assumed to have no previous conformity experience.
Burden hour <u>decrease</u> attributable to these changes: Approximately 1,231 hours

(iii) Program change associated with transfer of DOT ICR (OMB #2132-0529) to EPA ICR 2130.03:

- **Decrease in size of state and local respondent universe: Number of metropolitan planning organizations (MPOs) responsible for determining conformity for transportation plans and TIPs.**

The 2006 DOT ICR (OMB #2132-0529 - hereinafter referred to as the "DOT ICR") estimated that 192 MPOs are located in nonattainment and maintenance areas. EPA today estimates that 177 MPOs are located in nonattainment and maintenance areas.

In preparing this ICR renewal, EPA performed several activities to identify and confirm that there are 177 MPOs located in nonattainment areas. First, EPA created a full listing of all nonattainment and maintenance areas for which transportation conformity NAAQS applies. Next, using nonattainment maps on the DOT's web-site[32] and various Internet searches, EPA developed a full listing of MPOs and nonattainment and maintenance areas for which each is responsible for determining conformity.

To verify our data, EPA referred to two Federal Register notices: Qualifying Urban Areas for Census 2000, published by the Department of Commerce Bureau of the Census on May 1, 2002 (67 FR 21962-21967) and Designation of Transportation Management Areas, published by the Department of Transportation on July 8, 2002 (67 FR 45173-45178) . EPA also sent this data to EPA Regional Offices to review for accuracy.

- **Increase in number of MPOs taking advantage of SAFETEA-LU flexibilities and associated reduced costs.**

The DOT ICR estimated of the 192 MPOs located in nonattainment areas, only 50% of them would take advantage of the flexibilities that SAFETEA-LU provides in reducing frequency of conformity determinations for transportation plans from every three years to every four years. DOT also estimated that costs for conformity determinations would be reduced by 25% because of these SAFETEA-LU flexibilities. DOT did not calculate any reduced burden associated with SAFETEA-LU flexibilities for conformity determinations associated with TIPs.

In this ICR, EPA assumes that all 177 MPOs will take advantage of the flexibilities that SAFETEA-LU provides them in reducing the frequency of conformity determinations to every four years for both transportation plans and TIPs. EPA did not include transportation plan or TIP amendments that may occur voluntarily mid-cycle.

EPA also used a different method than DOT for calculating savings associated with the SAFETEA-LU flexibilities. Rather than assuming a flat 25% savings related to the SAFETEA-LU flexibilities, EPA used the same estimated hours burden as was used to determine burden in

[32] http://www.fhwa.dot.gov/environment/conformity/nonattain/8hrozonepages/index.htm; http://www.fhwa.dot.gov/environment/conformity/nonattain/pm25pages/index.htm

2004 for conformity determinations and re-calculated the total hours burden based on a four year frequency of conformity determinations, rather than a three-year frequency for transportation plans and a two-year frequency for TIPs.

- **Differences in state and local respondent costs associated with conformity determinations.**

To create average annual cost burden associated with transportation conformity determinations in its ICR, DOT used information obtained from FY2005/FY2006 Unified Planning Work Programs (UPWP) from a sample of 14 MPOs from large urban areas with populations of 200,000 or more and one MPO from a urban area with a population of 50,000-200,000 provided estimated annual conformity determination costs. Based on the UPWP's for FY2005/2006, the annual costs associated with transportation conformity determinations for large urban MPOs (population 200,000 or more) averaged $140,100 (pre-SAFETEA-LU) and $25,300 for small MPOs (populations of 50,000-200,000).

To show burden reductions, DOT multiplied these average costs for large and small MPOs, respectively, by the number of large MPOs (DOT identified 108) and small MPOs (DOT identified 84) in nonattainment areas. DOT then multiplied those results by three years (pre-SAFETEA-LU frequency of conformity determinations for plans) and divided those numbers by four (reduced frequency for conformity determinations associated with SAFETEA-LU). DOT multiplied those numbers by 50% to obtain the burden reduction associated with SAFETEA-LU flexibilities.

The calculations below are obtained from the DOT ICR (Section: Regulatory Cost Analysis of Proposed Rulemaking, sub-section 3(a)(10) "Reduce minimum frequency of Conformity Determination in nonattainment and maintenance areas from 3 to 4 years) showing reduced burden for transportation conformity determinations associated with SAFETEA-LU:

TMAs: $140.1K x 3 ÷ 4 x 108 MPOs x 50% = -$5.7 million
Non-TMAs: $25.3K x 3 ÷ 4 x 84 MPOs x 50% = -$800,000

DOT did not include actual burden estimates for transportation conformity in its ICR, but instead included estimated reductions as a result of SAFETEA-LU. To calculate estimated cost in the DOT ICR associated with transportation conformity, EPA used the above estimates to deduce that the DOT ICR estimated annual costs associated with transportation conformity at approximately $15,089,550.

In contrast, this ICR estimated cost by calculating burden hours and multiplying them by a labor rate. EPA based its state and local respondents' burden on the following factors:

- Burden hours: EPA relied on survey responses from EPA and DOT field offices that regularly work with state and local organizations responsible for doing conformity determinations for transportation plans, TIPs and projects; and
- Labor rates: EPA used the OPM general schedule salary rates for 2007 for a GS-13 step 3

annual labor rate of $71,415. EPA then divided the annual 2007 GS-13, step 3 salary rate by 2080 (the number of hours in a work year) and multiplied this number by the standard government overhead factor of 1.6. This calculation results in a state and local respondent cost of $54.93/burden hour.

- **Increase in burden associated with project-level conformity determinations**

The DOT ICR did not include estimated burden associated with project-level transportation conformity and hot-spot analysis for metropolitan and isolated rural areas. EPA included estimated state and local respondent burden associated with project-level conformity determinations and hot-spot analysis in both metropolitan and isolated rural areas.
Burden hour <u>increase</u> attributable to this program change: Approximately **51,049** hours

(iv) Program Change: 2006 24-hour $PM_{2.5}$ NAAQS revision

As a result of EPA promulgating the 2006 NAAQS for the 24-hour $PM_{2.5}$ on October 17, 2006, the overall burden for transportation conformity for state and local respondents and federal agency burden will increase. Note that burden associated with training and start-up costs for MPOs that had never performed conformity determinations for any transportation-related criteria pollutant is accounted for in 6(f)(ii).
Burden hour <u>increase</u> attributable to this Program Change: Approximately **3,580 hours**

(v) Adjustments associated with actual number of 1997 8-hour ozone and $PM_{2.5}$ nonattainment areas versus the estimated numbers in EPA ICR 2130.02

In ICR 2130.02, EPA estimated a total of 101 8-hour ozone nonattainment areas and 57 $PM_{2.5}$ nonattainment areas. The calculation of the number of hypothetical brand new nonattainment areas was based on 2000-2002 air quality data.

EPA's designations for the 8-hour ozone nonattainment were effective on June 15, 2004 and conformity under the new 8-hour ozone standard started applying on June 15, 2005. EPA's $PM_{2.5}$ nonattainment designations went into effect on April 5, 2005, and conformity under the new $PM_{2.5}$ standard began to apply on April 5, 2006.

The actual number of nonattainment areas for 8-hour ozone is 112 and the actual number of nonattainment areas for the new $PM_{2.5}$ standard is 39, which results in decreased burden from ICR 2130.02.
Burden hour <u>decrease</u> attributed to this adjustment: Approximately 4,514 hours

6(g) Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OAR-2007-0269, which is available for online viewing at www.regulations.gov, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742. An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select “search,” then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OAR-2007-0269 and OMB Control Number 2060-0561 in any correspondence.

Appendix A: Clean Air Action Section 176(c)
As Amended by SAFETEA-LU

NOTE: This document includes Clean Air Act section 176(c) as amended by SAFETEA-LU. EPA is providing this document for informational purposes only as an official version of the revised section is not yet available.

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[Laws in effect as of January 7, 2003]
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[**CITE**: **42 U.S.C. 7506**]

TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 85--AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I--PROGRAMS AND ACTIVITIES

Part D--Plan Requirements for Nonattainment Areas

Subpart 1--nonattainment areas in general

Sec. 7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub. L. 101-549, title I, Sec. 110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(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 implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means--

(A) Conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) That such activities will not--

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

(ii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iii) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The 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 metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular--

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements--

(i) Such a project comes from a conforming plan and program;

(ii) The design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) The design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) Promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if--

(A) The transportation plans and programs--

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) Provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) With respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) The transportation projects--

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY

(A) IN GENERAL—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1).

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS–The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects.

(C) CIVIL ACTION TO COMPEL PROMULGATION—A civil action may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(D) The procedures and criteria shall, at a minimum--

(i) Address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but ; the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) The metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and

(iii) Address how conformity determinations will be made with respect to maintenance plans.

(E). INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after the date of enactment of the SAFETEA–LU the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.''.

(F) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) Applicability.--This subsection shall apply only with respect to—

(A) A nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) An area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5,\1\ this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a \2\ of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23, United States Code, or section 5303(i) of title 49, United States Code, shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

(B) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

(C) EXCEPTION.—In any case in which an area has a revision to an implementation plan under section 175A(b) and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 175A(b).

(D) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(E) AIR POLLUTION CONTROL AGENCY DEFINED.—In this paragraph, the term ‘air pollution control agency’ means an air pollution control agency (as defined in section 302(b)) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures

(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) If the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) If the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) If the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) Consultation with the Administrator; and

(III) Reasonable public notice and opportunity for comment; and

(v) If the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—

(i) Concurrence by the metropolitan planning organization, State air pollution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Notwithstanding any other provision of this Act, no additional State process shall be necessary to support such revision to the applicable plan.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.— The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) LAPSE OF CONFORMITY.—If a conformity determination required under this subsection for a transportation plan under section 134(i) of title 23, United States Code, or

section 5303(i) of title 49, United States Code, or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate
compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

(10) LAPSE.—In this subsection, the term ‘lapse’ means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.’’.

Appendix B: Conformity-Related Research Considered for This ICR

The following is the conformity research studies that were considered for this ICR. EPA has cited in the ICR when these studies were utilized as appropriate.

- April 2003, "Transportation/Air Quality Issues in Rural Areas," FHWA and Dye Management Group.
- October 2003, "Rural Conformity: A Survey of Practice," NCHRP and ICF Consulting.