

projects do not occur. In addition, MPOs can rely on a previous emissions analysis for TIP updates that simply move a year of projects from the plan into the TIP (*i.e.*, there is no change in the project mix or project implementation schedule that would affect regional emissions).

EPA believes it is also appropriate to rely on a previous emissions analysis for minor plan revisions, since such revisions do not impact regional air quality and usually occur in tandem with minor TIP amendments. These minor revisions may include no addition of new regionally significant projects, no significant change in the design concept and scope of existing projects, and no change to the timeframe of the transportation plan. DOT's transportation planning regulations require that the TIP only include projects that are consistent with the transportation plan (23 CFR 450.324(f)(2)). As a result, when new projects are added to the TIP, they are also added to the plan. EPA believes it would not be practical to allow a minor TIP amendment to rely on a previous emissions analysis, but then require a new regional emissions analysis for making the same minor revision to the transportation plan.

Therefore, EPA's proposal provides consistency between the transportation planning and conformity processes so that new regional emissions analysis is only required for actions that involve significant air quality impacts.

EPA's second proposed change would add § 93.122(e)(3) to clarify that a conformity determination that relies on a previous analysis does not satisfy the frequency requirements for plans and TIPs (40 CFR 93.104). The conformity rule requires a new regional emissions analysis at least every three years for an updated transportation plan that incorporates the latest planning assumptions and emissions models.

EPA's third proposed change would add § 93.122(e)(1)(iv) and amend § 93.122(e)(2) to clarify that conformity determinations that rely on a previous regional emissions analysis must be based on all adequate and approved SIP budgets that apply at the time that DOT makes its conformity determination. This change would apply to conformity determinations for plans, TIPs, and projects not from a conforming plan and TIP. Like all conformity determinations, a determination that relies on a previous emissions analysis must satisfy the emissions test requirements of § 93.118 (or of § 93.119, if no applicable adequate or approved budgets exist), and must do so over the time frame of the transportation plan. Therefore, EPA

believes that pursuant to § 93.118(a) of the current rule, any conformity determination that relies on a previous emissions analysis must show consistency with all applicable adequate or approved budgets that are available for conformity purposes at the time the conformity determination is made, including those budgets that have become applicable since the previous conformity determination. For example, suppose an ozone area has an approved conformity determination based on reasonable further progress budgets and subsequently submits an attainment demonstration with budgets that EPA finds adequate. In its next determination, conformity would be demonstrated to the adequate attainment budgets (as well as to the reasonable further progress budgets if they are still applicable). The area could rely on the previous regional emissions analysis to satisfy the requirements of § 93.118 or § 93.119 if the plan and TIP had not changed significantly and the previous analysis was done to satisfy § 93.118 or § 93.118 requirements. If this is not possible, a new regional emissions analysis based on the latest assumptions and models is required.

EPA expects that most conformity implementers already consider new budgets when they rely on a previous emissions analysis. Today's proposal simply clarifies the rule and ensures that the conformity regulation continues to be correctly implemented in the future.

It is important to note that today's proposal would not change other factors in the implementation of § 93.122(e). MPOs can continue to rely on a previous emissions analysis if planning assumptions have changed, as long as the requirements of § 93.122(e) are met and no new regional emissions analysis is otherwise required (58 FR 3778). In addition, a new regional emissions analysis with the latest planning assumptions and models continues to be required at least every three years. As clarified in our proposed § 93.122(e)(3), conformity determinations that rely on a previous emissions analysis do not satisfy the frequency requirements for transportation plans and TIPs in § 93.104(b)(3) and (c)(3), and therefore, do not reset the three-year conformity clock.

E. Exempt Projects

Finally, we are proposing a minor revision to the list of exempt projects in § 93.126 of the conformity rule. On December 21, 1999, DOT published a rule revision to its right-of-way regulation (64 FR 71284) that changed the citation for emergency or hardship

advance land acquisitions (revised citation: 23 CFR 710.503)—projects that are currently exempt from the conformity process. Therefore, we are proposing a similar minor revision of § 93.126 to make the conformity rule fully consistent with DOT's December 1999 rulemaking that addresses these specific right-of-way acquisitions. This proposed revision in no way expands or reduces the type of land acquisitions that are exempt from transportation conformity; it merely updates the cross reference in the conformity rule to be consistent with the corresponding DOT regulation for these projects.

XII. How Does Today's Proposal Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs to reflect the criteria and procedures for determining conformity. States can choose to develop conformity SIPs as a memorandum of understanding (MOU), memorandum of agreement (MOA), or state rule. Section 51.390(b) of the conformity rule specifies that after EPA approves any conformity SIP revision, the federal conformity rule no longer governs conformity determinations (for the parts of the federal conformity rule that are covered by the approved conformity SIP).

In some areas, EPA has already approved conformity SIPs that include provisions from the 1997 transportation conformity rule (62 FR 43780) that EPA is proposing to revise through this rulemaking. In these areas, if EPA finalizes rule amendments in this proposal that are not a direct result of the March 1999 court decision (*e.g.*, streamlining the frequency of conformity determinations), these amendments will be effective only when the State includes them in a conformity SIP revision and EPA approves that SIP revision. EPA will work with states to approve such revisions as expeditiously as possible through flexible administrative techniques such as parallel processing or direct final rulemaking.

In contrast, those rule amendments in this proposal that address provisions directly impacted by the March 1999 court decision will apply immediately in all nonattainment and maintenance areas upon the effective date of EPA's final rule. Although some areas have conformity SIPs that were approved prior to March 1999, provisions included in these SIPs that the court subsequently remanded to EPA for further rulemaking are no longer enforceable by law. As a result, all areas, including those with a previously