

comment, to be consistent with the waiver guidance under the 8-hour standard (once issued), and to account for any new information that may point to a different conclusion.

*M. What Aspects of Transportation Conformity and the 8-Hour Ozone Standard Are Addressed in This Proposal?*

1. What Is Transportation Conformity?

Transportation conformity is required under section 176(c) of the CAA (42 U.S.C. § 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a SIP. 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 NAAQS. Transportation conformity applies in nonattainment areas and maintenance areas. EPA's transportation conformity rule, 40 CFR part 93, establishes the criteria and procedures for determining whether transportation activities conform to the State air quality plan. It also establishes criteria and procedures for determining whether transportation activities conform in areas where no SIP containing mobile source emissions budgets yet exists.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188) and has amended the rule several times. On August 15, 1997, a comprehensive set of amendments was published that clarified and streamlined language from the 1993 transportation conformity rule (62 FR 43780). These rulemakings, as well as other relevant conformity materials such as guidance documents, policy memoranda, and conformity research can be found at EPA's transportation conformity Web site, at: <http://www.epa.gov/otaq/transp.htm> (once at the site, click on "Transportation Conformity.")

2. Why Is EPA Discussing Transportation Conformity in This Proposed Rulemaking?

We are discussing transportation conformity in this proposed rulemaking in order to provide affected parties with information on when transportation conformity will be implemented under the 8-hour ozone standard and how we plan to make the transition from the 1-hour ozone standard to the 8-hour ozone standard. Affected parties may include State and local transportation and air quality agencies, metropolitan planning organizations (MPOs) and the U.S. Department of Transportation (DOT). To determine whether this discussion

affects your organization, you should carefully examine the applicability requirements in 40 CFR 93.102 of the transportation conformity rule.

3. Are Any Changes Being Made to Transportation Conformity in This Proposed Rulemaking?

No, we are not proposing changes to the transportation conformity rule in this proposed rulemaking. In the future, we plan to conduct a rulemaking to establish the specific conformity tests that will apply under the 8-hour standard. We intend to complete that rulemaking prior to area designations for the 8-hour standard and will provide the public with the opportunity to comment on the proposed changes. We plan to propose this rulemaking in the summer of 2003.

4. When Does Transportation Conformity Apply to 8-hour Ozone Nonattainment Areas?

Transportation conformity applies to 8-hour ozone nonattainment areas 1 year after the effective date of an area's designation. This 1-year grace period is found in the CAA at 42 U.S.C. 7506(c)(6). Specifically, this section of the CAA provides areas, that for the first time are designated nonattainment for a given air quality standard, with a 1-year grace period before the conformity regulation applies with respect to that standard. Since the 8-hour ozone standard is a different standard from the 1-hour ozone standard, every area that is designated nonattainment for the 8-hour ozone standard will have a 1-year grace period before conformity applies for the 8-hour standard, regardless of whether or not it was designated nonattainment or maintenance for the 1-hour ozone standard.

For more information, please see the proposed and final rulemaking entitled, "Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas," published October 5, 2001 (66 FR 50954); and August 6, 2002 (67 FR 50808), respectively for additional discussion of the 1-year grace period for newly designated areas. (The proposed and final rule can be found on EPA's transportation conformity Web site mentioned above.)

5. How Does the 1-Year Grace Period Apply in Metropolitan Areas?

Metropolitan areas are those areas that have a MPO designated as being responsible for transportation planning per 23 U.S.C. 134. In these areas, the 1-

year grace period means that, 1 year after the effective date of an area's designation as nonattainment for the 8-hour standard, the area must have a conforming transportation plan and Transportation Improvement Program in place to fund or approve transportation projects. If, at the conclusion of the 1-year grace period, a metropolitan area is not able to make a conformity determination for its plan and Transportation Improvement Program, the area will be in what is known as a "conformity lapse." (For the discussion of which projects can proceed during a conformity lapse, please see DOT's January 2, 2002 guidance, published February 7, 2002, at 67 FR 5882; and EPA's May 14, 1999 guidance.<sup>65</sup> Both of these documents can be found on EPA's transportation conformity Web site: <http://www.epa.gov/otaq/transp/traqconf.htm>.)

6. How Does the 1-Year Grace Period Apply in "Donut" Areas?

For the purposes of conformity, a donut area is the geographic area outside a metropolitan planning area boundary, but inside the boundary of a designated nonattainment/maintenance area. The conformity requirements for donut areas are generally the same as those for metropolitan areas, and the MPO would include any projects occurring in the donut area in its analysis of the metropolitan transportation plan and TIP. Therefore, the one-year grace period applies to donut areas in much the same way that it applies to metropolitan areas. That is, within one year of the effective date of an area's designation, a donut area's projects must be included in an MPO's conformity determination for the metropolitan plan and TIP for those projects to be funded or approved. If, at the conclusion of the one-year grace period, the donut area's projects have not been included in an MPO's conformity determination, the entire nonattainment area's conformity would lapse.

7. How Does the 1-Year Grace Period Apply in Isolated Rural Areas?

For the purposes of conformity, a nonattainment or maintenance area (or portion thereof) is considered to be an isolated rural area if it does not have a metropolitan transportation plan or Transportation Improvement Program required under 23 U.S.C. 134, and its projects are not considered in the emissions analysis of any MPO's

<sup>65</sup> The EPA's Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision (EPA 420-F-99-025, May 1999).