

Finally, as background, in CO nonattainment and maintenance areas, the impact of new transportation projects on local emissions must be demonstrated through quantitative or qualitative analysis (40 CFR 93.123). In PM-10 nonattainment and maintenance areas, the localized emissions impact of new projects should be demonstrated through a qualitative analysis at this time. According to section § 93.123(b)(4) of the rule, quantitative PM-10 hot-spot analyses are not required until EPA releases modeling guidance on this subject; a project's impact on localized PM-10 violations must be qualitatively considered until this guidance is issued. On September 12, 2001, DOT issued "Guidance for Qualitative Project Level 'Hot Spot' Analysis in PM-10 Nonattainment and Maintenance Areas." DOT consulted with EPA on the development of this guidance; the guidance is available on EPA's conformity Web site listed in section I.B.2. of this proposal.

B. Why Are We Proposing This Clarification?

On May 26, 1994, Environmental Defense, Natural Resource Defense Council and Sierra Club collectively submitted to EPA a Petition for Reconsideration of the November 1993 conformity rule (58 FR 62188). In the preamble to an April 2000 conformity rule amendment (65 FR 18913, April 10, 2000), we addressed four remaining issues raised in this petition, one of which was the issue regarding horizon years for hot-spot analyses. Specifically, the petitioners requested that we alter the rule to ensure that areas examine the 20-year time frame of the transportation plan when conducting hot-spot analyses. The existing transportation conformity rule does not clearly specify a time frame to be considered for hot-spot analyses.

In the preamble to the 2000 amendment, we acknowledged that hot-spot analyses should address the full time frame of the transportation plan to ensure that new projects will not cause or worsen any new or existing hot-spot violations. In addition, we clarified that in some cases modeling the last year of the transportation plan or the year of project completion may not be sufficient to satisfy this requirement. EPA believes that the most effective means to meet this requirement would be to have the hot-spot analysis examine the year(s) during the time frame of the plan in which project emissions, in addition to background regional emissions in the project area, are expected to be the highest.

In our 2000 amendment, however, we were unable to make the described regulatory clarification to § 93.116 because we had not previously proposed this change to the rule. Instead, we committed to propose this clarification in today's action.

XI. Additional Changes and Clarifications to the Rule

A. Definitions

EPA is proposing two new definitions for areas known as "donut areas" and "isolated rural nonattainment and maintenance areas" in § 93.101. In today's proposal, "donut areas" are defined as geographic areas outside a metropolitan planning area boundary as designated under 23 U.S.C. 134 and 49 U.S.C. 5303, but inside the boundary of a designated nonattainment/maintenance area that is dominated by a metropolitan area(s). In contrast, "isolated rural nonattainment and maintenance areas" are defined as any nonattainment or maintenance area that does not contain or is not part of any metropolitan planning area as designated under 23 U.S.C. 134 and 49 U.S.C. 5303. Isolated rural areas do not have metropolitan transportation plans or TIPs required under 23 U.S.C. 134 and 49 U.S.C. 5303 and 5304 and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included only in statewide transportation improvement programs.

These proposed definitions would be used in conformity rule provisions that clarify how areas that are designated nonattainment or maintenance, but that are not within the planning boundary of any MPO's jurisdiction, should be considered with regard to the applicable conformity requirements. The conformity requirements for donut areas are generally the same as those for metropolitan areas. However, the transportation planning requirements in donut areas may differ. The conformity requirements for isolated rural nonattainment and maintenance areas are stated in § 93.109(g) of the current rule and generally exclude most conformity determination frequency requirements and triggers. Conformity determinations in these areas are required only when a new non-exempt FHWA/FTA project needs funding or approval. State approvals and funding for regionally significant non-federal projects would also require that such projects are included in a regional emissions analysis that conforms. The requirements for isolated rural areas also offer greater flexibility for

demonstrating conformity in years after the attainment year or after the last year of the maintenance plan. Given these differences in conformity requirements, EPA believes the proposed definitions will help to alleviate confusion over how metropolitan and rural areas are distinguished so that the conformity program can be more efficiently and practicably implemented in these different areas.

B. Budget Test Requirements for the Attainment Year

We are proposing a minor revision to clarify how § 93.118(b) and (d) should be implemented when a budget is established for a year prior to the attainment year. Specifically, we are proposing that once an area has any control strategy SIP budget available for conformity purposes, conformity must be demonstrated using the "budget test" for the attainment year if the attainment year is within the time frame of the transportation plan. Today's proposal would address questions raised by some State and local conformity implementers.

As background, the "budget test" is completed by comparing the regional emissions produced by a proposed transportation plan and TIP to the SIP's motor vehicle emissions budget(s) for a given year. If the emissions from the plan and TIP are equal to or less than the applicable SIP budget(s), the plan and TIP conform. Section § 93.118(d)(2) describes the years for which regional emissions from the plan and TIP must be estimated, and § 93.118(b) describes the years for which consistency with the budgets must be demonstrated, including which submitted or approved budget applies for a given year.

Section 93.118(d)(2) of the current rule requires a regional emissions analysis to be performed for the last year of the transportation plan, the attainment year (when it is in the time frame of the transportation plan), and any intermediate years so that analysis years are no more than 10 years apart. Section 93.118(b) requires that the budget test be performed for any year with a budget, for the last year of the transportation plan and any relevant intermediate years, but it does not explicitly require the budget test to be performed for the attainment year when it is in the time frame of the transportation plan but does not have a budget. In other words, the current rule could be interpreted, in limited cases, to require transportation planners to model emissions for the attainment year without comparing these estimated emissions to an existing budget from a prior year. EPA did not anticipate this