

## II. Background on the Transportation Conformity Rule

### A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the criteria pollutants: ozone, coarse particulate matter (PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Today's proposal would also apply the conformity rule provisions in fine particulate matter (PM<sub>2.5</sub>) areas. 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"). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

On June 30, 2003, EPA published a proposal that would amend the current conformity rule to be consistent with a March 2, 1999, U.S. Court of Appeals decision (68 FR 38974). The "court proposal" also included several proposed amendments to regulatory provisions that did not directly result from the court decision. EPA has not yet taken a final action on this proposed rulemaking. We are reviewing the public comments on the court proposal and will promulgate a final rule in the future.

Today's proposal should be considered a separate action from the June 30, 2003 court proposal. However, some sections and paragraphs of the conformity rule are addressed in both proposals. For those sections, EPA has repeated the court proposal's regulatory language in today's proposal along with the proposed revisions that address the conformity requirements in 8-hour ozone and PM<sub>2.5</sub> areas.

Other changes to the conformity program could occur through the reauthorization of the Surface Transportation Act, currently entitled the Transportation Equity Act for the 21st Century (TEA-21). However, EPA believes it is prudent to expeditiously pursue the regulatory changes proposed today to ensure that entities subject to conformity for the new air quality standards understand applicable requirements as close to area designations as possible. EPA will continue to monitor the proposed reauthorization proposals for their potential impact on the conformity regulation. If statutory amendments to the conformity program result from

TEA-21 reauthorization, EPA would take appropriate action to address such changes.

EPA has consulted with the Department of Transportation (DOT), our federal partners in implementing the transportation conformity regulation, in developing this rulemaking, and DOT concurs with this proposal. EPA has also met with state and local transportation and environmental organizations to discuss this rulemaking. The proposal reflects our consideration of the comments that we received through these stakeholder discussions. Documentation of these stakeholder meetings and specific comments are included in the docket for this rulemaking.

### B. Why Is EPA Conducting This Rulemaking?

EPA has developed new 8-hour ozone and PM<sub>2.5</sub> air quality standards, and anticipates designating areas as nonattainment for these new standards in April and December 2004, respectively. EPA is conducting this rulemaking to provide clear guidance and rules for implementing conformity for these standards. Some of the proposed revisions to the current regulation would provide more options and flexibility in demonstrating conformity. Other proposed changes would also apply to existing 1-hour ozone, CO, PM<sub>10</sub> and NO<sub>2</sub> nonattainment and maintenance areas.

The following table provides a roadmap for determining whether a specific proposal included in this rulemaking would apply in your area.

Type of area	Issue being addressed in this proposal	Preamble section	Proposed regulatory section
8-hour ozone .....	Conformity grace period .....	III.A	§ 93.102(d).
	Revocation of 1-hour ozone standard .....	III.B	No proposed regulatory amendments.
	Early Action Compacts .....	III.C	No proposed regulatory amendments.
	Baseline year test .....	IV.B	§ 93.119(b).
	Build/no-build test (marginal and below classifications and subpart 1 areas) .....	IV.C	§ 93.119(b)(2). § 93.119(g)(2).
	Regional conformity tests (moderate and above classifications) .....	IV.D	§ 93.119(b)(1).
	Regional Conformity tests (areas without 1-hour ozone budgets) .....	V	§ 93.109(k).
	Regional conformity tests (areas with 1-hour ozone budgets) .....	VI	§ 93.109(e).
	Definitions .....	XIV.A.	§ 93.101.
	Insignificance .....	XIV.B	§ 93.109(d). § 93.121(c).
	Transportation plan and modeling requirements (moderate and above classifications) .....	XIV.D	§ 93.106(b). § 93.122(c).
	Non-federal projects (for isolated rural areas only) .....	XIV.F	§ 93.121(b)(1).
PM <sub>2.5</sub> .....	Applicability .....	III.A	§ 93.102(b)(1).
	Conformity grace period .....	III.A	§ 93.102(d)
	Baseline year test .....	IV.B	§ 93.119(e)
	Build/no-build test .....	IV.C	§ 93.119(e) § 93.119(g)(2)
	Regional conformity tests .....	VII	§ 93.109(i)