

is warranted to assist readers who may not need to read the entire proposal.

C. Does This Proposal Include the Entire Transportation Conformity Regulation?

No. The proposed regulatory text is limited to proposed changes to affected portions of the conformity rule. However, a complete version of the conformity rule is available to the public on our transportation conformity website listed in Section I.B.2. of this proposal. The complete version is intended to help reviewers understand today's proposed changes in context with the June 30, 2003 conformity proposal and other existing rule sections that are not proposed to be changed.

III. Conformity Grace Period and Revocation of the 1-Hour Ozone Standard

A. When Will Conformity Apply for the 8-Hour Ozone and PM_{2.5} Standards?

Conformity applies one year after the effective date of EPA's initial nonattainment designation for a given pollutant and standard. This one-year conformity grace period is provided by Clean Air Act section 176(c)(6) and § 93.102(d) of the conformity regulation.

Section 93.102(d) currently addresses newly designated nonattainment areas for ozone, CO, PM₁₀ and NO₂. This proposal would add PM_{2.5} to § 93.102(d) of the conformity rule even though the grace period is already available to all newly designated nonattainment areas as a matter of law. Today's proposed change would simply reflect the statutory flexibility in the regulation.

Although the same pollutant, the 8-hour and 1-hour ozone standards are different NAAQS. Therefore, every area that is designated nonattainment for the 8-hour ozone standard will also have a 1-year grace period before conformity applies for that standard, even if the area was designated nonattainment for the 1-hour ozone standard. Areas currently subject to conformity for the 1-hour ozone standard would continue to be subject to such requirements during the 1-year grace period for the 8-hour ozone standard. EPA anticipates designating areas for the 8-hour ozone standard in April 2004. If, for example, designations have a 30-day delayed effective date, conformity for the 8-hour ozone standard would begin to apply in May 2005, since under EPA's regulations the one-year grace period begins upon the effective date of an area's designation. EPA is proposing to include new regulatory definitions for the 1-hour and 8-hour ozone standards in § 93.101. These proposed definitions are consistent with how the standards

are described in existing EPA regulations at 40 CFR 50.9 and 40 CFR 50.10, respectively.

Similarly, every area that is designated nonattainment for the PM_{2.5} standard will have a one-year grace period before conformity applies for that standard. EPA plans to designate areas for PM_{2.5} by December 2004. Under today's proposed § 93.102(b), the conformity rule would apply in areas designated nonattainment for PM_{2.5}. Therefore, conformity for the PM_{2.5} standard would apply beginning in January 2006, for example, if a 30-day effective date is provided in accordance with § 93.102(d). It is important to note that PM₁₀ is a different pollutant than PM_{2.5}, and today's proposal does not affect the applicability and general implementation of conformity in PM₁₀ nonattainment and maintenance areas.

EPA anticipates that some areas will be designated as nonattainment for both the 8-hour ozone and PM_{2.5} standards. In these areas, conformity for the 8-hour ozone standard will apply one year after the effective date of the area's 8-hour ozone designation, while conformity for PM_{2.5} will apply one year after the effective date of the area's PM_{2.5} designation.

The following discussion provides more details on the application of the one-year conformity grace period in specific types of newly designated nonattainment areas—metropolitan, donut, and isolated rural areas.

1. Metropolitan Areas

Metropolitan areas are urbanized areas that have a population greater than 50,000 and a designated metropolitan planning organization (MPO) responsible for transportation planning per 23 U.S.C. 134. In general, within one year after the effective date of the initial nonattainment designation for a given pollutant and standard, the area's MPO and DOT must make a conformity determination with regard to that pollutant and standard for the area's transportation plan and TIP. If, at the conclusion of the one-year grace period, the MPO and DOT have not made a plan and TIP conformity determination for the relevant pollutant and standard, the area would be in a conformity "lapse." As described in section III.B., MPOs must continue to meet conformity requirements for the 1-hour ozone standard for plan, TIP, and project approvals made up until the time that the 1-hour standard is revoked.

During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed. Such projects include: exempt projects (e.g., safety projects) listed in §§ 93.126,

93.127 and 93.128 of the current conformity rule; transportation control measures in an approved SIP; and, projects or project phases (e.g., right-of-way, final design, construction) that received all required federal funding or approval prior to the conformity lapse. The practical impact of a conformity lapse will vary on an area-by-area basis. For additional information on projects that can proceed during a conformity lapse, see the following guidance memoranda that implement the March 2, 1999 U.S. Court of Appeals decision that affected related provisions of the conformity rule: DOT's January 2, 2002 guidance, published in the **Federal Register** on February 7, 2002 (67 FR 5882); DOT's May 20, 2003, and FTA's April 9, 2003, supplemental guidance documents; as well as EPA's May 14, 1999 guidance memorandum. EPA proposed to incorporate this existing guidance into the conformity regulation on June 30, 2003 (68 FR 38974). A copy of this proposed rulemaking, as well as the guidance listed above, can be downloaded from EPA's transportation conformity Web site listed in section I.B.2. of this proposal.

2. Donut Areas

For the purposes of conformity, a "donut" area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO. The conformity requirements for donut areas, including the application of the one-year conformity grace period, are generally the same as those for metropolitan areas. Within one year after the effective date of an area's initial nonattainment designation, the existing and planned transportation network for the donut portion of the area (as well as for the metropolitan portion of the area) must demonstrate conformity, or conformity of the metropolitan transportation plan and TIP will lapse as discussed above, and the entire nonattainment area will be unable to obtain additional project funding and approvals at that time.

To demonstrate conformity of its plan and TIP, the adjacent MPO must include in its regional emissions analysis the emissions from the donut area's proposed transportation network and planned project activities. To demonstrate conformity of projects in the donut portion, such projects must have been included in the regional emissions analysis that supports the conformity determination of the metropolitan area's plan and TIP. In nonattainment and maintenance areas with a donut portion, the MPO and