

State DOT may choose to include donut area projects in the MPO's plan and TIP. However, this approach is not required by either DOT's planning regulations or the conformity rule.

The interagency consultation group for each newly designated nonattainment area that includes a donut portion should determine how best to consider the donut area transportation system and new donut area projects in the MPO's regional emissions analyses and conformity determinations. For more discussion on how conformity determinations should be made for donut areas, see the preamble to the original conformity rule published on November 24, 1993 (58 FR 62207).

3. Isolated Rural Areas

Isolated rural nonattainment and maintenance areas are areas that do not contain or are 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 for any portion of the area, 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 (STIPs) and statewide transportation plans, when appropriate.

Like all newly designated nonattainment areas, the one-year conformity grace period will begin on the effective date of an isolated rural area's initial nonattainment designation. However, because these areas do not have federally required metropolitan transportation plans and TIPs, they are not subject to the frequency requirements for conformity determinations on plans and TIPs specified in § 93.104(b), (c) and (e) of the current rule. Instead, conformity determinations in isolated rural areas are required only when a non-exempt FHWA/FTA project(s) needs funding or approval. Therefore, although the one-year conformity grace period is available to isolated rural areas, no conformity consequences may apply upon the expiration of the one-year grace period because these areas may not have any projects that require funding and approval at that time.

In fact, many isolated rural areas may not have a transportation project in need of federal funding or approval for some time after the one-year grace period has ended, and therefore, will not have to demonstrate conformity before that time. Once the conformity grace period

has expired, a conformity determination will only be required in such areas the next time a non-exempt project needs funding or approval. For non-exempt FHWA/FTA projects, a conformity determination is normally required before the National Environmental Policy Act (NEPA) process is completed, since NEPA is typically the first stage requiring approval in a federal project's development. However, isolated rural areas that are newly designated as nonattainment may also be required to demonstrate conformity for subsequent funding and approvals for project phases (e.g., right-of-way acquisition, final design, construction) that occur after the grace period has ended, if these projects have not yet been included in a conformity determination and regional emissions analysis for the relevant pollutant and standard. For more information on the conformity requirements for isolated rural areas, see § 93.109(g) of the current conformity regulation; corresponding discussions on how to demonstrate conformity in isolated rural areas can also be found in the preambles to the November 24, 1993 transportation conformity final rule (58 FR 62207) and the August 15, 1997 final rule (62 FR 43785). Please note that the current rule's § 93.109(g) would become § 93.109(l) under today's proposal, due to other proposed revisions and additions to this regulatory section. The proposed changes to § 93.109 do not change the basic conformity requirements for isolated rural areas.

B. When Does Conformity Stop Applying for the 1-Hour Ozone Standard?

EPA proposed in a separate rulemaking to revoke the 1-hour ozone standard—in whole or in part—one year after the effective date of EPA's 8-hour ozone standard designations (June 2, 2003, 68 FR 32819). Today's conformity proposal is consistent with the revocation options in the June 2003 proposal, but does not seek additional comment on the proposed revocation options.

Clean Air Act section 176(c)(5) requires conformity only in areas that are designated nonattainment or maintenance for a given pollutant and standard. Therefore, under either of the revocation options in EPA's proposed 8-hour ozone implementation rule, conformity for the 1-hour ozone standard would no longer apply in existing 1-hour ozone nonattainment and maintenance areas once the standard and area designations are revoked. The proposed one-year delay in the revocation of the 1-hour ozone standard is linked to the one-year

statutory conformity grace period for newly designated 8-hour ozone nonattainment areas. To preserve the progress that areas have made in achieving clean air to date, EPA believes that 1-hour ozone nonattainment and maintenance areas should continue to ensure that transportation activities conform to the existing 1-hour ozone standard until conformity for the new 8-hour ozone standard applies.

During the one-year grace period, areas that are currently subject to the 1-hour ozone standard must continue to adhere to 1-hour conformity requirements. Additionally, areas should consider at what point they will determine conformity for the 8-hour ozone standard. For example, if a conformity determination is made in June 2004, an area may choose to demonstrate conformity for the 1-hour ozone standard and address the 8-hour ozone standard at a later date near the end of the one-year grace period. In contrast, if a conformity determination is made in January 2005, an area may choose to demonstrate conformity for both ozone standards because of the approaching end of the one-year grace period.

Under EPA's June 2003 implementation proposal, when the 1-hour standard is revoked, conformity would no longer apply for either ozone standard in areas that are attaining the 8-hour ozone standard. See EPA's proposed 8-hour implementation rule for more discussion on the proposed options for revoking the 1-hour ozone standard (June 2, 2003; 68 FR 32818–32825).

C. When and for What Ozone Standard Does Conformity Apply in Areas With an Early Action Compact for the 8-Hour Ozone Standard?

Areas that are violating the 8-hour ozone standard but are attaining the 1-hour ozone standard—including 1-hour ozone maintenance areas—were eligible for an Early Action Compact (EAC) as described in EPA's November 14, 2002 memorandum entitled, "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts" and EPA's June 2, 2003 proposal for the implementation of the 8-hour ozone standard (68 FR 32859–32860).

For areas participating in an EAC, EPA plans to provisionally defer the effective date of the area's 8-hour ozone nonattainment designation into the future. The deferral of the 8-hour designation effective date is contingent upon the participating area's adherence to all the terms and milestones of its EAC. If the EAC area attains the 8-hour