

# Regulatory Announcement

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## Transportation Conformity Final Rule: Conformity Amendments for the New 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards, Response to March 1999 Court Decision, and Additional Rule Changes

*The U.S. Environmental Protection Agency (EPA) is revising the transportation conformity rule to: 1) provide transportation conformity regulations for the new 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS); 2) incorporate existing federal guidance that is consistent with a U.S. Court of Appeals decision; and 3) streamline and improve EPA's existing transportation conformity rule. Transportation conformity is a Clean Air Act requirement that ensures that federally-supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). Conformity ensures that public health is protected by early consideration of transportation decisions in cities with air quality challenges.*

### **Background and Description of Final Rule**

EPA developed this final rule in response to two proposals that were published last year. On November 5, 2003, EPA published a proposal to

address conformity requirements under the new ozone and PM<sub>2.5</sub> air quality standards (68 FR 62690). On June 30, 2003, EPA proposed to incorporate existing federal guidance into the conformity rule consistent with a March 2, 1999, U.S. Circuit Court of Appeals decision (68 FR 38974). EPA is now combining both of these rulemaking efforts into one final rule to provide a complete package to all existing and new nonattainment and maintenance areas. The following paragraphs provide further information on the main issues addressed in this final conformity rule.

First, we are conducting this rulemaking in the context of EPA's broader strategies for implementing the new air quality standards. EPA's nonattainment area designations for the new 8-hour ozone standard are effective on June 15, 2004, and EPA anticipates designating areas for the new PM<sub>2.5</sub> standard in December 2004. Through this final rule, EPA is providing clear guidance and procedures for implementing conformity for both new standards.

The final rule describes when conformity first applies in new ozone and PM<sub>2.5</sub> nonattainment areas. The Clean Air Act and transportation conformity rule allow a one-year grace period before conformity applies for the new standards, and this grace period begins upon the effective date of EPA's nonattainment designation for either new standard.

The final rule also describes the general requirements for doing conformity under the new standards, such as the regional emissions test(s) that would apply before and after SIP motor vehicle emissions budgets are established for the new standards. A motor vehicle emissions budget (or "budget") is the level of emissions from cars and trucks that the state has determined to be consistent with local air quality goals. Through this final rule, EPA is providing certain 8-hour ozone areas and all PM<sub>2.5</sub> areas a choice between what conformity emissions test can be used for ensuring that transportation decisions are consistent with clean air. EPA is also providing additional flexibility for areas with less severe air quality problems. SIP budgets for the existing 1-hour ozone standard will be used for 8-hour ozone conformity prior to establishing 8-hour SIPs, unless other tests are deemed more appropriate through an area's interagency consultation process. Using existing 1-hour ozone SIP budgets in the interim will ensure that progress continues towards achieving the new ozone standard.

Second, the final rule incorporates existing EPA and Department of Transportation (DOT) guidance for a March 2, 1999, decision from the U.S. Court of Appeals for the District of Columbia Circuit. In *Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999, the U.S. Court of Appeals ruled against EPA on several provisions of the transportation conformity regulations. One significant rule revision resulting from the court decision affects the procedures for advancing highway and transit projects during a conformity lapse. These projects may proceed, consistent with the court decision, during a conformity lapse as long as they have received the appropriate federal approvals before the lapse. A conformity lapse occurs when an area does not meet conformity deadlines on time. The final rule also establishes in regulation EPA's existing administrative process for determining whether the motor vehicle emissions budgets in SIP submissions are appropriate to use in conformity determinations.

Finally, EPA is making several other changes to clarify the conformity regulations and improve implementation. Of particular interest is a final rule revision that streamlines the current requirements for redetermining conformity after certain SIP actions have occurred (e.g., after EPA's approval of a SIP). This revision ensures that a new conformity determination is required only for SIP budgets that have never been used in the conformity process. Another significant revision implements the Clean Air Act in a more reasonable and practicable manner by allowing transportation planners to base regional emissions analyses on assumptions available at the beginning of the conformity process. Under the current conformity rule, transportation agencies must include the latest planning assumptions available at the end of the conformity process (i.e., after a regional analysis has already been completed).

### **Key Elements of the Final Rule**

- The final rule directly supports EPA's broader strategy for implementing the new ozone and PM<sub>2.5</sub> standards. Providing clear guidance on how to implement transportation conformity under the new standards will ensure that transportation and air quality planning is coordinated and that clean air is achieved.
- EPA has worked closely with DOT in the development of all aspects of this final rule. Additionally, EPA consulted with state and local transportation and air quality agencies and interest groups in its initial development of the conformity options for the new standards that were proposed in November 2003.

- The final rule provides guidance for when conformity first applies in new ozone and PM<sub>2.5</sub> nonattainment areas. It also describes the general requirements for doing conformity under the new standards, such as what conformity emissions test(s) would apply before and after a SIP is established for the new standards. EPA is also providing additional flexibility for implementing these tests in areas with less severe air quality.
- EPA notes that the final rule does not address transportation conformity requirements for PM<sub>2.5</sub> precursors and PM hot-spot analyses. EPA will consider conformity requirements for addressing PM<sub>2.5</sub> precursors after the close of the comment period on the EPA's soon to be proposed general PM<sub>2.5</sub> implementation rule. EPA will also be publishing a supplemental notice of proposed rulemaking to request additional comment on options related to new PM<sub>2.5</sub> and existing PM<sub>10</sub> hot-spot requirements for individual transportation projects. EPA intends to finalize any conformity provisions for PM<sub>2.5</sub> precursors and PM hot-spots before PM<sub>2.5</sub> designations are effective.
- This final rule also revises the transportation conformity regulations to incorporate current guidance issued by EPA and DOT to implement a March 1999 U.S. Court of Appeals decision. This final rule provides clear guidance and rules that will assist all nonattainment and maintenance areas in implementing conformity consistent with the court's ruling. State and local governments have been successfully implementing this guidance for almost five years.
- EPA is making other rule changes to clarify and improve the existing conformity regulations in existing and new areas. Of particular interest are final rule amendments for streamlining when a conformity determination is needed and using latest planning assumptions in a more practicable manner.

## **Health and Environmental Impacts**

The final rule will not result in any change in health and environmental benefits of the conformity program. This rulemaking will ensure that conformity is practicably implemented for the new and current air quality standards in a manner consistent with the Clean Air Act's public health and environmental goals.

## **For More Information**

You can access the final rule and related documents electronically on the Office of Transportation and Air Quality Web site at:

[www.epa.gov/otaq/transp/traqconf.htm](http://www.epa.gov/otaq/transp/traqconf.htm)

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