

**Transportation Conformity Rule Amendments for the New 8-hour  
Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and  
Miscellaneous Revisions for Existing Areas;  
Transportation Conformity Rule Amendments:  
Response to Court Decision and Additional Rule Changes**

**Summary of the July 1, 2004, Published Final Rule**

Note: This document provides a summary of the various rule revisions included in EPA's July 1, 2004, transportation conformity final rule (69 FR 40004). The July 1, 2004, rulemaking addresses: 1) transportation conformity under the new 8-hour ozone and PM<sub>2.5</sub> air quality standards; and 2) the March 2, 1999, conformity court decision that affected several provisions of the rule. The summary descriptions correspond with the individual preamble sections included in the final rule.

Section III: Conformity Grace Period and Revocation of the 1-hour Ozone Standard

As discussed in this section of the final rule, conformity applies one year after the effective date of EPA's initial nonattainment designation for the 8-hour ozone and PM<sub>2.5</sub> air quality standards. The rule provides information on how the one-year conformity grace period should be implemented in new 8-hour ozone and PM<sub>2.5</sub> areas, including multi-jurisdictional metropolitan, donut and isolated rural areas.

This section also discusses the conformity impacts of EPA's April 30, 2004, final rule (69 FR 23951) that revokes the 1-hour ozone standard one year after the effective date of 8-hour ozone nonattainment designations. In accordance with EPA's April 30, 2004, final rule, conformity for the 1-hour ozone standard will no longer apply in existing 1-hour nonattainment and maintenance areas once that standard and corresponding designations are revoked.

This section also describes when conformity will apply, or not apply, in areas with an Early Action Compact (EAC). See the conformity final rule and April 30, 2004, final rule for more details on this issue.

Finally, this section describes only minor revisions to the transportation conformity rule, since it primarily discusses issues that are already in statute, or are affected by other rulemakings or guidance.

Section IV: General Changes in Interim Emissions Tests

As discussed in this section, the final rule:

- ▶ Changes the previous conformity rule's references for "emissions reductions tests" to be "interim emissions tests;"
- ▶ Establishes 2002 as the baseline year for the baseline year interim emissions tests for the 8-hour ozone and PM<sub>2.5</sub> standards (i.e., for the "no-greater-than-2002" and "less-than-2002" interim emissions tests);

- ▶ Allows certain areas to utilize a “build-no-greater-than-no-build” test, and does not require regional emissions analyses in years where the transportation projects and assumptions in the build and no-build scenarios are the same; and
- ▶ Specifies that higher classified ozone and CO areas must continue to meet both the build-less-than-no-build and less-than-baseline year test during the time period before SIP budgets are available.

Section V: Regional Conformity Tests in 8-hour Ozone Areas That Do Not Have 1-hour Ozone SIPs

This section discusses the following rule changes:

- ▶ Once an 8-hour ozone area has adequate or approved 8-hour SIP budgets in place, those budgets must be used to demonstrate conformity.
- ▶ Prior to adequate or approved budgets:
  - marginal and subpart 1 (“basic”) areas can do either the build-no-greater-than-no-build test or the no-greater-than-2002 test.
  - higher classified ozone (moderate and above) and CO (moderate with design value greater than 12.7 ppm and serious) areas must continue to meet both the build-less-than-no-build and less-than-baseline year test, as stated above in the summary for Section IV.
- ▶ The final rule extends the 1-hour ozone flexibility for conformity determinations that meet clean data area requirements to 8-hour ozone areas. See the conformity final rule for further details.
- ▶ Prior to a SIP submission, interim emissions tests and regional emissions analyses in 8-hour ozone nonattainment areas must address both ozone precursors, nitrogen oxides (NOx) and volatile organic compounds (VOCs), unless EPA issues a NOx waiver for the 8-hour ozone standard.

Section VI: Regional Conformity Tests in 8-hour Ozone Areas That Have 1-hour Ozone SIPs

This section describes the following rule changes:

- ▶ Once an 8-hour ozone area has adequate or approved 8-hour SIP budgets in place, those budgets must be used to demonstrate conformity.
- ▶ Prior to adequate or approved 8-hour ozone SIP budgets, all 8-hour areas with adequate or approved 1-hour ozone SIPs must use their 1-hour budgets for 8-hour conformity, unless it is determined through the interagency consultation process that using the interim emissions tests is more appropriate for meeting Clean Air Act requirements (limited cases only, as described in preamble).
- ▶ The final rule discusses four different area boundary scenarios and how the budget test using 1-hour ozone budgets should be used to demonstrate conformity for the 8-hour ozone standard. Conformity for the four area boundary scenarios must be demonstrated as follows:

Scenario 1 – Where 8-hour and 1-hour ozone boundaries are the same, conformity must generally be demonstrated by using the 1-hour ozone SIP budgets.

Scenario 2 – Where the 8-hour ozone boundary is smaller than the 1-hour ozone boundary, conformity must generally be shown using one of the following versions of the budget test:

- the budget test using the portion(s) of existing adequate or approved 1-hour ozone SIP budgets that cover the 8-hour nonattainment area, where such portion(s) can be appropriately identified; or

- the budget test using the existing adequate or approved 1-hour ozone SIP budgets for the entire 1-hour nonattainment area. Emission reductions must come from within the 8-hour ozone area.

Scenario 3 – Where the 8-hour ozone boundary is larger than the 1-hour ozone boundary, conformity must generally be demonstrated using the budget test based on the 1-hour ozone SIP budgets for the 1-hour ozone area, plus the interim emissions test(s) for one of the following:

- the portion of the 8-hour ozone nonattainment area not covered by the 1-hour budgets;
- the entire 8-hour ozone nonattainment area; or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

Scenario 4 – Where portions of the 8-hour and 1-hour ozone boundaries overlap, conformity must generally be demonstrated using existing 1-hour budgets whenever feasible, plus the interim emissions test(s) for one of the following:

- the portion of the 8-hour ozone nonattainment area not covered by the 1-hour budgets;
- the entire 8-hour ozone nonattainment area; or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

If it is impossible to determine what part of a 1-hour ozone budget is appropriate, a Scenario 4 area can use the interim reduction test(s) alone.

- ▶ For more information on the conformity test requirements in complex areas, see EPA’s “Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards.” A copy of this guidance can be downloaded from EPA’s transportation conformity website at, <http://www.epa.gov/otaq/transp/conform/policy.htm>

#### Section VII: Regional Conformity Tests in PM<sub>2.5</sub> Areas

This section discusses the following rule changes:

- ▶ Once a PM<sub>2.5</sub> area has adequate or approved PM<sub>2.5</sub> budgets in place, those budgets must be used to demonstrate conformity.
- ▶ Prior to adequate or approved budgets, PM<sub>2.5</sub> areas can choose either the build-no-greater-than-no-build test or the no-greater-than-2002 test for direct PM<sub>2.5</sub> emissions and the relevant PM<sub>2.5</sub> precursors that apply in a given area.

#### Section VIII: Consideration of Direct PM<sub>2.5</sub> and PM<sub>2.5</sub> Precursors in Regional Emissions Analyses

As described in this section, the rule requires that directly emitted PM<sub>2.5</sub> from motor vehicle tailpipe, brake wear, and tire wear emissions must be considered in all conformity analyses. This section also explains that EPA is not finalizing conformity requirements for PM<sub>2.5</sub> precursors proposed in the November 5, 2003, rulemaking (68 FR 62690) in this action. EPA plans to finalize the requirements for PM<sub>2.5</sub> precursors in a subsequent rulemaking before PM<sub>2.5</sub> nonattainment designations are finalized.

### Section IX: Re-entrained Road Dust in PM<sub>2.5</sub> Regional Emissions Analyses

This section discusses the following rule changes:

- ▶ Conformity analyses must include re-entrained road dust if a SIP establishes an adequate or approved PM<sub>2.5</sub> budget that includes re-entrained road dust.
- ▶ Prior to adequate or approved budgets, re-entrained road dust must be included in conformity analyses only if EPA or the State air agency finds it to be significant.
- ▶ PM<sub>2.5</sub> emissions may be adjusted to reflect the true impact of re-entrained road dust on regional air quality in accordance with EPA's future guidance on this issue.

### Section X: Construction-Related Fugitive Dust in PM<sub>2.5</sub> Regional Emissions Analyses

This section discusses the following rule changes:

- ▶ Conformity must be demonstrated for construction-related fugitive dust if a SIP establishes an adequate or approved PM<sub>2.5</sub> budget that includes construction-related fugitive dust. Construction-related fugitive dust is not included in any PM<sub>2.5</sub> conformity determinations before a SIP is submitted.
- ▶ PM<sub>2.5</sub> emissions may be adjusted to reflect the true impact of construction-related fugitive dust on regional air quality in accordance with EPA's future guidance on this issue.

### Section XI: Compliance With PM<sub>2.5</sub> SIP Control Measures

As described in this section, FHWA and FTA projects in PM<sub>2.5</sub> nonattainment and maintenance areas are required to comply with the PM<sub>2.5</sub> SIP's control measures, when such measures exist. The final rule is similar to the current requirement for PM<sub>10</sub> areas.

### Section XII: PM<sub>2.5</sub> Hot-spot Analyses

This section explains that EPA is not finalizing any of the options for PM<sub>2.5</sub> hot-spot analyses proposed in the November 5, 2003, rulemaking (68 FR 62690) in this action. EPA plans to request further public comment on these and other options for PM<sub>2.5</sub> hot-spot analyses in a subsequent rulemaking. EPA plans to finalize requirements for PM<sub>2.5</sub> hot-spots before PM<sub>2.5</sub> designations are finalized.

### Section XIII: PM<sub>10</sub> Hot-spot Analyses

EPA is also not finalizing any of the options for PM<sub>10</sub> hot-spot analyses proposed in the November 5, 2003, rulemaking (68 FR 62690). EPA plans to request further public comment on these and other options for PM<sub>10</sub> hot-spot analyses in a subsequent rulemaking. Existing conformity rule PM<sub>10</sub> hot-spot requirements continue to remain in effect.

### Section XIV: Federal Projects

The final rule amends the conformity regulations in response to the March 2, 1999, conformity court decision that affected the procedures for advancing highway and transit projects during a conformity lapse. Consistent with the court decision, transportation projects may advance during a conformity lapse as long as they have received the appropriate federal approvals before the lapse. This rule revision is consistent with existing EPA and the Department of Transportation (DOT) guidance; guidance implementing the March 2, 1999, court decision can be downloaded from EPA's conformity website at, <http://www.epa.gov/otaq/transp/conform/policy.htm>

### Section XV: Using Motor Vehicle Emissions Budgets from Submitted SIPs for Transportation Conformity Determinations

The final rule requires EPA to find SIP budgets adequate before they can be used in a conformity determination. This rule revision is consistent with the March 2, 1999, conformity court decision and existing federal guidance on this issue. The rule also establishes EPA's existing administrative process for determining whether SIP budgets are adequate for conformity

purposes. It also describes the process for determining the adequacy of budgets through the SIP approval process and for changing a previous finding of adequacy or inadequacy.

#### Section XVI: Non-federal Projects

As discussed in this section, regionally significant non-federal projects cannot be advanced during a conformity lapse unless they have received all necessary state and local approvals prior to the lapse. This rule revision is consistent with the March 2, 1999, conformity court decision and existing federal guidance on this issue.

#### Section XVII: Conformity Consequences of Certain SIP Disapprovals

The final rule changes the point in time at which a conformity “freeze” occurs when EPA disapproves a control strategy SIP without a protective finding (i.e., deletes the previous rule’s 120-day grace period before a conformity freeze occurs). Under this rule change, a conformity freeze occurs immediately upon the effective date of EPA’s final disapproval of a control strategy SIP and its budgets if a protective finding is not made. During a conformity freeze no new plans, TIPs or plan/TIP amendments can be found to conform. This rule change is consistent with the March 2, 1999, conformity court decision and existing federal guidance on this issue.

#### Section XVIII: Safety Margins

The final rule deletes a provision of the conformity regulations that had allowed areas with SIPs submitted prior to November 24, 1993, to use existing safety margins for conformity without EPA approval. This rule revision is consistent with the March 2, 1999, conformity court decision and existing federal guidance on this issue.

#### Section XIX: Streamlining the Frequency of Conformity Determinations

This section discusses several changes to the conformity frequency requirements. Specifically, the final rule:

- ▶ Eliminates the requirement to determine conformity of the TIP within 6 months when conformity has been demonstrated for the transportation plan;
- ▶ Eliminates the requirement to redetermine conformity within 18 months of November 24, 1993, the publication date of the first conformity rule;
- ▶ Specifies that the 18-month SIP approval trigger begins on the effective date of EPA’s approval action;
- ▶ Streamlines the 18-month SIP approval trigger by requiring a conformity determination only when the budgets in an approved SIP have not previously been used in conformity;
- ▶ Eliminates the 18-month trigger for SIPs and federal implementation plans that add, delete, or change a TCM.

#### Section XX: Latest Planning Assumptions

The final rule changes the point in the conformity process when the latest planning assumptions are determined. The final rule allows conformity determinations to be based on the latest planning assumptions that are available at the time the conformity analysis begins, rather than at the time of DOT’s conformity determination for a transportation plan, TIP or project. This section clarifies the “time the conformity analysis begins,” and provides details on how the final rule should be implemented.

#### Section XXI: Horizon Years for Hot-spot Analyses

This section describes a clarification to the rule that project-level hot-spot analyses in metropolitan nonattainment and maintenance areas must consider the full time frame of the area’s transportation plan when the analysis is conducted. EPA does not expect this clarification to change significantly how project-level analyses are being conducted in practice.

### Section XXII: Relying on a Previous Regional Emissions Analysis

As discussed in this section, the final rule:

- ▶ Allows MPOs to rely on a previous regional emissions analysis for minor transportation plan revisions.
- ▶ Adds the existing policy interpretation into the rule that a conformity determination that relies on a previous analysis does not satisfy the three-year frequency requirement for plans and TIPs.
- ▶ Clarifies that a conformity determination that relies on a previous regional emissions analysis must be based on all adequate and approved SIP budgets that apply at the time that DOT makes its conformity determination.

### Section XXIII: Miscellaneous Revisions

In this section, EPA describes changes to the rule that streamline and improve the existing conformity regulations, such as:

- ▶ Adding and revising definitions;
- ▶ Including existing limited maintenance plan and insignificance policies into the regulatory text;
- ▶ Providing a grace period for new models;
- ▶ Clarifying budget test requirements;
- ▶ Clarifying requirements for non-federal projects in isolated rural areas.