



# Regulatory Announcement

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## Transportation Conformity Notice of Proposed Rulemaking: Response to March 1999 Court Decision and Additional Rule Changes

*The U.S. Environmental Protection Agency (EPA) is proposing to revise the transportation conformity rule in response to a U.S. Court of Appeals decision and thereby provide clear guidance and rules that will assist states in meeting the conformity requirements in a practicable manner consistent with the court's ruling. This rulemaking would also propose several changes to the conformity regulation that would clarify and improve implementation of the program. Transportation conformity is required by the Clean Air Act to ensure that federally funded or approved highway and transit activities are consistent with or "conform to" state air quality plans (SIPs).*

### Background

In *Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled against EPA on several provisions of the transportation conformity regulation. In response, EPA and the Department of Transportation (DOT) issued interim guidance to implement the court decision prior to EPA updating its regulation. State and local governments have been successfully implementing this guidance for over four years. The proposal would incorporate this existing guidance into the conformity regulation.

One significant proposal resulting from the court decision is to 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 proposal would also establish 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. A motor vehicle emissions budget is the level of emissions from cars and trucks that the state has determined to be consistent with local air quality goals.

In addition to issues addressed by the court decision, EPA will propose several other changes to clarify and improve the conformity regulation. Of particular interest is EPA's proposal to streamline the current requirements for redetermining conformity after certain SIP actions have occurred (e.g., after EPA's approval of a SIP). This proposal would ensure that a new conformity determination is only required for SIP budgets that have never been used in the conformity process.

A second significant proposal would implement 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 rule, transportation agencies must include the latest planning assumptions available at the end of the conformity process (after a regional analysis has already been completed).

## **Key Elements of the Proposed Rule**

- This proposal would revise the transportation conformity regulation consistent with current guidance that implements a March 1999 U.S. Court of Appeals decision issued by EPA and DOT.
- Consistent with the court decision and existing guidance, the proposal would allow transportation projects to proceed during a conformity lapse as long as they have received the appropriate federal approvals before the lapse.

- A second major proposal resulting from the court decision would establish 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 (i.e., EPA's "adequacy process").
- The proposal would also make a few additional changes to the conformity regulation that would streamline and improve implementation of the program. Of particular interest are EPA's proposals to: 1) streamline the number of triggers that require a new conformity determination; and, 2) allow transportation planners to base regional emissions analyses on assumptions available at the beginning of the conformity process.

## **Health and Environmental Impacts**

The proposed rule would not result in any change in health and environmental benefits of the conformity program. This rulemaking will continue to support the Clean Air Act's air quality standards to protect the public and environmental health.

## **Public Participation Opportunities**

We welcome your comments on this proposed rule. For instructions on submitting written comments, please see the *Federal Register* notice. You may submit written comments to EPA up to 30 days after the proposed rule is published in the *Federal Register*. It is available from the EPA Air Docket by calling (202) 566-1742; please refer to Docket No. OAR-2003-0063.

In addition, you can access the proposed rules 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)

## **For More Information**

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