



Federal Register

Thursday,
July 1, 2004

Technical Committee
Item #4

Part II

Environmental Protection Agency

40 CFR Part 93

**Transportation Conformity Rule
Amendments for the New 8-hour Ozone
and PM_{2.5} National Ambient Air Quality
Standards and Miscellaneous Revisions
for Existing Areas; Transportation
Conformity Rule Amendments: Response
to Court Decision and Additional Rule
Changes; Final Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 93
[FRL-7774-6]
RIN 2060-AL73; 2060-AI56
**Transportation Conformity Rule
Amendments for the New 8-hour
Ozone and PM_{2.5} National Ambient Air
Quality Standards and Miscellaneous
Revisions for Existing Areas;
Transportation Conformity Rule
Amendments: Response to Court
Decision and Additional Rule Changes**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: Today we (EPA) are amending the transportation conformity rule to finalize several provisions that were proposed last year. First, today's final rule includes criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or "standards"). Transportation conformity is required under Clean Air Act section 176(c) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of a state air quality implementation plan (SIP). We are conducting this rulemaking in part to revise the conformity regulation in the context of EPA's broader strategies for implementing the new ozone and PM_{2.5} standards.

The final rule also addresses a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). This final rule incorporates into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been used in place of certain regulatory provisions of the rule since the court decision.

DOT is EPA's federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of this rulemaking, and DOT concurs with this final rule.

EPA notes that a supplemental notice of proposed rulemaking will be published in the near future to request additional comment on options related to PM_{2.5} and PM₁₀ hot-spot requirements. EPA is also not finalizing at this time any requirements for addressing PM_{2.5} precursors in transportation conformity determinations for PM_{2.5} nonattainment and maintenance areas. EPA is

considering the transportation conformity rule's PM_{2.5} precursor requirements in the context of EPA's broader PM_{2.5} implementation strategy. All of these issues will be addressed in a separate final rule to be issued before PM_{2.5} designations become effective.

EFFECTIVE DATE: August 2, 2004.

ADDRESSES: Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR-2003-0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR-2003-0063. For more information about accessing information from the docket, see Section I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, patulski.meg@epa.gov, (734) 214-4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, kapichak.rudolph@epa.gov, (734) 214-4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, berry.laura@epa.gov, (734) 214-4858.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

- I. General Information
- I. Background on the Transportation Conformity Rule
- II. Conformity Grace Period and Revocation of the 1-hour Ozone Standard
- III. General Changes in Interim Emissions Tests
- IV. Regional Conformity Tests in 8-hour Ozone Areas That Do Not Have 1-hour Ozone SIPs
- V. Regional Conformity Tests in 8-hour Ozone Areas That Have 1-hour Ozone SIPs
- VI. Regional Conformity Tests in PM_{2.5} Areas
- VIII. Consideration of Direct PM_{2.5} and pm_{2.5} Precursors in Regional Emissions Analyses
- IX. Re-entrained Road Dust in PM_{2.5} Regional Emissions Analyses
- X. Construction-Related Fugitive Dust in PM_{2.5} Regional Emissions Analyses
- XI. Compliance with PM_{2.5} SIP Control Measures
- XII. PM_{2.5} Hot-spot Analyses
- XIII. PM₁₀ Hot-spot Analyses
- XIV. Federal Projects
- XV. Using Motor Vehicle Emissions Budgets from Submitted SIPs for Transportation Conformity Determinations

- XVI. Non-federal Projects
- XVII. Conformity Consequences of Certain SIP Disapprovals
- XVIII. Safety Margins
- XIX. Streamlining the Frequency of Conformity Determinations
- XX. Latest Planning Assumptions
- XXI. Horizon Years for Hot-spot Analyses
- XXII. Relying on a Previous Regional Emissions Analysis
- XXIII. Miscellaneous Revisions
- XXIV. Comments Not Related to Rulemaking
- XXV. How Does Today's Final Rule Affect Conformity SIPs?
- XXVI. Statutory and Executive Order Reviews

I. General Information
A. Regulated Entities

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government.	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government.	State transportation and air quality agencies.
Federal government.	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established official public dockets for today's final rule. Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR-2003-0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR-2003-0063. The

official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Docket telephone number is (202) 566-1742. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. You may have to pay a reasonable fee for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through EPA's transportation conformity Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>. You may also access this document electronically under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. Once in the EPA electronic docket system, select "search," then key in the appropriate docket identification number.

II. Background on the Transportation Conformity Rule

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act

section 175A) for the criteria pollutants: ozone, particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). Today's final rule also applies the conformity rule provisions in fine particulate matter (PM_{2.5}) areas. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards"). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

Today's final rule includes provisions from two proposals that were published on June 30, 2003 and November 5, 2003, as described below. EPA has consulted with the Department of Transportation (DOT), our federal partner in implementing the transportation conformity regulation, in developing all aspects of this rulemaking, and DOT concurs with this final rule.

B. What Did EPA Propose on June 30, 2003 and Why?

Today's final rule incorporates existing federal guidance into the conformity regulation consistent with a previous court decision. A decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Circuit affected several provisions of the August 15, 1997 rulemaking (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999; hereinafter referred to as the "court decision"). Specifically, the court's ruling affected provisions that pertain to five aspects of the conformity rule, including:

(1) Federal approval and funding of transportation projects in areas without a currently conforming transportation plan and transportation improvement program (TIP);

(2) Provisions allowing motor vehicle emissions budgets from submitted SIPs to be used in transportation conformity determinations before the SIP has been approved;

(3) The adoption and approval of non-federal transportation projects in areas

without a currently conforming transportation plan and TIP;

(4) The timing of conformity consequences following an EPA disapproval of a control strategy SIP (e.g., reasonable further progress SIPs and attainment demonstrations) without a protective finding; and,

(5) The use of submitted safety margins in areas with approved SIPs that were submitted prior to November 24, 1993.

In response to the court decision, the EPA and DOT issued guidance¹ to address the provisions directly affected by the court decision. DOT also issued guidance on May 20, 2003, to clarify the conformity requirements as they relate to FHWA/FTA projects that require environmental impact statements.² In addition, FTA issued guidance on April 9, 2003, that further clarified which approvals are necessary for transit projects to proceed during a conformity lapse.³ EPA and DOT consulted on the development of all of the guidance documents that were issued to implement the court decision.

This final rule incorporates all of these guidance documents, as proposed in EPA's June 30, 2003 rulemaking entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). EPA notes that although guidance implementing the court decision will still apply upon the effective date of this final rule, aspects of these guidance documents that are specifically addressed in this rulemaking will be governed by the

¹ May 14, 1999, Memorandum from Gay MacGregor, then-Director of the Regional and State Programs Division of EPA's Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision"; January 2, 2002, Memorandum from Mary E. Peters, Administrator, Federal Highway Administration (FHWA), and Jennifer L. Dorn, Administrator, Federal Transit Administration (FTA), to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, "Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity"; February 7, 2002, Notice, Issuance of Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity, **Federal Register**, 67 FR 5882.

² May 20, 2003, Memorandum from James M. Shrouds, Director, Office of Natural and Human Environment, FHWA, and Susan Borinsky, Director, Office of Human and Natural Environment, FTA, to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, "INFORMATION: Clarification of Transportation Conformity Requirements for FHWA/FTA Projects Requiring Environmental Impact Statements."

³ April 9, 2003, Memorandum from Jennifer L. Dorn, Administrator, FTA, to Regional Administrators, Regions 1-10, "INFORMATION: Revised FTA Procedures for a Conformity Lapse."

federal conformity rules when they become effective. In addition to issues affected by the court, the June 30, 2003 proposal and today's final rule include several amendments to other provisions of the conformity regulations. These amendments are aimed at improving the implementation of the conformity program.

The June 30, 2003 proposal and the comments received on that proposal serve as the basis for related provisions of today's final rule. The public comment period for the proposed rule ended on July 30, 2003. EPA received 25 sets of public comments on the proposed rule from MPOs; state and local transportation and air quality agencies; and, environmental, transportation and construction industry advocacy groups. Today's final rule makes several minor changes to the June 30, 2003 proposed rule in response to these stakeholder comments. The changes from the June 30, 2003 proposal and EPA's rationale for these changes are stated below. EPA has not, however, restated in this final rule background information and our complete rationale for many of the revisions to the conformity rule that are identical to the June 2003 proposal. The reader is referred to the proposal for such discussions. A copy of the proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

C. What Did EPA Propose on November 5, 2003 and Why?

This final rule is also based on the November 5, 2003 proposed rule entitled, "Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas" (68 FR 62690), and the comments received on that proposal. The public comment

period for this proposal ended on December 22, 2003. EPA held one public hearing for this proposal on December 4, 2003. EPA received over 110 sets of public comments on the proposed rule from MPOs, state and local transportation and air quality agencies, and environmental and transportation advocacy groups. EPA also received over 11,000 similar comments on the proposal from public citizens from a mass e-mail campaign. Today's final rule promulgates proposed options and rule revisions in response to these stakeholder comments. This preamble explains EPA's rationale for the selection of certain proposed options described in the November 2003 proposal. A copy of the November 2003 proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

EPA's nonattainment area designations for the new 8-hour ozone standard are effective on June 15, 2004 for most areas, and EPA anticipates designating areas for the new PM_{2.5} air quality standard in November or December 2004. EPA is conducting this rulemaking to provide clear guidance and rules for implementing conformity for these standards. Some of the conformity rule revisions in this rulemaking will provide more options and flexibility in demonstrating conformity. Other changes apply to existing 1-hour ozone, CO, PM₁₀ and NO₂ nonattainment and maintenance areas.

EPA notes that today's action does not finalize new transportation conformity requirements for PM_{2.5} precursors and PM_{2.5} hot-spot analyses, or make changes to existing PM₁₀ hot-spot analysis requirements. EPA is considering requirements for addressing PM_{2.5} precursors in transportation conformity determinations in the context of EPA's broader PM_{2.5}

implementation strategy. EPA will soon be publishing a supplemental notice of proposed rulemaking to request additional comment on options related to PM_{2.5} and PM₁₀ hot-spot requirements. PM_{2.5} precursors and PM_{2.5}/PM₁₀ hot-spot analysis requirements will be addressed in a separate final rule to be issued before PM_{2.5} designations become effective. See Sections VIII., XII., and XIII. for further information on these topics.

Other changes to the conformity program could occur in the future through the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21), which authorizes federal surface transportation programs. EPA will continue to monitor the proposed reauthorization proposals for their potential impact on the conformity regulation. If statutory amendments to the conformity program result from TEA-21 reauthorization, EPA would take appropriate action to address such changes in the future.

D. What Parts of the Final Rule Apply to Me?

The following table provides a roadmap for determining whether a specific final rule revision included in this rulemaking would apply in your area. This table illustrates which parts of the final rule are relevant for various pollutants and standards. Please note that Sections V.-VII. provide stand-alone descriptions of the regional emissions tests that will apply in PM_{2.5} areas and 8-hour ozone areas with and without existing 1-hour ozone SIPs. For example, if your area expects only to be designated nonattainment under the PM_{2.5} standard, you should read Section VII. but not Sections V. and VI. (for 8-hour ozone areas). EPA believes that any redundancy between these sections is warranted to assist readers that may not need to read the entire final rule.⁴

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone	Conformity grace period	III.A.	§ 93.102(d).
	Revocation of 1-hour ozone standard	III.B.	Not applicable.
	General implementation of new standards	III.C.	Not applicable.
	Early Action Compacts	III.D.	Not applicable.
	Baseline year test	IV.B.	§ 93.119(b).
	Build/no-build test (marginal classification and subpart 1 areas ⁴)	IV.C.	§ 93.119(b)(2); § 93.119(g)(2).
	Regional conformity tests (moderate and above classifications)	IV.D.	§ 93.119(b)(1).
	Regional conformity tests (areas without 1-hour ozone budgets)	V.	§ 93.109(d).
	Regional conformity tests (areas with 1-hour ozone budgets)	VI.	§ 93.109(e).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).

⁴ "Subpart 1 areas" are areas that are designated nonattainment under subpart 1 of part D of title 1

of the Clean Air Act. EPA also referred to these areas as "basic" nonattainment areas in its April 30,

2004 final designations rule for the 8-hour ozone standard (69 FR 23862).

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
PM _{2.5}	Transportation plan and modeling requirements (moderate and above classifications) ...	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
	Applicability	III.A.	§ 93.102(b)(1).
	Conformity grace period	III.A.	§ 93.102(d).
	Baseline year test	IV.B.	§ 93.119(e).
	Build/no-build test	IV.C.	§ 93.119(e); § 93.119(g)(2).
	Regional conformity tests	VII.	§ 93.109(i).
	Precursors in regional analyses	VIII.	No regulatory text being finalized.
	Re-entrained road dust in regional analyses	IX.	§ 93.102(b)(3); § 93.119(f).
	Construction-related fugitive dust in regional analyses	X.	§ 93.122(f).
1-hour ozone	Compliance with SIP control measures	XI.	§ 93.117.
	Hot-spots	XII.	No regulatory text being finalized.
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
	Revocation of 1-hour ozone standard	III.B.	No proposed regu- latory amendments.
	Build/no-build test (marginal and below classifications)	IV.C.	§ 93.119(b)(2); § 93.119(g)(2).
	Regional conformity tests (moderate and above classifications)	IV.D.	§ 93.119(b)(1).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).
PM ₁₀	Limited maintenance plans	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Transportation plan and modeling requirements (moderate and above classifications) ...	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§ 93.109(c).
	Build/no-build test	IV.C.	§ 93.119(d); § 93.119(g)(2).
	Compliance with SIP control measures (Request for information only)	XI.	No proposed regu- latory amendments.
	Hot-spots	XIII.	No regulatory text being finalized.
	Clarification to Precursors	XIV.E.	§ 93.102(b)(2); § 93.119(f)(5).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).
CO	Limited maintenance plans	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§ 93.109(g).
	Build/no-build test (lower CO classifications)	IV.C.	§ 93.119(c); § 93.119(g)(2).
	Regional conformity tests (higher CO classifications)	IV.D.	§ 93.119(c)(1).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).
	Limited maintenance plans	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Transportation plan and modeling requirements (moderate and serious classifications)	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
NO ₂	Clarification to use of approved budgets in conformity	XIV.G.	§ 93.109(f).
	Build/no-build test	IV.C.	§ 93.119(d); § 93.119(g)(2).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).
	Non-federal projects (for isolated rural areas only)	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity	XIV.G.	§ 93.109(h).

E. Does This Final Rule Include the Entire Transportation Conformity Regulation?

No. The regulatory text in this final rule is limited to 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 rulemaking. The complete version is intended to help reviewers understand today's final rule in context with other existing rule sections that are not being 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?

1. Description of Final Rule

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. This final rule adds 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.

Since the 1-hour and 8-hour ozone standards are different NAAQS, every area that was designated nonattainment for the 8-hour ozone standard has a one-year grace period before conformity applies for that standard even if the area was previously designated nonattainment for the 1-hour ozone standard. Areas subject to conformity for the 1-hour ozone standard continue to be subject to all applicable Clean Air Act requirements during the 1-year conformity grace period for the 8-hour ozone standard, as described in B. of this section. EPA designated areas for the 8-hour ozone standard on April 15, 2004, and published the final designations rule on April 30, 2004 (69 FR 23858). Designations for most of these 8-hour areas will be effective on June 15, 2004. Therefore, conformity for the 8-hour ozone standard will begin to apply on June 15, 2005 in most areas.

When conformity is done for the 1-hour standard during the grace period for the 8-hour standard, areas should consider whether demonstrating conformity for the 1-hour and 8-hour ozone standards at the same time is possible or advantageous. For example, if a conformity determination is made in September 2004 for a new or revised transportation plan and/or TIP, an area

would demonstrate conformity for the 1-hour ozone standard and may choose to address the 8-hour ozone standard at a later date near the end of the one-year grace period, if conformity analyses for the 8-hour standard are not yet completed. In contrast, if a conformity determination is made in January 2005 for a new or revised plan/TIP, an area may be able to complete all the necessary work to demonstrate conformity for both ozone standards at that time. If no new or revised plan/TIP is required during the one-year grace period, conformity could be determined for the 8-hour standard without also making a conformity determination for the 1-hour standard. Whatever the case, a conformity determination for the 8-hour standard must be in place on June 15, 2005 for the plan and TIP, or an area will lapse.

Areas should use the interagency consultation process to determine a schedule for conducting regional emissions analyses and demonstrating conformity for the 1-hour and 8-hour ozone standards during the one-year conformity grace period as appropriate. Areas can rely on similar analyses and other work for conformity determinations for existing and new standards, to the extent that such work meets applicable requirements.

EPA plans to designate areas for PM_{2.5} by November or December of 2004. Similarly, every area that is designated nonattainment for the PM_{2.5} standard will have a one-year grace period from the effective date of designations before conformity applies for that standard. It is important to note that PM₁₀ is a different pollutant than PM_{2.5}, and today's final rule does not affect the applicability and continued 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.

As described in the November 5, 2003 proposal, if upon the expiration of the one-year grace period, a metropolitan area does not have a transportation plan and TIP that conform to the applicable standard in place, the conformity status of the area "lapses." Likewise, within one year after the effective date of an area's initial nonattainment designation, the existing and planned transportation

network for any donut⁵ portion of an 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, and the entire nonattainment area will be unable to obtain additional non-exempt project funding and approvals at that time. During a conformity lapse funding and approval of transportation projects are restricted and only limited types of projects can proceed (e.g., safety projects, project phases that were approved before the lapse).

The November 2003 proposal also stated that the one-year conformity grace period applies in isolated rural nonattainment areas.⁶ However, conformity determinations in isolated rural areas are required only when a non-exempt FHWA/FTA project needs funding or approval. Therefore, 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 more information on the application of the conformity grace period in metropolitan, donut and isolated rural nonattainment areas, see the November 5, 2003 proposal to this final rule (68 FR 62695-62696). See Section III.C. below for guidance and EPA's responses to comments regarding implementation of the one-year grace period and conformity determinations under the new standards.

2. Rationale and Response to Comments

EPA received a number of comments on the one-year conformity grace period and the transition from the 1-hour ozone standard to the 8-hour ozone standard. Most commenters supported the one-year conformity grace period, with some commenters stating that the grace period makes sense and will provide state and local agencies with the time needed to prepare for conformity under the new standards. Another commenter supported the grace period as a means to prevent having to demonstrate conformity to two ozone standards simultaneously.

⁵ As defined in § 93.101 of today's final rule, donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

⁶ As defined in § 93.101 of today's final rule, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. These areas are not donut areas.

cooperative transportation and air quality planning. Therefore, EPA is not changing the final rule in response to this comment.

A few commenters supported one or the other of the proposed interim emissions tests in 8-hour marginal or subpart 1 areas. One commenter supported elimination of the build-no-greater-than-no-build test because no specific allowable level or limit is placed on emissions levels associated with the no-build scenario, while the no-greater-than-2002 test compares future emissions to a specified allowable level. However, another commenter made an opposing argument against the use of the no-greater-than-2002 test arguing that if an area was not attaining the 8-hour ozone standard in 2002, then the no-greater-than-2002 test allows emissions to continue at a level that will not bring the area into attainment. A third commenter suggested that prior to adequate or approved SIP budgets, emissions should be held to as low a level as possible to prevent an area from proceeding with transportation projects that may preclude them from meeting the 8-hour ozone standard in the future.

Since the transportation conformity rule was promulgated on November 24, 1993 (58 FR 62188), the build-less-than-no-build and less-than-1990 tests have been part of the transportation conformity rule as appropriate tests in meeting the conformity requirements of the Clean Air Act prior to the availability of SIP budgets. In the August 15, 1997 amendments (62 FR 43780), the transportation conformity rule was amended to allow ozone areas not classified moderate or higher to meet either the build-less-than-no-build test or the no-greater-than-1990 test. Our rationale for this change is found in the proposed rulemaking for those amendments (July 9, 1996, 61 FR 36112).

Though EPA has updated the tests in today's rule, our rationale for allowing 8-hour marginal and subpart 1 areas to choose between the two tests remains the same as described in the 1996 proposal. When there are no adequate or approved budgets, EPA believes that either test meets the Clean Air Act requirement that transportation activities will not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. In contrast to ozone areas of higher classifications, transportation activities in these areas are not required to contribute to emissions reductions per Clean Air Act section 176(c)(3)(A)(iii).

Though EPA considered additional options for moderate and above 8-hour ozone areas as discussed in Section IV.D., the final rule is consistent with requirements for 1-hour ozone areas. In 8-hour nonattainment areas classified moderate or above, EPA believes the build-less-than-no-build and the less-than-2002 tests together support the determination that a transportation plan, TIP, or project will not cause new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, these tests together demonstrate that plans and TIPs contribute to emissions reductions required by section 176(c)(3)(A)(iii) of the Clean Air Act. Additional discussion of the rationale for both tests in these areas is also found in Section IV.D.

EPA is also continuing to provide more choices to areas that qualify for EPA's clean data policy. As EPA intends to include the clean data policy in EPA's Phase 2 final 8-hour ozone implementation rule, EPA is including the conformity options for such areas in today's conformity rule. These provisions will be able to be used once EPA has found that an area is a clean data area for the 8-hour standard pursuant to the regulations the Agency intends to promulgate under Phase 2 of the 8-hour implementation rule. See EPA's previous discussion and rationale for the conformity clean data options from the preamble to the 1996 proposed and 1997 final transportation conformity rule amendments (July 9, 1996, 61 FR 36116; and August 15, 1997, 62 FR 43784–43785, respectively). Two commenters supported extending the clean data policy to qualifying 8-hour ozone areas. One reasoned that conformance with budgets constrained by emissions levels during years in which the area demonstrated attainment should not cause or contribute to nonattainment, and thus meeting any one of the tests for clean data areas should be sufficient to demonstrate conformity.

However, two commenters stated that EPA should not apply a "clean data policy" to ozone areas classified as moderate or above because Clean Air Act sections 172 and 175A require a completed SIP containing measures that must be implemented if the area backslides into nonattainment, and a maintenance plan if the area seeks to avoid implementing some elements of its nonattainment plan.

In today's final rule, EPA is not making changes to its existing clean data policy, nor to the conformity process for clean data areas. EPA is merely extending the conformity

flexibility that 1-hour ozone clean data areas have to the 8-hour ozone clean data areas. EPA believes this is appropriate since the Agency intends to extend the clean data policy to 8-hour areas for SIP purposes in Phase 2 of the final 8-hour ozone implementation rule. EPA will respond to all comments on the appropriateness of that extension in the final action on Phase 2 of the final 8-hour implementation rule.

Finally, one commenter wanted EPA to issue VOC waivers for areas that are NO_x limited, so they can focus on getting NO_x reductions. However, though section 182(f) of the Clean Air Act specifically provides that EPA could waive NO_x requirements in certain areas, the Clean Air Act provides no such flexibility with respect to VOCs. Since VOCs are clearly an ozone precursor, ozone areas must demonstrate conformity to VOC levels that provide for attainment and maintenance to prevent potential future violations, even in areas that may not need additional VOC reductions to attain. EPA has no ability to offer any provision to give areas VOC waivers.

VI. Regional Conformity Tests in 8-Hour Ozone Areas That Have 1-Hour Ozone SIPs

A. Description of Final Rule

This section covers how regional emissions analyses must be done in 8-hour ozone areas with an existing 1-hour ozone SIP that covers either part or all of the 8-hour ozone nonattainment area. The regulatory text in § 93.109(e) provides a general overview of when the budget test and interim emissions tests apply in 8-hour ozone nonattainment areas with adequate or approved 1-hour ozone SIP budgets. As in Section V., EPA describes the final rule provisions in four parts: conformity when 8-hour budgets are available, conformity before 8-hour budgets are available, conformity in clean data areas, and general implementation of regional emissions tests.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with budget(s) that EPA has found adequate or approved, the budget test with the budgets from the 8-hour ozone SIP must be used in accordance with § 93.118 to complete the regional emissions analysis for 8-hour conformity determinations. The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration). The first SIP could also

be submitted earlier and demonstrate a significant level of emission reductions from the current level of emissions, as described in Section V.A.1. Any existing 1-hour ozone SIP budgets and/or interim emissions tests will no longer be used for conformity for either NO_x or VOCs once an adequate or approved 8-hour SIP budget is established for such a precursor. State, local, and federal air quality and transportation agencies must consult on the development of 8-hour ozone SIPs including their budgets as appropriate, pursuant to § 93.105 of the conformity rule.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Under today's final rule, all 8-hour areas with adequate or approved 1-hour budgets must use these budgets for 8-hour conformity before 8-hour budgets are available, unless it is determined through the interagency consultation process that using the interim emissions tests is more appropriate for meeting Clean Air Act requirements. In today's rule, the budget test using the existing 1-hour ozone SIP budgets fulfills the regional emissions analysis requirement for the 8-hour ozone standard, rather than the 1-hour ozone standard. Please note that the 1-hour budgets are to be used as a proxy for 8-hour budgets. Conformity for the 1-hour and 8-hour ozone standards will not apply at the same time, according to EPA's April 30, 2004 final 8-hour ozone implementation rule, as described in Section III. of today's action.

There are four potential scenarios into which areas covered by this section can be categorized:

- *Scenario 1:* Areas where the 8-hour ozone area boundary is exactly the same as the 1-hour ozone area boundary;
- *Scenario 2:* Areas where the 8-hour boundary is smaller than the 1-hour boundary, (i.e., the 8-hour area is completely within the 1-hour area);
- *Scenario 3:* Areas where the 8-hour boundary is larger than the 1-hour boundary (i.e., the 1-hour area is completely within the 8-hour area); and
- *Scenario 4:* Areas where the 8-hour boundary partially overlaps the 1-hour area boundary.

EPA has posted diagrams of these four boundary scenarios for further clarification on the transportation conformity Web site. Please note that scenarios are determined according to how the entire 8-hour nonattainment area relates to the entire 1-hour nonattainment or maintenance area(s). For example, in a multi-state 8-hour area, the area's scenario and corresponding conformity requirements are based on the entire 8-hour area

boundary, rather than on each state's portion of the 8-hour area. State and local agencies can consult with EPA and DOT field offices to determine which scenario applies to a given 8-hour nonattainment area.

The following paragraphs describe how regional conformity tests are applied in the four boundary scenarios, as well as the circumstances under which another test(s) may be appropriate. Please see A.4. of this section for further information regarding when another test may be appropriate for meeting Clean Air Act requirements. EPA will post more detailed implementation guidance on its transportation conformity website for conformity determinations in new standard areas, including 8-hour ozone areas with 1-hour SIP budgets and multi-state/multi-MPO nonattainment areas. Please also see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

Scenario 1: Areas where 8-hour and 1-hour ozone boundaries are exactly the same. In this case, the 8-hour and 1-hour ozone boundaries cover exactly the same geographic area. Such an area could be formed from a single 1-hour area, or more than one 1-hour area, as long as the entire 8-hour area boundary is exactly the same as the boundary of the previous 1-hour area or areas.

In these areas, conformity must generally be demonstrated using the budget test according to § 93.118 with the 1-hour SIP budgets, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(i) covers Scenario 1 areas. The interagency consultation process would be used to clarify the 1-hour budget(s) for the 8-hour area. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in a regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule. EPA will post on its website implementation guidance for conducting 8-hour conformity determinations in multi-jurisdictional areas, including Scenario 1 areas with multiple states, MPOs, etc. Please see Section I.B.2. of this notice for information regarding EPA's conformity website.

Scenario 2: Areas where the 8-hour ozone boundary is smaller than and within the 1-hour ozone boundary. In this case, the 8-hour nonattainment area is smaller than and completely encompassed by the 1-hour nonattainment boundary. In these areas, conformity must generally be shown

using one of the following versions of the budget test:

- The budget test using the subset or 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. However, in this case any additional emissions reductions beyond those addressed by control measures in the 1-hour SIP budgets need to pass the budget test and must come from within the 8-hour nonattainment area.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(ii)(A) and (B) reflects these two choices. Though the November 5, 2003 proposed rule included both choices in one paragraph, today's rule separates them into different regulatory subparagraphs simply for ease of readability.

Once an area selects either of these budget test options, it must be used consistently for each analysis year of a given conformity determination. EPA believes that to do otherwise would be unnecessarily complicated and would imply that one test option used consistently for all analysis years may not demonstrate conformity. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in the regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule.

As described in the November 2003 proposal, the first budget test option is available to an area if it is possible to determine what portion of the 1-hour budget applies to the 8-hour area. In that case, that portion can be used as the budget for the 8-hour area. Determining such a budget would be straightforward, for example, if the budget corresponds directly with an on-road mobile inventory for the 1-hour ozone SIP that was calculated by county, and the portion to be subtracted is a specific county that is not part of the 8-hour ozone area. However, where the 1-hour SIP does not clearly specify the amount of emissions in the portion of the 1-hour ozone area not covered by the 8-hour ozone area, this method may not be available. The consultation process would be used to determine whether using a portion of a 1-hour ozone SIP

budget is appropriate and feasible, and if so, how deriving such a portion would be accomplished.

In the second budget test option, a conformity determination based on the entire 1-hour ozone budget would include a comparison between the on-road regional emissions produced in the entire 1-hour ozone area and the existing 1-hour ozone budgets.

However, if additional emissions reductions are required to meet conformity beyond those produced by control measures in the 1-hour SIP budgets, only reductions within the 8-hour ozone nonattainment area can be included in the regional emissions analysis. If conformity cannot be determined on schedule using either budget test option, only the 8-hour ozone nonattainment area would be in a conformity lapse.

Scenario 3: Areas where the 8-hour ozone boundary is larger than the 1-hour ozone boundary. This scenario will result when an entire 1-hour ozone nonattainment or maintenance area is contained within a larger 8-hour ozone area. For example, a Scenario 3 area would result when an 8-hour area is formed from an existing 1-hour area plus an additional county or counties that were not covered by the 1-hour standard. In these areas, the budgets from the previous 1-hour ozone area will not cover the entire 8-hour nonattainment area. However, conformity must consider regional emissions for the entire 8-hour ozone nonattainment area.

Therefore, in these areas, 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.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The interim emissions tests would only be used instead of the 1-hour budget if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year in the regional emissions analysis, as explained in A.4. of this section and

§ 93.109(e)(2)(v) of the final rule. The regulatory text in § 93.109(e)(2)(iii)(A) and (B) reflects requirements for Scenario 3 areas. EPA notes that the final rule separates Scenario 3 and 4 area test requirements in the regulation for easier implementation.

The final rule's options for interim emissions tests are intended to give areas the flexibility to continue to implement conformity as they have under the 1-hour standard. EPA is clarifying this flexibility related to multi-state areas in the final rule since it was intended by the proposal and supported by public comments received.

For example, if an 8-hour multi-state nonattainment area with multiple MPOs has separate adequate or approved 1-hour budgets for each state, the MPOs would continue to determine conformity to their state's 1-hour budgets. In this special case where states and MPOs want to continue to work independently under the 8-hour standard, the budget test would be completed with applicable 1-hour SIP budgets for each state. In addition, the interim emissions test(s) would be done for either:

- any portion of a state's 8-hour nonattainment area that is not covered by a state's 1-hour SIP budget; or
- the entire portion of the 8-hour nonattainment area covered by that state.

EPA notes that the interim emissions test(s) could also be done for the entire 8-hour nonattainment areas under this final rule in this example. However, doing so may not allow each MPO in this example to develop transportation plans and TIPs and conformity determinations independently.

Rather than include all the possibilities of this type and others in today's preamble, EPA will post implementation guidance on its transportation conformity Web site for conducting 8-hour conformity determinations with 1-hour SIP budgets, including determinations in multi-state and multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site. In any case, whether one or both interim emissions tests is required depends on the area's classification or whether an area is a subpart 1 area, as described in Section V. of today's preamble.

EPA acknowledges that there may be cases where it is difficult to model the remaining portion of the 8-hour ozone area separately, e.g., in an area where the remaining 8-hour ozone area is a ring of counties around the 1-hour

ozone area. In this case, an area may choose to complete the interim emissions test(s) for the entire 8-hour ozone area, rather than just the portion not covered by the 1-hour ozone budgets. Once an area selects a particular interim emissions test(s) and geographic coverage for such test(s), these choices must be applied consistently for all regional analysis years in a given conformity determination. For example, a marginal 8-hour ozone area that is larger than the 1-hour ozone area with one applicable 1-hour SIP can complete the regional emissions analysis by meeting the budget test for the 1-hour ozone nonattainment area and the no-greater-than-2002 test for the remaining portion of the 8-hour ozone area for all analysis years.

The consultation process should also be used to select analysis years for performing modeling where both the budget test (§ 93.118) and interim emissions test(s) (§ 93.119) are used. Sections 93.118(d) and 93.119(g) of the conformity rule both require the last year of the transportation plan and an intermediate year(s) to be analysis years where modeling is completed. However, the analysis years for the short-term may be different for the budget test and interim emissions tests in some cases. For example, § 93.118 requires modeling for the budget test to be completed for the attainment year if it is within the timeframe of the transportation plan; § 93.119 requires the first analysis year for the interim emissions tests to be within the first five years of the transportation plan. The consultation process can be used to select analysis years that satisfy both the budget and interim emissions test requirements as appropriate to avoid multiple modeling analyses in these cases.

Scenario 4: Areas where the 8-hour ozone boundary overlaps with a portion of the 1-hour ozone boundary. This scenario results when 1-hour and 8-hour boundaries partially overlap. For example, a Scenario 4 area could be an 8-hour area formed from a portion of one or more 1-hour areas plus new counties that were not covered by the 1-hour standard. As in the previous scenarios, these areas must generally use existing 1-hour budgets whenever feasible to determine conformity, plus the interim emissions test(s) when a portion of the 8-hour nonattainment area is not covered by existing 1-hour budgets.

In Scenario 4 areas, conformity must generally be demonstrated using the budget test based on the portion of the 1-hour ozone SIP budget(s) that covers both the 1-hour and 8-hour areas, plus



U.S. Environmental Protection Agency

Fine Particle (PM 2.5) Designations

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Recommendations for Areas to Be Designated “Nonattainment” for the Fine Particle National Air Quality Standards

ACTION

- On June 28 and 29, 2004, the Environmental Protection Agency (EPA) sent letters to state and tribal representatives responding to their recommendations for areas meeting and not meeting the national air quality standards for fine particles (PM 2.5). This action starts a 120 day period for the states and tribes to respond to EPA's modifications to their attainment/nonattainment area recommendations.
- EPA will make final designations of attainment, unclassifiable and nonattainment in November 2004.
- Areas not meeting the national air quality standards are called nonattainment areas. These areas have had (or have contributed to) PM 2.5 levels higher than allowed under EPA's national air quality standard. The standard is designed to protect the public from exposure to PM 2.5 at levels that may cause health problems. While fine particles are unhealthy for anyone to breathe, people with heart or lung disease, older adults, and children are especially at risk.
- States and tribes will have the opportunity to comment on EPA's recommendations on EPA's modifications to their recommendations, and to provide new information and analyses if necessary. States and tribes made their initial recommendations in February of 2004.
- The designations process plays an important role in letting the public know whether air quality in their area is healthy. Once designations take effect, they become an important component of state, local and tribal governments' efforts to reduce fine particle pollution. By law, nonattainment areas are subject to a number of requirements to reduce particles and the pollutants that form them.
- States and tribes with designated nonattainment areas must submit plans by February 2008 that outline how they will meet the PM 2.5 standards. Areas are required to attain clean air by 2010. EPA may grant attainment date extensions of up to five years in areas with more severe PM 2.5 problems and where emissions control measures are not available or feasible.
- The Bush Administration has made the reduction of fine particle pollution a critical element of a comprehensive national clean air strategy. This strategy includes EPA's recent rule to reduce pollution from nonroad diesel engines, and the proposed rule to reduce

pollution from power plants in the eastern U.S. These two rules are important components of EPA's efforts to help states and localities meet the more protective national fine-particle and 8-hour ozone air quality standards. Together these rules will help all areas of the country achieve cleaner air.

ABOUT DESIGNATIONS

- In November, when EPA makes final attainment and nonattainment designations, many areas across the country will need to take action to improve their air quality.
- Areas that will be designated attainment will have monitored air quality that meets the level of EPA's health based national air quality standards for fine particle pollution. While these areas will not have to take steps to improve air quality they must prevent their air quality from deteriorating.
- The Clean Air Act requires state, local and tribal governments to take steps to control particle pollution in nonattainment areas. Those steps may include stricter controls on industrial facilities, and additional planning requirements for transportation sources.
- State, local and tribal governments must detail these control requirements in plans demonstrating how they will meet the PM 2.5 national air quality standard. Those plans are known as state or tribal implementation plans, or SIPs/TIPs. States and tribes must submit their plans to EPA within three years after the Agency makes final designations (by February 2008).
- Nonattainment areas are subject to a measure known as "transportation conformity," which requires local transportation and air quality officials to coordinate planning to ensure that transportation projects, such as road construction, do not affect an area's ability to reach its clean air goals. Transportation conformity requirements become effective one year after an area is designated as nonattainment.
- Once designated, nonattainment areas also are subject to new source review requirements. New Source Review is a permitting program for industrial facilities to ensure that new and modified sources of pollution do not impede progress toward cleaner air.
- In February and April 2003, EPA provided guidelines to states and tribes for recommending nonattainment area boundaries for the PM 2.5 standard. The guidance instructed states and tribes to begin their analysis of attainment and nonattainment area boundaries based on the boundaries of metropolitan areas. The guidances also instructed states to include in nonattainment areas any nearby counties contributing to fine particle pollution in those metropolitan areas. The guidances also recommended that states and tribes consider using common boundaries for areas to be designated as nonattainment for both the PM 2.5 and 8-hour ozone standards. Common boundaries will help states and tribes facilitate future planning and implementation activities.
- EPA instructed states and tribes to use metropolitan area boundaries to ensure that they consider population density, traffic

and commuting patterns, commercial development and area growth when recommending areas for attainment and nonattainment designation.

- EPA also asked states and tribes to consider the following factors as they developed their boundary recommendations:
 - emissions and air quality in adjacent areas
 - population density and commercial development in adjacent areas
 - traffic and commuting patterns
 - extent, pattern and rate of growth
 - weather and transport patterns
 - mountains or other air basin boundaries
 - jurisdictional boundaries
 - level of control of emission sources

ABOUT THE FINE PARTICLE STANDARDS

- In July 1997, EPA issued National Ambient Air Quality Standards for Fine Particles (PM 2.5). The standards include an annual standard set at 15 micrograms per cubic meter, based on the 3-year average of annual mean PM 2.5 concentrations and a 24-hour standard of 65 micrograms per cubic meter, based on the 3-year average of the 98th percentile of 24-hour concentrations.
- A number of events delayed the implementation of the PM 2.5 standard.
 - EPA's new standards were challenged by the American Trucking Association, the U.S. Chamber of Commerce and other state and business groups.
 - The Transportation Equity Act for the Twenty-first Century (TEA-21) revised the deadline to publish nonattainment designations in order to provide additional time to collect three years of air quality monitoring data.
 - In February 2001, the Supreme Court upheld EPA's authority under the Clean Air Act to set National Ambient Air Quality Standards that protect the American public from harmful effects of air pollution. The Supreme Court also sent the case back to the D.C. Circuit Court of Appeals to resolve several additional issues. In March 2002, the DC Circuit Court rejected all remaining legal challenges to EPA's 1997 ambient air quality standards for PM 2.5.
 - The health effects associated with exposure to fine particles are significant. Epidemiological studies have shown a significant correlation between elevated fine particle levels and premature mortality. Other important effects associated with fine particle exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia.
 - Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children.

FOR MORE INFORMATION

- For more information on the designation process for the fine particle standards, go to EPA's Web site at www.epa.gov/pmdesignations.

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In some cases either the state and/or EPA recommended partial counties. These are identified by a (P). If a county is not listed below, EPA recommends that it be designated as attainment/unclassifiable.

State Recommendations vs. EPA's Response on PM2.5 Nonattainment Areas

State	Area Name	State Recommended Nonattainment Counties	EPA Recommended Nonattainment Counties
Alabama	Birmingham, AL	Jefferson	Jefferson Shelby Walker
	Chattanooga, TN-GA		Jackson
	Columbus, GA-AL	Russell	Lee Russell
California	Los Angeles, CA	Los Angeles (P) Orange Riverside (P) San Bernardino (P)	Los Angeles (P) Orange Riverside (P) San Bernardino (P)
	San Diego, CA	San Diego	San Diego
	San Joaquin Valley, CA	Fresno Kern (P) Kings Madera Merced San Joaquin Stanislaus Tulare	Fresno Kern (P) Kings Madera Merced San Joaquin Stanislaus Tulare
Connecticut	New York, NY-NJ-CT-PA	New Haven	Fairfield New Haven
Delaware	Philadelphia PA-NJ-DE-MD	New Castle	New Castle
District of Columbia	Washington MSA	District of Columbia	District of Columbia
Georgia	Athens, GA	Clarke	Clarke Madison Oconee

In some cases either the state and/or EPA recommended partial counties. These are identified by a (P). If a county is not listed below, EPA recommends that it be designated as attainment/unclassifiable.

Indiana	Cincinnati, OH-KY-IN		Dearborn (P)
	Chicago, IL-IN	Lake	Lake Porter
	Elkhart IN	Elkhart	Elkhart St. Joseph
	Evansville IN-KY	Dubois Vanderburgh	Dubois Gibson Pike Spencer Vanderburgh Warrick
	Indianapolis IN	Marion	Hamilton Hendricks Johnson Marion Morgan
	Louisville KY-IN	Clark	Clark Floyd Jefferson
Kentucky	Cincinnati, OH-KY-IN		Boone Campbell Kenton
	Huntington, WV- KY-OH		Boyd Lawrence
	Lexington, KY	Fayette	Clark Fayette Madison Mercer Woodford
	Louisville, KY-IN	Jefferson	Bullitt Jefferson
Maryland	Baltimore, MD	Anne Arundel Baltimore City Baltimore	Anne Arundel Baltimore City Baltimore Carroll Harford Howard
	Berkeley, WV-MD		Washington

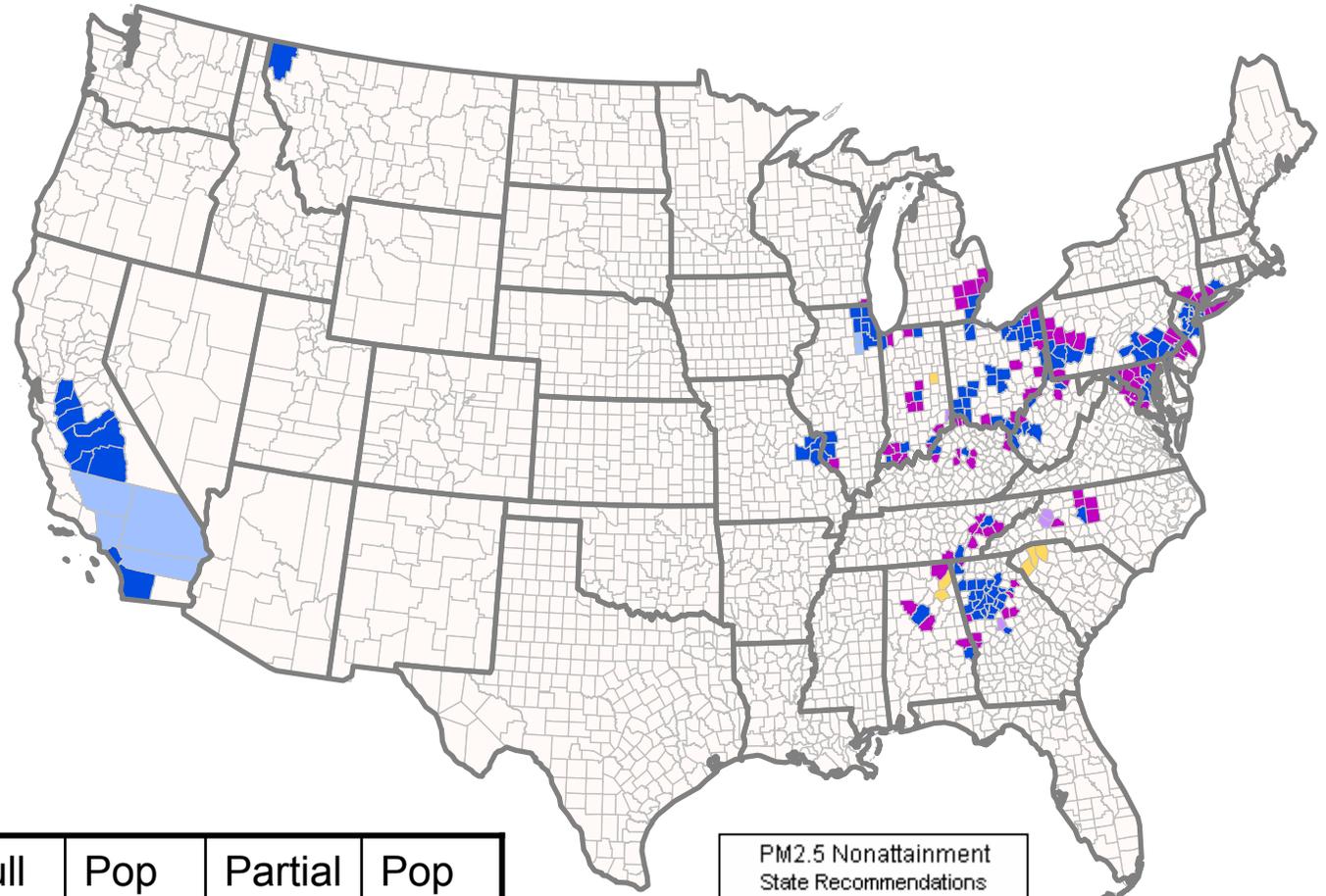
In some cases either the state and/or EPA recommended partial counties. These are identified by a (P). If a county is not listed below, EPA recommends that it be designated as attainment/unclassifiable.

	Washington MSA	Prince George's	Charles Frederick Montgomery Prince George's
Michigan	Detroit, MI	Monroe Wayne	Livingston Macomb Monroe Oakland St. Clair Washtenaw Wayne
Missouri	St. Louis, MO-IL	Franklin Jefferson St. Charles St. Louis St. Louis City	Franklin Jefferson St. Charles St. Louis St. Louis City
Montana	Lincoln County, MT	Lincoln	Lincoln
New Jersey	New York, NY-NJ-CT-PA	Bergen Essex Hudson Mercer Middlesex Monmouth Morris Passaic Somerset Union	Bergen Essex Hudson Mercer Middlesex Monmouth Morris Passaic Somerset Union
	Philadelphia, PA-NJ-DE-MD		Burlington Camden Gloucester
New York	New York , NY-NJ-CT-PA	Bronx Kings New York Queens Richmond	Bronx Kings Nassau New York Orange Queens Richmond Rockland Suffolk Westchester

In some cases either the state and/or EPA recommended partial counties. These are identified by a (P). If a county is not listed below, EPA recommends that it be designated as attainment/unclassifiable.

Pennsylvania	Harrisburg, PA	Cumberland Dauphin	Cumberland Dauphin Lebanon
	Johnstown, PA	Cambria	Cambria Indiana
	Lancaster PA	Lancaster	Lancaster
	Philadelphia, PA-NJ-DE-MD	Chester Delaware Philadelphia	Bucks Chester Delaware Montgomery Philadelphia
	Pittsburgh, PA	Allegheny Beaver Washington Westmoreland	Allegheny Armstrong Beaver Butler Greene Lawrence Washington Westmoreland
	Reading, PA	Berks	Berks
	York, PA	York	York
	Youngstown, OH		Mercer
Tennessee	Chattanooga TN-GA	Hamilton	Hamilton Marion
	Knoxville	Knox	Anderson Blount Knox Loudon McMinn Roane Sevier
Virginia	Washington MSA		Alexandria City Arlington Fairfax Loudoun Prince William Falls Church City Manassas City Manassas Park City Fairfax City

EPA Response to State Recommendations on PM_{2.5} Designations – June 29, 2004



	All Cou	Pop (mill)	Full Cou	Pop (mill)	Partial Cou	Pop (mill)
ST	142	79	134	65	8	14
EPA	244	99	234	85	10	14

PM2.5 Nonattainment
State Recommendations

- Nonattainment
- Partial nonattainment

EPA Additions

- Nonattainment
- Partial nonattainment
- Unclassifiable
- Attainment/Unclassifiable