



AN OVERVIEW OF AIR QUALITY PLANNING & TRANSPORTATION CONFORMITY FREQUENTLY ASKED QUESTIONS



1. HOW ARE THE AIR QUALITY AND TRANSPORTATION PLANNING PROCESSES LINKED?

The Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to identify and revise national ambient air quality standards (NAAQS) for air pollutants that may reasonably be anticipated to endanger public health or welfare. To date, EPA's Office of Air Quality Planning and Standards has set NAAQS for six pollutants, which are commonly called "criteria" air pollutants: carbon monoxide, nitrogen dioxide, ground-level ozone, lead, particulate matter (PM), and sulfur dioxide. EPA and the states share responsibility for ensuring that all areas attain federal NAAQS by the deadlines specified in the CAA.

A geographic area that does not meet EPA air quality standards for any one of the "criteria" pollutants is classified as a nonattainment area. The NAAQS require three consecutive years of complete annual data before an area can be designated as in attainment or nonattainment.

Designation as a nonattainment area triggers a series of steps that must be taken to bring the area into compliance. First, states are responsible for preparing and executing state implementation plans (SIPs) to achieve and maintain NAAQS within their borders. As part of these plans, states divide their total area into air quality control regions. State and local air pollution control authorities then establish enforceable requirements for controlling air pollution from stationary and mobile sources within each region. Mobile sources include on-road sources and off-road sources such as construction equipment. Specifically, an SIP identifies the total motor vehicle emissions that an area can produce and still meet air quality standards—called a motor vehicle emission budget (MVEB).

Once the MVEB is identified, metropolitan planning organizations must develop a transportation plan and a transportation improvement program (TIP) that "conform" with the SIP. 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 air quality standards.

2. WHAT IS TRANSPORTATION CONFORMITY?

Transportation conformity provisions under CAA attempt to coordinate transportation and air quality planning. As indicated above, the Act's conformity provisions are designed to ensure that: (1) planning for transportation systems is consistent with a state's SIP for attaining and maintaining NAAQS; and (2) transportation activities do not worsen air quality or interfere with the "purpose" of an SIP. In short, if the TIP does not fit the SIP, the area is said to be out of conformity. Transportation conformity applies in all nonattainment and maintenance areas (i.e., a previously designated nonattainment area) that fail to meet NAAQS.

Conformity determinations are required for the adoption, acceptance, approval or support of transportation plans, or for transportation improvement plans by a metropolitan planning organization or the U.S. Department of Transportation. In addition, conformity determinations are required for the approval, funding, or implementation of highway and transit projects. **When an area is out of conformity, the funding and implementation of all federal highway/transit projects in the nonattainment area are suspended.**

A conformity lapse occurs when an area fails to satisfy the time frame for making a conformity determination. Once conformity lapses, no new projects may advance until a new conformity determination is made.

3. UNDERSTANDING TRANSPORTATION CONFORMITY: WHERE DO I GO FOR MORE INFORMATION?

Applying the Clean Air Act's conformity mandates can be a challenge. *Following are some new online resources that may be downloaded from EPA's Transportation Air Quality (TRAQ) Center webpage at www.epa.gov/oms/transp/traqconf.htm or call the TRAQ Center Request Line at (734) 214-4100 for a hardcopy:*

- ***U.S. Department of Transportation's (DOT) Transportation Conformity Reference Guide***—This guide was prepared by the Federal Highway Administration, in cooperation with the Federal Transit Administration and EPA, to facilitate state and local agencies' compliance with the transportation conformity regulations. The guide contains the transportation conformity rules and relevant preamble language, questions and answers, and lists of resource materials on conformity.
- ***Federal Highway Administration Guidance for Qualitative Project Level "Hot Spot" Analysis in PM-10 Nonattainment and Maintenance Areas***—This document provides guidance in a question-and-answer format on conformity requirements that apply to particulate matter (PM)-10 nonattainment or maintenance areas. For example, it suggests approaches for performing a qualitative analysis of highway and transit projects in such areas.
- ***DOT's Guidance on Plan Requirements in Nonattainment and Maintenance Areas***—This document provides clarification on the implementation of the three-year transportation plan update requirements in nonattainment and maintenance areas.
- ***EPA's Final Policy Guidance: Improving Air Quality Through Land Use Activities***—This document presents the conditions under which the benefits of land use activities can be included in air quality and transportation planning processes.

4. DID EPA RECENTLY RESTORE THE GRACE PERIOD IN THE TRANSPORTATION CONFORMITY RULE?

EPA recently amended its transportation rules to give newly designated nonattainment areas a one-year grace period before the agency's conformity provisions apply (67 FR 50808, August 6, 2002). Under the final rule, an area that is designated as "not in attainment" of an EPA air quality standard for the first time has one year from the date of that designation to put in place a conforming transportation plan and a transportation improvement program (TIP). If this deadline is not met, the area is said to be in a "conformity lapse" and the federal funding and approval of all highway and transit projects in the nonattainment area are suspended.

The rule restores a grace period that had been allowed by EPA under a 1995 rule, challenged by the Sierra Club, and overturned by a federal appeals court in 1997. However, Congress amended the CAA in October 2000 to nullify the court decision and reinstate the grace period. The rule translates the amendment into regulatory text. According to EPA, the grace period will ease implementation of conformity in areas that are newly designated under EPA's stricter eight-hour ozone and fine-particulate matter standards (see *AGC's Environmental Observer* Issue No. 6-02, p. 2 for an "in-depth look" at EPA's new air rules and their potential impact on the construction industry).

The rule also requires that a conformity determination be made on a metropolitan area's transportation plan and TIP within 18 months of EPA's affirmative finding that the state implementation plan's (SIP) motor vehicle emissions budgets are adequate. This modification comes in response to 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). Previously, a new conformity determination was required within 18 months of a state's initial SIP submission.

For more information, contact EPA's Angela Spickard, Transportation and Regional Programs Division, at (734) 214-4283 or via e-mail at spickard.angela@epa.gov.

5. ARE ADDITIONAL AMENDMENTS TO THE TRANSPORTATION CONFORMITY RULE LIKELY?

The Clean Air Act (CAA) requires EPA to enact rules that establish the criteria and procedures for determining whether highway and transit plans, programs, and projects conform to state air quality implementation plans (SIP). According to the EPA's most recent regulatory agenda, EPA is scheduled to propose additional amendments to the transportation conformity rule in 2002. The first amendment would clarify how emissions trading may be reconciled in the conformity process (i.e., how to quantify emission reductions that can be traded among regulated parties and how trading should occur). The second amendment—also designed to align the conformity rule with the March 1999 court decision—would clarify the types of projects that can be implemented in the absence of a conforming transportation plan. In addition, it would explain EPA's process for reviewing newly submitted air quality plans and when those submissions can be used for conformity purposes. *EPA already has issued guidance to this effect—titled "Conformity Guidance on Implementation of March 2, 1999, Court Decision"—which is available online at www.epa.gov/oms/transp/traqconf.htm.*

For more information on the emission trading provisions, contact EPA's Laura Voss at (734) 214-4858. Questions on the submission and review of air quality plans and the types of projects excluded from the conformity rules may be directed to EPA's Kathryn Sargeant at (734) 214-4441.

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