UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
AIR AND RADIATION

MEMORANDUM

Subject: Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} Standard

From: Sarah Dunham, Acting Director
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Office of Transportation and Air Quality

To: EPA Regional Air Directors, Regions I – X

On October 17, 2006, EPA issued a final rule that retained the 24-hour PM_{10} national ambient air quality standard, and revoked the annual PM_{10} standard. I am providing guidance in the attached question and answer document to fulfill EPA's commitment in the October 2006 final rule to address how transportation conformity is to be implemented in PM_{10} areas. Please note that this document pertains only to transportation conformity, and does not address general conformity or the National Environmental Policy Act (NEPA).

General questions about this guidance can be directed to Laura Berry of my staff at berry.laura@epa.gov or phone number 734-214-4858.

Attachment

Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} Standard

1. What is the purpose of this guidance?

This guidance document covers what is required for transportation conformity in PM_{10} nonattainment and maintenance areas ("PM_{10} areas"). On October 17, 2006, EPA issued a final rule establishing changes to the $PM_{2.5}$ and PM_{10} national ambient air quality standards (NAAQS or "standards," 71 FR 61144).[1] Today's guidance completes the commitment EPA made in the October 2006 final rule to provide information regarding how transportation conformity will be implemented under the revised PM standards (71 FR 61215). EPA issued guidance on April 16, 2007, that addresses when the 2006 24-hour $PM_{2.5}$ standard applies for conformity.[2]

Please note that this document contains guidance related only to transportation conformity, and does not address general conformity or the National Environmental Policy Act (NEPA).

The Department of Transportation (DOT), our federal partner in implementing the conformity rule, assisted in the development of this guidance and concurred on its content. This guidance document is consistent with what is currently required and being implemented for PM_{10} conformity determinations.

2. 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 funded or approved highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (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 the relevant standards. EPA's transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation plans, transportation improvement programs (TIPs), and projects conform to the SIP. Transportation conformity applies to nonattainment and maintenance areas for transportation-related criteria pollutants: ozone, $PM_{2.5}$, PM_{10}, carbon monoxide, and nitrogen dioxide.

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[1] EPA originally promulgated $PM_{2.5}$ standards in an October 23, 1997, final rule (62 FR 55201).

[2] Memorandum from Merrylin Zaw-Mon, "Transportation Conformity and the Revised 24-hour $PM_{2.5}$ Standard," April 16, 2007. This memo can be downloaded from EPA's web site at: http://www.epa.gov/otaq/stateresources/transconf/generalinfo/rev24hr-pm25.pdf

3. How did the October 2006 final rule change the PM_{10} standards?

The October 2006 final rule retained the 24-hour PM_{10} standard of 150 $\mu g/m^3$, and revoked the annual PM_{10} standard.

For more information about the rulemaking, please consult the October 2006 final rule and EPA outreach materials at:
http://www.epa.gov/air/particlepollution/actions.html.

4. How is transportation conformity done in PM_{10} nonattainment and maintenance areas?

As stated in the October 2006 final rule (71 FR 61215), transportation conformity continues to apply to all PM_{10} nonattainment and maintenance areas because no designations were changed as a result of the final rule. Under Clean Air Act section 176(c)(5), conformity applies to areas based on their status as a nonattainment or maintenance area for a relevant criteria pollutant.[3] Therefore, as of December 18, 2006, (the effective date of the final rule), conformity determinations in PM_{10} areas are required only for the 24-hour PM_{10} standard. Conformity for the annual PM_{10} standard is no longer required, because EPA revoked the annual standard.

The following bullets summarize what PM_{10} areas are required to use as the test for conformity:

- PM_{10} areas that currently have adequate or approved SIP motor vehicle emissions budgets for the 24-hour standard must use them for future PM_{10} conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP.
- PM_{10} areas that have SIP budgets for both the 24-hour and annual standards must meet <u>only</u> the budgets established for the 24-hour standard. The budgets established for the annual standard no longer apply in these cases. See Questions 7 and 8 for additional detail.
- The limited number of PM_{10} areas that have SIP budgets only for the annual PM_{10} standard must continue to use them for PM_{10} conformity determinations, until SIP budgets are established for the 24-hour PM_{10} standard. See Question 9 for more information.
- PM_{10} areas that do not have any PM_{10} SIP budgets must continue to meet one of the two interim emissions tests described in 40 CFR 93.119(d) for the 24-hour PM_{10} standard.

Project-level conformity determinations in PM_{10} areas must continue to be made, but are required to be demonstrated only to the 24-hour PM_{10} standard. In some cases, a

[3] EPA's original nonattainment designations were for PM_{10} and covered both standards, rather than only the 24-hour or annual PM_{10} standard. Now that EPA has revoked the annual standard, the existing PM_{10} designations are effective with regard to the remaining applicable standard, i.e., the 24-hour PM_{10} standard.

project-level conformity determination will have to include a hot-spot analysis (see 40 CFR 93.116(a) and 93.123(b) or a state's approved conformity SIP). However, PM_{10} hot-spot analyses are no longer required for the annual PM_{10} standard, since that standard was revoked in all PM_{10} areas.

5. If a PM_{10} nonattainment or maintenance area is attaining the 24-hour PM_{10} standard, is transportation conformity still required for PM_{10} now that the annual standard has been revoked?

Yes. All PM_{10} nonattainment and maintenance areas – including any PM_{10} areas that are currently attaining the 24-hour PM_{10} standard and any PM_{10} areas that never violated the 24-hour PM_{10} standard – must continue to demonstrate conformity for the 24-hour PM_{10} standard even though the annual standard has been revoked. As noted above, transportation conformity applies based on an area's status as a nonattainment or maintenance area, and PM_{10} designations were not affected by the October 2006 final rule. As stated in the October 17, 2006, final rule, "both transportation and general conformity will continue to apply to all PM_{10} nonattainment and maintenance areas since no designations are changing" (71 FR 61215).

As of the December 18, 2006, effective date of the October 2006 rule, conformity determinations in PM_{10} areas have been required only for the 24-hour PM_{10} standard. The October 2006 final rule stated, "... because EPA is revoking the annual PM_{10} standard in this final rule, after the effective date of this rule conformity determinations in PM_{10} areas will only be required for the 24-hour PM_{10} standard; conformity to the annual PM_{10} standard will no longer be required" (71 FR 61215). Please refer to the October 17, 2006 final rule for additional information (71 FR 61144).

PM_{10} nonattainment areas that are currently attaining the 24-hour PM_{10} standard can consider submitting a PM_{10} maintenance plan that addresses that standard. EPA notes that an area's transportation conformity requirements can be reduced if that area is eligible for EPA's PM_{10} limited maintenance plan policy.[4] Please consult your EPA Regional Office for additional information if you are interested in developing any maintenance plan.

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[4] On August 9, 2001, EPA released a memorandum entitled, "Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas" (to download a copy of this memorandum, please go to EPA's website at http://www.epa.gov/ttn/oarpg/t1/memoranda/lmp_final.pdf). The transportation conformity rule at 40 CFR 93.101 defines a "limited maintenance plan" as "a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth." A regional emissions analysis is not required for a pollutant and standard in an area that has an adequate or approved limited maintenance plan for that pollutant and standard. Please refer to 40 CFR 93.109(j).

6. **What is necessary to demonstrate conformity in PM_{10} areas that have adequate or approved budgets for both the annual and the 24-hour PM_{10} standards? Do budgets for both standards have to be met?**

Areas that have adequate or approved budgets for both PM_{10} standards only need to meet the budget for the 24-hour standard, as the annual standard has been revoked. The Clean Air Act requires nonattainment and maintenance areas to meet the Act's transportation conformity requirements. After the revocation of the annual standard, the transportation conformity requirement does not apply for the annual standard. Therefore, in areas that have adequate or approved budgets for both the annual and the 24-hour PM_{10} standards, the 24-hour PM_{10} budgets are the only applicable budgets for transportation conformity.

7. **Do areas that have adequate or approved SIP budgets for both PM_{10} standards need to take any action to remove budgets established for the annual standard? Would transportation conformity for the annual standard still apply because the budgets are still in an approved SIP?**

No, states with SIP budgets for both standards are not required to take any action to remove budgets established for the annual PM_{10} standard. EPA notes that states can choose to revise such SIPs to remove any annual PM_{10} budgets since this standard has been revoked. The remaining 24-hour PM_{10} budgets would ensure that Clean Air Act anti-backsliding SIP requirements are met. As described above, the air quality standards that apply for a criteria pollutant do not depend on whether an area has a SIP with a budget for a particular standard of that pollutant. For PM_{10}, the applicable standard is now only the 24-hour standard.

8. **What conformity test would be used in a PM_{10} area that has adequate or approved SIP budgets only for the annual PM_{10} standard, and not for the 24-hour PM_{10} standard?**

As noted above, conformity ceased to apply for the annual PM_{10} standard on December 18, 2006. However, there are a limited number of PM_{10} areas that have SIP budgets only for the annual standard and not for the 24-hour standard. EPA believes that the statute requires such areas to continue to use the budgets for the annual standard, rather than use one of the interim emissions tests in 40 CFR 93.119(d).[5]

Furthermore, where annual PM_{10} budgets are the only PM_{10} budgets, EPA believes it is necessary to use the annual PM_{10} budgets to demonstrate conformity for the 24-hour PM_{10} standard to be consistent with legal precedent. In Environmental Defense

[5] Note that states that intend to submit a PM_{10} control strategy SIP or maintenance plan should include only a budget for the 24-hour standard. States where an existing PM_{10} SIP contains budgets for only the annual PM_{10} standard cannot remove such budgets from the SIP until 24-hour PM_{10} budgets are found adequate or approved to ensure no backsliding occurs, per Clean Air Act requirements.

v. EPA, 467 F.3d 1329 (D.C. Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked one-hour ozone standard existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone standard until the SIP is revised to include budgets for the 8-hour standard. While the Environmental Defense case concerned ozone, EPA believes the court's holding is relevant for other pollutants for which conformity must be demonstrated. Consequently, EPA believes that annual PM_{10} budgets must be used to demonstrate conformity for the 24-hour PM_{10} standard when adequate or approved 24-hour PM_{10} budgets are not established.

9. Who should I contact for additional information?

For specific questions concerning a particular PM_{10} nonattainment or maintenance area, please contact the transportation conformity staff person responsible for your state at the appropriate EPA regional office. Contact information for EPA regional transportation conformity staff can be found at the following website: http://www.epa.gov/otaq/stateresources/transconf/contacts.htm

General questions about this guidance can be directed to Laura Berry at EPA's Office of Transportation and Air Quality, berry.laura@epa.gov, (734) 214-4858.

10. Does this guidance create any new requirements?

This guidance is based on Clean Air Act requirements and existing associated regulations and does not create any new requirements. This guidance merely explains how to implement current transportation conformity requirements in light of the revisions to the PM_{10} standards that EPA promulgated on October 17, 2006.

The Clean Air Act and EPA's regulations at 40 CFR Parts 51 and 93 contain legally binding requirements. This document is not a substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, DOT, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance but still comply with the statute, and with SIP, conformity and transportation planning regulations. This guidance may be revised periodically without public notice.