

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit only one application for one educational facility for each competition.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 93**

[EPA-HQ-OAR-2009-0128; FRL-9188-5]

RIN 2060-AP57

Transportation Conformity Rule Restructuring Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to restructure several sections of the transportation conformity rule so that they would apply to any new or revised National Ambient Air Quality Standards (NAAQS) that are established in the future for transportation-related criteria pollutants. This proposal should reduce the need to amend the rule in the future for the sole purpose of referencing specific new or revised NAAQS. EPA is also proposing in this action that a near-term year would have to be analyzed when using the budget test when an area's attainment date has passed, or when an area's attainment date has not yet been established. The budget test demonstrates that the total on-road emissions projected for a metropolitan transportation plan or TIP are within the emissions limits ("budgets") established by the state air quality implementation plan ("SIP").

This action also includes several administrative proposals and clarifications to improve implementation of the rule.

The Clean Air Act (CAA) requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with ("conform to") the purpose of the state air quality implementation plan. The U.S. Department of Transportation (DOT) is EPA's Federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, and they concur with this proposed rule.

DATES: Written comments on this proposal must be received on or before September 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0128, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* a-and-r-docket@epa.gov.

- *Fax:* (202) 566-9744.

- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2009-0128. Please include a total of two copies.

- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA-HQ-OAR-2009-0128. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0128. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Patty Klavon, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: klavon.patty@epa.gov, telephone number: (734) 214-4476, fax number: (734) 214-4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: berry.laura@epa.gov, telephone number: (734) 214-4858, fax number: (734) 214-4052.

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

- I. General Information
- II. Background on the Transportation Conformity Rule
- III. Restructure of 40 CFR 93.109
- IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies
- V. Baseline Year for Certain Nonattainment Areas
- VI. Transportation Conformity Requirements for Secondary NAAQS
- VII. Analysis of a Near-Term Year in the Budget Test
- VIII. How does this proposal affect conformity SIPs?
- IX. Statutory and Executive Order Reviews

I. General Information**A. Does this action apply to me?**

Entities potentially regulated by the transportation 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. chapter 53. 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 proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation 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 40 CFR 93.102. 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. What should I consider as I prepare my comments for EPA?**1. Submitting CBI**

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal

Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

C. How do I get copies of this proposed rule and other documents?**1. Docket**

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OAR-2009-0128. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. You may also access this document electronically under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the official public docket is available through <http://www.regulations.gov>. You may

use <http://www.regulations.gov> to submit or 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. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. 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 the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

II. Background on the Transportation Conformity Rule

A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects 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 or achievement of interim emission reductions or milestones of the relevant NAAQS. Transportation conformity (hereafter, “conformity”) applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (“maintenance areas”) for transportation-related criteria pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO₂) and particulate matter (PM_{2.5} and PM₁₀).¹

EPA’s conformity rule (40 CFR parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. DOT is EPA’s Federal partner in implementing the conformity regulation. EPA has consulted with DOT, and they concur with this proposed rule.

B. Why are we issuing this proposed rule?

EPA has already undertaken two conformity rulemakings primarily for the purpose of addressing a new or revised NAAQS. See the March 24, 2010 final rule and the July 1, 2004 final rule (75 FR 14260, and 69 FR 40004, respectively). Due to other CAA requirements, EPA will continue to establish new or revised NAAQS in the future. Therefore, EPA is proposing to restructure two sections of the conformity rule, 40 CFR 93.109 and 93.119, and is proposing minor changes for definitions in 40 CFR 93.101, so that the rule’s requirements would clearly apply to areas designated for future new or revised NAAQS. These proposed changes are intended to minimize the need to make administrative updates to the conformity rule merely to reference

a specific new or revised NAAQS. EPA believes that these proposed revisions would provide more certainty to implementers without compromising air quality benefits from the current program. These proposed changes are found in Sections III. and V. of today’s proposal.

EPA is also proposing to clarify the additional conformity test option currently available to nonattainment areas that meet the criteria of EPA’s clean data² regulations or policies for certain NAAQS, and to extend that flexibility to any nonattainment areas covered by such a regulation or policy. See Section IV. of today’s proposal for further details. EPA is also clarifying that conformity requirements apply in areas designated nonattainment or maintenance for a transportation-related secondary NAAQS. See Section VI. for further information.

In addition, EPA is proposing that a near-term year would have to be analyzed when using the budget test when an area’s attainment date has passed, or when an area’s attainment date has not yet been established. The budget test demonstrates that the total on-road emissions projected for a metropolitan transportation plan or TIP are within the emissions limits (“budgets”) established by the state air quality implementation plan (“SIP”). Section VII. of this preamble describes this issue and EPA’s proposed change for budget test analysis years. Finally, Section VIII. covers how today’s proposal affects conformity SIPs.³

Two recent actions are useful background for today’s proposed rule. In the March 24, 2010 Transportation Conformity Rule PM_{2.5} and PM₁₀ Amendments (“PM Amendments”) rulemaking, EPA provided conformity procedures for state and local agencies in areas that are designated nonattainment for the 2006 24-hour PM_{2.5} NAAQS (“2006 PM_{2.5} NAAQS”)(75 FR 14260). The other rulemaking that provides useful background is the final rule EPA published on July 1, 2004 (69 FR 40004). In this rulemaking, EPA provided conformity procedures for state and local agencies under the

² Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that we are proposing a minor change to the existing definition of clean data found in 40 CFR 93.101, see Section IV. of today’s notice.

³ The transportation conformity SIP includes a state’s specific criteria and procedures for certain aspects of the transportation conformity process. For more information about transportation conformity SIPs, see EPA’s “Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)”, (EPA-420-B-09-001, January 2009).

8-hour ozone and PM_{2.5} NAAQS (or “1997 ozone” and “1997 PM_{2.5}” NAAQS, respectively).⁴ See EPA’s Web site at <http://www.epa.gov/otaq/stateresources/transconf/index.htm> for further information about any of EPA’s transportation conformity rulemakings.⁵

III. Restructure of 40 CFR 93.109

A. Overview

Conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP must include a regional emissions analysis that fulfills CAA requirements. The conformity rule provides for several different regional conformity tests that satisfy statutory requirements in different situations. Once a SIP with a motor vehicle emissions budget (“budget”) is submitted for a NAAQS and EPA finds the budget adequate for conformity purposes or approves it as part of the SIP, conformity must be demonstrated using the budget test for that pollutant or precursor, as described in 40 CFR 93.118.

EPA has amended the conformity rule on two prior occasions to address a new or revised NAAQS. In the July 1, 2004 final rule (69 FR 40004), EPA amended 40 CFR 93.109 by adding new paragraphs to describe the regional conformity tests for the 1997 ozone areas that do not have 1-hour ozone budgets, 1997 ozone areas that have 1-hour ozone budgets, and 1997 PM_{2.5} areas. Also, in the March 24, 2010 PM Amendments final rule (75 FR 14260), EPA amended 40 CFR 93.109 again by adding two new paragraphs to describe the regional conformity tests for 2006 PM_{2.5} areas without 1997 PM_{2.5} budgets, and 2006 PM_{2.5} areas that have 1997 PM_{2.5} budgets.

EPA believes it would be useful to restructure 40 CFR 93.109 to eliminate repetition and reduce the need to update the rule each time a NAAQS is promulgated. The same hierarchy of conformity tests as described below in B. of this section generally applies to all areas where conformity is required, and for the reasons described below, EPA believes it would apply to all future areas, regardless of pollutant or NAAQS. Given that CAA section 109(d)(1) requires EPA to revisit the NAAQS for criteria pollutants at least every five

⁴ The July 1, 2004 final rule described regional conformity tests for areas designated nonattainment or maintenance for the 8-hour ozone NAAQS codified at 40 CFR 50.10 and for areas designated nonattainment or maintenance for the PM_{2.5} NAAQS codified at 40 CFR 50.7.

⁵ At this Web site, click on “Regulations” to find all of EPA’s proposed and final rules as well the current transportation conformity regulations.

¹ 40 CFR 93.102(b)(1) defines PM_{2.5} and PM₁₀ as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

years, and that EPA is in the process of considering revisions to other NAAQS per this requirement, EPA anticipates other NAAQS revisions will be made in the future that will be subject to conformity requirements.

In the existing conformity regulation, 40 CFR 93.109 includes nine paragraphs, (c) through (k), one for each of the various types of nonattainment and maintenance areas. Each of these paragraphs contains the requirements that apply for that specific pollutant, NAAQS, and/or area boundary scenario, but each paragraph's requirements are consistent with the hierarchy of regional conformity tests described below in B. of this section. Therefore, there is redundancy in 40 CFR 93.109 as it currently exists.

B. Proposal

Today, EPA is proposing to restructure this section to provide the requirements for regional conformity tests in one paragraph, and project-level conformity tests in another. Under today's proposal, existing paragraphs (c) through (k) would be replaced with two paragraphs:

- Regional conformity tests, which would be covered by newly proposed paragraph § 93.109(c); and,
- Project-level conformity tests, which would be covered by newly proposed paragraph § 93.109(d).

EPA is not proposing substantive changes to this section of the conformity rule; therefore, we are taking comments only on the proposed restructuring of 40 CFR 93.109, not on the underlying requirements of the regulation.

New paragraph (c). Under today's proposal, § 93.109(c) would include requirements for using the budget test and/or interim emissions tests in the same manner as in the existing regulation. That is, the following general hierarchy of regional conformity tests that is found in the existing regulations would be retained by the new structure:

- First, a nonattainment or maintenance area for a specific NAAQS must use the budget test, if the area has budgets from an adequate or approved SIP for that specific NAAQS (proposed § 93.109(c)(1)). For example, once a 2010 ozone nonattainment or maintenance area has adequate or approved SIP budgets for the 2010 ozone NAAQS, it would use those budgets for the budget test as the regional test of conformity;

- Second, if an area does not have such budgets but has budgets from an adequate or approved SIP that addresses a different NAAQS for the same criteria pollutant, these budgets must be used in the budget test. Where such budgets do

not cover the entire area, the interim emissions test(s) may also have to be used (proposed § 93.109(c)(2)). For example, before a 2010 ozone area has adequate or approved budgets for the 2010 ozone NAAQS, it would use the budget test, using budgets from an adequate or approved SIP for an earlier ozone NAAQS, if it has them.⁶ If these budgets do not cover the entire 2010 ozone area, the interim emissions test(s) may also have to be used;

- Third, if an area has no adequate or approved budgets for that criteria pollutant at all, it must use the interim emissions test(s), as described in 40 CFR 93.119 (proposed § 93.109(c)(3)). For example, if a 2010 ozone area has no adequate or approved budgets for any ozone NAAQS, it would use the interim emissions test(s), as described in 40 CFR 93.119.

All of the requirements and flexibilities in the existing rule that apply for regional conformity tests for specific pollutants would be retained in proposed § 93.109(c)(4) and (c)(6). In addition, EPA is proposing to expand the clean data⁷ conformity option in 40 CFR 93.109(c)(5), (d)(5) and (e)(4) to all clean data areas for which EPA has a clean data regulation or policy (proposed § 93.109(c)(5)). See Section IV. below for further information.

New paragraph (d). With regard to project-level requirements, today's proposed paragraph § 93.109(d) places the existing rule's requirements for hot-spot analyses of projects in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas together in one paragraph (proposed § 93.109(d)(1), (2), and (3)). These requirements would be unchanged from the existing regulation.⁸

Related proposed amendments to 40 CFR 93.101. EPA also proposes to remove the definitions for "1-hour ozone NAAQS," "8-hour ozone NAAQS," "24-hour PM₁₀ NAAQS," "1997 PM_{2.5} NAAQS," "2006 PM_{2.5} NAAQS," and "Annual PM₁₀ NAAQS" found in 40 CFR 93.101 of the conformity rule. Under today's proposed reconstruction of 40 CFR 93.109, these definitions

⁶ It is possible that the adequate or approved budget for an earlier ozone NAAQS could be an adequate or approved 1-hour ozone budget.

⁷ Clean data refers to air quality monitoring data determined by EPA to indicate attainment of the NAAQS. Note that we are proposing a minor change to the existing definition of clean data found in 40 CFR 93.101, see Section IV. of today's notice.

⁸ Project-level conformity determinations are typically developed during the National Environmental Policy Act (NEPA) process, although conformity requirements are separate from NEPA-related requirements. Today's proposal to restructure 40 CFR 93.109 does not affect how NEPA-related requirements are implemented in the field.

would no longer be necessary because the proposed regulatory text for 40 CFR 93.109 would apply for any and all NAAQS of a pollutant for which conformity applies.

C. Rationale for Restructuring of § 93.109

EPA believes that section 93.109 of the conformity rule can be restructured because a recent court decision has already established the legal parameters for regional conformity tests. In *Environmental Defense v. EPA*, 467 F.3d 1329 (DC Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until the SIP is revised to include budgets for the new (or revised) NAAQS. EPA incorporated the court's decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4434). 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 the hierarchy of regional conformity tests described above, which is already found in the existing rule for 8-hour ozone and 2006 PM_{2.5} areas, would apply for any NAAQS of a pollutant for which conformity applies.

Today's proposed restructuring would reduce the likelihood that EPA would have to amend the conformity rule when new or revised NAAQS are promulgated, which would have several benefits. First, implementers would know the requirements for regional conformity tests for any potential area designated nonattainment for a new or revised NAAQS, even before such area's designation. Thus, implementers may have more time to determine conformity of a transportation plan and TIP and would not need to wait for any additional conformity rulemaking from EPA. Second, reducing the need to amend the conformity regulation each time a NAAQS change is made would save government resources and taxpayer dollars and also reduce stakeholder effort needed to keep track of regulatory changes.

EPA's proposed changes to 40 CFR 93.109, along with today's proposed elimination of definitions in 40 CFR 93.101 and proposed changes for the baseline year in 40 CFR 93.119 (see Section V.), should make the rule sufficiently flexible to cover most future NAAQS changes, such as promulgation

of a new or revised NAAQS or revocation of a NAAQS.

EPA is not proposing to revise regional conformity test requirements in 40 CFR 93.109⁹ or hot-spot analyses requirements for existing areas and is therefore not seeking comment on these requirements in existing areas. Further, today's proposal is consistent with the regional conformity test requirements for 2006 PM_{2.5} areas and PM₁₀ areas described in the March 24, 2010 PM Amendments final rule. The rationale for the required regional tests has been described in previous rulemakings as well. The rationale for the requirements for project-level conformity tests in CO, PM_{2.5}, and PM₁₀ areas has also been described in previous rulemakings,¹⁰ and EPA is not proposing to revise and is therefore not seeking comment on those requirements.

Request for comments. While EPA believes today's changes proposed for 40 CFR 93.109 are clear and concise, we also recognize that there could be other ways to organize this section to achieve the same result of accommodating the promulgation of future NAAQS. For example, another possible structure for this section could be to create separate paragraphs containing the conformity tests required for each of the pollutants for which conformity applies: Ozone, CO, PM₁₀, PM_{2.5}, and NO₂. Under this alternative structure, the requirements for each pollutant would be wholly contained in one specific paragraph but the same requirements for regional conformity tests would be repeated five times in the regulatory text.

EPA is specifically seeking comment on the overall organization of this section, whether it be (1) By regional conformity test and project-level test requirements as in today's proposed regulatory text, (2) by each of the five pollutants for which conformity applies, or (3) by another method that achieves the goals described in today's proposal to restructure the conformity provisions in this section, without affecting the substantive requirements of the regulation. EPA requests that commenters provide the reasons for their preferences if possible, as these reasons are especially valuable to EPA in making a final decision. Where

commenters recommend an alternative structure, please provide example text.

IV. Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies

A. Overview

Currently, sections 93.109(c)(5), (d)(5), and (e)(4) of the conformity rule provide an additional regional conformity test option for moderate and above 1-hour and 8-hour ozone nonattainment areas that meet the criteria of EPA's existing clean data regulation and policy.¹¹ Today's conformity proposal would clarify this flexibility and extend this flexibility to any nonattainment areas that are covered by EPA's clean data regulations or clean data policies.¹²

B. Proposal

Today, EPA is proposing to clarify that any nonattainment area that EPA determines has air quality monitoring data that meet the requirements of 40 CFR parts 50 and 58 and that show attainment of the NAAQS—a "clean data" area¹³—can choose to complete a regional conformity analysis using the most recent year of clean data as the motor vehicle emissions budget(s) rather than using the interim emissions test(s)

¹¹ For further details on EPA's clean data policy for ozone areas, please refer to July 1, 2004 final rule (69 FR 40019–40020). See also EPA's November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646) and 40 CFR 51.918. EPA had also previously issued a policy memorandum on May 10, 1995 that addressed certain SIP requirements of moderate and above 1-hour ozone areas. This memorandum is entitled, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements of Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," and is available on EPA's Web site at: <http://www.epa.gov/ttn/caaa/t1/memoranda/clean15.pdf>.

¹² In addition to EPA's clean data regulation and policy for ozone areas, EPA also promulgated a clean data regulation for the PM_{2.5} NAAQS. See EPA's April 25, 2007 Phase 1 PM_{2.5} Implementation rulemaking for the 1997 PM_{2.5} NAAQS (72 FR 20586) and 40 CFR 51.1004(c). EPA had previously issued a policy memorandum on December 14, 2004 on this subject. This memorandum is entitled, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards," and is available on EPA's Web site at: http://www.epa.gov/pmdesignations/1997standards/documents/Clean_Data_Policy.pdf.

EPA has also applied its clean data policy in making determinations of attainment in PM₁₀ nonattainment areas. For example, see the October 30, 2006 final rule (71 FR 63642) for the finding of attainment for the San Joaquin Valley, California PM₁₀ nonattainment area. See also the February 8, 2006 final rule (71 FR 6352) for the finding of attainment of the Ajo, Arizona PM₁₀ nonattainment area, and the March 14, 2006 final rule (71 FR 13021) for the finding of attainment for the Yuma, Arizona PM₁₀ nonattainment area.

¹³ See 40 CFR 93.101.

per 40 CFR 93.119 if the following are true:

- The state or local air quality agency requests that budgets be established in conjunction with EPA's determination of attainment (Clean Data) rulemaking for the respective NAAQS, and EPA approves the request; and,

- These areas have not submitted a maintenance plan for the respective NAAQS and EPA has determined that these areas are not subject to the CAA reasonable further progress and attainment demonstration requirements for the respective NAAQS.

Otherwise, clean data areas for a relevant NAAQS must complete a regional conformity analysis using either the budget test if they have adequate or approved budgets (per 40 CFR 93.109 and 93.118), or the interim emissions test(s) per 40 CFR 93.119 if they do not have adequate or approved budgets.

The proposed regulatory text for this flexibility is found in § 93.109(c)(5), and would clarify that the state or local air quality agency would have to make the request that the emissions in the most recent year for which the area is attaining (*i.e.*, the most recent year that the area has "clean data") be used as budgets, and that EPA would have to approve that request. These steps are in the current regulation; today's proposed regulatory text would simply make them more explicit and would extend them to any nonattainment area covered by EPA's clean data regulations or policies.

EPA is also proposing to update the definition of "clean data" in 40 CFR 93.101 to describe this term more accurately. The updated definition would reference the appropriate requirements at 40 CFR part 50, as well as part 58. The reference to 40 CFR part 58 is included in the existing definition.

We are seeking comments on the proposal to extend this flexibility to use clean data budgets for any NAAQS for which EPA has a clean data regulation or policy. We are not seeking comments on the existing clean data regulation and policy and how they currently apply to ozone nonattainment areas under the conformity rule.

C. Rationale

Today's proposed clarification for clean data areas is consistent with the current conformity rule. Options for conformity tests for clean data areas remain the same, although today's proposal would extend the additional flexibility to use clean data budgets to any nonattainment areas where EPA develops a clean data regulation or policy for the relevant NAAQS. The regulatory text for this proposal is found

⁹ EPA is proposing to include a near-term analysis year requirement for the SIP budget test in 40 CFR 93.118. See Section VII. of today's proposal for further details.

¹⁰ For further details on project-level conformity test requirements, please refer to the March 10, 2006 final rule (71 FR 12469–12506). See also EPA's January 24, 2008 final rule (73 FR 4432–4434), EPA's July 1, 2004 final rule (69 FR 40036–40037; 40056–40058), the August 15, 1997 final rule (62 FR 43798), and the November 24, 1993 final rule (58 FR 62199–62201; 62207; 62212–62213).

in proposed § 93.109(c)(5), which would apply to areas designated for any NAAQS.

EPA believes that nonattainment areas that EPA has determined to be attaining a NAAQS (clean data areas) for which EPA has developed a clean data regulation or policy should be extended the same flexibility that the current conformity rule provides to moderate and above 1-hour and 8-hour ozone areas¹⁴ that qualify for EPA's ozone clean data regulation and policy. *See* EPA's previous discussion and rationale for the clean data conformity option in the preamble to the 1996 conformity proposal and 1997 final rule (July 9, 1996, 61 FR 36116, and August 15, 1997, 62 FR 43785, respectively).

For further details on EPA's clean data regulations and policies, please refer to the July 1, 2004 final rule (69 FR 40019–40020). *See also* EPA's November 29, 2005 Phase 2 Ozone Implementation rulemaking for the 1997 ozone NAAQS (70 FR 71644–71646), 40 CFR 51.918, and EPA's April 25, 2007 Clean Air Fine Particle Implementation Rule for the 1997 PM_{2.5} NAAQS (72 FR 20603–20605). *See also* the October 30, 2006 final rule (71 FR 63642), the February 8, 2006 final rule (71 FR 6352) and the March 14, 2006 final rule (71 FR 13021) determinations of attainment for various PM₁₀ nonattainment areas using EPA's Clean Data policy.

V. Baseline Year for Certain Nonattainment Areas

A. Overview

Before an adequate or approved SIP budget is available, conformity for the transportation plan, TIP, or project not from a conforming transportation plan and TIP is demonstrated with one or both of the interim emissions tests, as described in 40 CFR 93.119. The interim emissions tests include different forms of the “build/no-build” test and “baseline year” test. In general, the baseline year test compares emissions from the planned transportation system to emissions that occurred in the relevant baseline year. The build/no-build test compares emissions from the planned (or “build”) transportation system with the existing (or “no-build”) transportation system in the analysis year. Because EPA has amended this section of the conformity rule two times in the past to add a baseline year for new or revised NAAQS (*See* Section II.B. of today's proposal for details), EPA is proposing today to revise 40 CFR 93.119 to apply more generally to any

NAAQS, rather than updating this section of the conformity rule to address a specific NAAQS.

B. Proposal

EPA is proposing to revise 40 CFR 93.119 to define the baseline year by reference to another requirement. Rather than naming a specific year, EPA is proposing to define the baseline year for conformity purposes as the most recent year for which EPA's Air Emissions Reporting Requirements (AERR) (40 CFR 51.30(b)) requires submission of on-road mobile source emissions inventories, as of the effective date of EPA's nonattainment designations for any NAAQS promulgated after 1997. AERR requires on-road mobile source emission inventories to be submitted for every third year, for example, 2002, 2005, 2008, 2011, etc.¹⁵

This proposed definition establishes the baseline year for conformity purposes for any areas designated nonattainment for a NAAQS that EPA promulgated after 1997. This has already been done for areas designated nonattainment for the 2006 PM_{2.5} NAAQS, which was promulgated on October 17, 2006 (71 FR 61144). *See* the March 24, 2010 PM Amendments final rule (75 FR 14265–14266) for further details. Today's proposed definition is consistent with Option 2 which was finalized for the 2006 PM_{2.5} NAAQS in the PM Amendments final rule, except that in the PM Amendments final rule, this definition applies only to areas designated for a PM_{2.5} NAAQS other than the 1997 PM_{2.5} NAAQS. Today's proposal would apply more generally, for any new or revised NAAQS of any pollutant promulgated after 1997, not just the PM_{2.5} NAAQS. Therefore, for any future NAAQS changes, the conformity rule would not have to be amended merely to establish a new baseline year for conformity purposes; this proposed definition would automatically establish a relevant baseline year. For all future NAAQS, EPA would identify the baseline year that results from today's proposed definition for implementers in guidance and maintain a list of baseline years on EPA's Web site.¹⁶ Once the baseline year is established according to this provision, it would not change (*i.e.*, the baseline year would not be a rolling baseline year for a given NAAQS). Today's proposal would not change the

baseline years already established prior to today's proposed rule.

The current requirements for interagency consultation (40 CFR 93.105(c)(1)(i)) would apply to the process to determine the latest assumptions and models for generating baseline year motor vehicle emissions to complete any baseline year test. The baseline year emissions level that is used in conformity would be required to be based on the latest planning assumptions available, the latest emissions model, and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, 93.122 of the current conformity rule.

The baseline year test can be completed with a submitted or draft baseline year motor vehicle emissions SIP inventory, if the SIP reflects the latest information and models. An MPO or state DOT, in consultation with state and local air agencies, could also develop baseline year emissions as part of the conformity analysis. EPA believes that a submitted or draft SIP baseline inventory may be the most appropriate source for completing the baseline year tests for an area's first conformity determination under a new or revised NAAQS. This is due to the fact that SIP inventories are likely to be under development at the same time as these conformity determinations, and such inventories must be based on the latest available data at the time they are developed (CAA section 172(c)(3)).

C. Rationale

EPA believes that today's proposed definition for the baseline year is appropriate for meeting CAA conformity requirements for nonattainment areas and is environmentally protective. Coordinating the conformity baseline year with the year used for SIP planning and an emissions inventory year was EPA's rationale for using 2002 as the baseline year for conformity tests in nonattainment areas for the 1997 ozone NAAQS. As described in the July 1, 2004 final rule (69 FR 40015), EPA selected 2002 as the conformity baseline year because 2002 was identified as the anticipated emissions inventory base year for the SIP planning process under the 1997 ozone NAAQS.¹⁷ EPA continues to believe that coordinating the baseline year for interim emissions tests with other data collection and inventory requirements would allow state and local governments to use their

¹⁵ These are known as Three-Year Cycle Inventories. *See* 40 CFR 51.30(b) in the EPA's December 17, 2008 final rule (73 FR 76539) for more details.

¹⁶ *See* <http://www.epa.gov/otaq/stateresources/transconf/baseline.htm>.

¹⁴ The 1-hour ozone NAAQS was revoked effective June 15, 2005. Transportation conformity no longer applies for this NAAQS.

¹⁷ Also, the AERR requires submission of point, nonpoint, and mobile source emissions inventories every three years, and 2002 was one of those required years for such updates.

resources more efficiently. EPA also believes it would be important to coordinate the conformity rule's baseline year with a year that is consistent with emission inventory requirements, which will most likely be consistent with the year ultimately used as a baseline for SIP planning for a particular NAAQS as well.

Because the CAA requires EPA to review the NAAQS for possible revision once every five years, the existing conformity rule as structured requires EPA to update the conformity rule to establish a baseline year every time a new or revised NAAQS is promulgated. Therefore, EPA is proposing to generalize the language for the baseline year for areas designated under any NAAQS established after 1997.

Adopting this proposal would standardize the process for selecting an appropriate baseline year to use in meeting conformity requirements before SIP budgets have been established for any NAAQS promulgated in the future.

Today's proposed baseline year definition provides implementers with knowledge of the baseline year for any NAAQS promulgated after 1997 upon the effective date of nonattainment designations for that NAAQS, without having to wait for EPA to amend the conformity rule. As a result, MPOs and other implementers would understand conformity requirements for future NAAQS revisions more quickly, which may, in turn, enable them to fully utilize the 12-month conformity grace period to complete conformity determinations for new nonattainment areas.

EPA believes that generalizing the baseline year in the conformity rule would result in an appropriate baseline year for any given NAAQS. This proposed amendment to the conformity rule is based on criteria that have been used for establishing specific baseline years for other NAAQS (58 FR 62191, 69 FR 40014). Therefore, EPA believes that generalizing the baseline year would continue to result in an environmentally protective and appropriate baseline year for conformity under any future NAAQS revisions and is consistent with how conformity has been implemented for new or revised NAAQS in the past.

VI. Transportation Conformity Requirements for Secondary NAAQS

Based on the CAA conformity provisions, the existing conformity rule, and today's proposal, conformity requirements must be met for all transportation-related criteria pollutants and NAAQS. All of the transportation-related criteria pollutants except CO have a primary NAAQS and a secondary NAAQS. The primary NAAQS protects

public health. The secondary NAAQS prevents unacceptable effects on the public welfare, e.g., unacceptable damage to crops and vegetation, buildings and property, and ecosystems (CAA section 109(b)(2)).

CAA section 176(c)(1)(A) states that conformity to a SIP means "conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards * * *". In other words, because the CAA refers to the NAAQS without qualifying them, conformity applies to both the primary and secondary NAAQS for transportation-related criteria pollutants.

EPA has historically set the secondary NAAQS at the same level as the relevant primary NAAQS for transportation-related criteria pollutants (*i.e.*, PM, ozone, nitrogen dioxide). Hence, the conformity rule has not needed to address requirements specifically for areas designated nonattainment only for a secondary NAAQS or designated for both a primary and a different secondary NAAQS for the same pollutant.

However, for example, in its January 19, 2010 (75 FR 2938) proposal to revise the ozone NAAQS, EPA proposed a secondary ozone NAAQS that, if finalized as proposed, would be distinct from the primary ozone NAAQS that was proposed. It is also possible that in the future EPA will propose to establish distinct secondary NAAQS for other transportation-related criteria pollutants.

Because a secondary NAAQS may not have a specified attainment year which is required to be analyzed,¹⁸ EPA is proposing in Section VII. of today's proposal to address analysis year requirements for areas without an established attainment date. EPA would issue guidance as needed to assist areas in implementing conformity requirements for new NAAQS, including any secondary NAAQS for the 2010 ozone NAAQS, if applicable.

¹⁸ This may occur in areas designated nonattainment for a secondary NAAQS which is different from the primary NAAQS. The CAA does not specify an attainment date for such areas. CAA section 172(a)(2)(B) specifies that "[t]he attainment date for an area designated nonattainment with respect to a secondary [NAAQS] shall be the date by which attainment can be achieved as expeditiously as practicable after the date such an area was designated under section 107(d)." For transportation conformity purposes, an attainment date would be established when an attainment demonstration is submitted and SIP budgets are found adequate through the adequacy process or approved through the SIP approval process.

VII. Analysis of a Near-Term Year in the Budget Test

A. Existing Requirements for Analysis Years

As described earlier, conformity determinations for transportation plans and TIPs include a regional emissions analysis for the budget test and/or interim emissions test, whichever applies in a given area. When these tests are performed, state and local agencies are not required to examine the emissions impacts of every year within the timeframe of the transportation plan. Rather, the conformity rule requires that only certain years be analyzed (40 CFR 93.118(d)) to understand the emissions impacts of planned transportation activities over the timeframe of the entire transportation plan and conformity determination. Emissions in these analysis years must be consistent with budgets, as required by 40 CFR 93.118(b).

Analysis years are those years for which a regional emissions analysis that meets the requirements of 40 CFR 93.110, 93.111, and 93.122 must be run. The analysis year requirements in the existing conformity rule differ slightly between the budget test and the interim emissions tests. The existing rule at 40 CFR 93.118(d)(2) requires the following years to be analyzed when the budget test is used:

- The attainment year, if it is within the timeframe of the transportation plan and conformity determination;
- The last year of the timeframe of the conformity determination (as described in 40 CFR 93.106(d)); and
- Intermediate years as necessary, so that analysis years are no more than ten years apart.

Under this existing set of analysis years, once the attainment year has passed, or when the attainment year is not yet established, there is no requirement to analyze a near-term year. In contrast, the existing rule at 40 CFR 93.119(g)(1) addressing the interim emissions tests requires that a near-term year always be analyzed. Specifically, when performing the interim emissions tests, a year not more than five years beyond the year in which the conformity determination is being made must be analyzed, in addition to the last year of the transportation plan/conformity determination and intermediate years.

B. Proposal

EPA proposes that when the attainment year has passed, or when an area's attainment date has not been

established,¹⁹ a near-term year would have to be analyzed when using the budget test. For these cases, EPA proposes to amend 40 CFR 93.118(d)(2) to require areas to analyze a year no more than five years beyond the year in which the conformity determination is being made. This proposal would not affect budget test analysis year requirements where the attainment year for a given NAAQS is within the timeframe of the transportation plan and conformity determination.

An example may help illustrate today's proposal. Current 1997 ozone areas that are classified as moderate are required to demonstrate attainment in the year 2009. Suppose one of these areas is demonstrating conformity in the year 2010 for a transportation plan that covers the years 2010 through 2030. Under the current conformity rule, the budget test for such an area would be required to be performed, at a minimum, for the years 2020 and 2030. An analysis of the attainment year would not be required under the current conformity rule since the attainment year would no longer be in the timeframe of the transportation plan. Today's proposal would add an analysis year to this example by requiring that an analysis year be chosen that is no more than five years beyond 2010 (the year the conformity determination is being done) but within the timeframe of the transportation plan, (in this case, any year from 2010 to 2015).

As a second example, suppose a maintenance area makes a conformity determination in the year 2010, and the last year of its maintenance plan is 2017. The area's transportation plan covers the years 2010 through 2030. Under the current conformity rule, three regional emissions analyses will be required to meet the budget test requirements: An analysis must be done for 2030, the last year of the transportation plan/conformity determination; 2017, likely chosen because 40 CFR 93.118(b)(2) requires consistency with the budgets in the last year of the maintenance plan; and a year between 2017 and 2030 would also have to be selected for analysis, so that analysis years are not more than ten years apart.

Under today's proposal, this maintenance area would have to demonstrate consistency with the SIP budget for four years but could choose to perform a regional emissions analysis

for only three of those years: 2030, because it is the last year of the transportation plan or conformity determination; any year from 2010 to 2015, to fulfill the proposed requirement to analyze a year no more than five years beyond the year the conformity determination is being made; and a year between 2020 and 2024, required so that analysis years are not more than ten years apart. In contrast to the first illustration above, the area is not required and could choose not to perform a regional emissions analysis for the year 2017 because the conformity rule permits the area to interpolate emissions for that year (40 CFR 93.118(d)(2)).²⁰

EPA is proposing a related change to 40 CFR 93.118(b). Currently, this provision requires that consistency with budgets be demonstrated for any year for which the SIP establishes a budget, the attainment year if it is in the timeframe of the transportation plan and conformity determination, the last year of the transportation plan/conformity determination, and intermediate years as needed so that years for which consistency is demonstrated are no more than ten years apart.

Today's proposal would simplify this language by requiring consistency for any years where a budget is established and for any years that are analyzed to meet the requirements in 40 CFR 93.118(d). This change would ensure that consistency is demonstrated for the analysis year chosen to fulfill a year within the first five years, in the case where the attainment year has passed or is not established.

This proposal would not affect requirements to demonstrate consistency with the budgets where the attainment year for a given NAAQS is within the timeframe of the transportation plan and conformity determination.

C. Rationale

EPA believes this proposal is consistent with the conformity requirements in the CAA that transportation activities not create new air quality violations, worsen existing violations, or delay timely attainment or achievement of interim reductions or milestones of the relevant NAAQS. The CAA does not require specific analysis

years for the conformity tests; it simply establishes the foundations of these tests and that they apply over the entire timeframe of the transportation plan and conformity determination. EPA has established and subsequently amended the analysis years for these conformity tests in past rulemakings.²¹

EPA believes it is appropriate to require that a near-term year be analyzed when using the budget test after an attainment year has passed or when an area's attainment date has not been established because EPA believes doing so would better demonstrate that the CAA's requirements at 176(c) are met, and thus would better protect air quality.

Today's proposal results from EPA's experience in implementing several different NAAQS over the years, including the 1997 ozone and PM_{2.5} NAAQS. While conformity applies one year after the effective date of nonattainment designations by statute, areas generally have three years to submit SIPs by statute. Once those SIP budgets are adequate or approved, areas have two years to determine conformity to those budgets (CAA 176(c)(2)(E) and 40 CFR 93.104(e)). In cases where the attainment date is within five or six years of the date of designations, this schedule can result in areas analyzing the attainment year and using the budgets specifically established for that year only once. In subsequent conformity determinations after the attainment year, there is no requirement to analyze a near term year.

As NAAQS are established or revised, EPA believes this case will be repeated because many CAA attainment dates are within a few years of the date that areas are designated nonattainment. The CAA establishes attainment dates for various criteria pollutants, the attainment dates vary by pollutant and, in most cases, attainment dates also vary based on the severity of an area's air quality problem. For example, under Subpart 1 of the CAA, which covers nonattainment areas in general, areas must attain no later than five years from the effective date of their designation as nonattainment;²² for various other pollutants, attainment dates are often within five or six years

²¹ For further details on EPA's rulemakings that address analysis years requirements for transportation conformity tests, see the November 24, 1993 final rule (58 FR 62195). See also the July 9, 1996 proposed rule (61 FR 36118, 36130), the August 15, 1997 final rule (62 FR 43780), the July 1, 2004 final rule (69 FR 40004), and the January 24, 2008 final rule (73 FR 4429–4430).

²² Subpart 1 of the Clean Air Act provides for an extension of up to an additional five years based on the severity of an area's air quality problem, and the availability and feasibility of controls.

¹⁹ Cases in which an area's attainment date may not be established include areas designated for a secondary NAAQS only or areas designated nonattainment for a secondary NAAQS that is different than the primary NAAQS of the same pollutant.

²⁰ Demonstrating consistency with the motor vehicle emissions budget for the last year of the maintenance plan could be satisfied using interpolation rather than analysis (40 CFR 93.118(d)(2)). In the example given in which the MPO has the choice to analyze or interpolate a year for the conformity determination, we assume that the MPO would choose to interpolate to minimize the number of years that have to be analyzed.

of the date of nonattainment designations.

In contrast to areas with higher classifications where the attainment date is farther into the future, in areas with near-term attainment dates, the conformity rule's requirement to analyze the attainment year is in effect only briefly. Once the attainment year passes, under the existing regulation, the only years that areas have to analyze are the last year of the transportation plan (or timeframe of the conformity determination), and intermediate years such that analysis years are not more than ten years apart. Therefore, the first year analyzed could be as distant as ten years into the future.

Today's proposed change would rectify that situation by ensuring that a near-term year would be analyzed in all cases. EPA believes this result better protects air quality by ensuring that air quality impacts of the transportation plan and TIP are examined during the whole period of time covered by the transportation plan or conformity determination, not just the later years. EPA believes that ensuring analysis of a near-term year meets the intent of the CAA, which requires that a transportation plan, TIP, and project not from a conforming transportation plan and TIP not cause a new violation, worsen an existing violation or delay timely attainment or achievement of any interim milestone. Under today's proposal, areas would be ensuring that state and local air quality goals are met over the entire timeframe of the transportation plan or conformity determination, even when the attainment date has passed.

Today's proposal also ensures that areas designated for a secondary NAAQS analyze a near term year when using the budget test. As described in Section VI., EPA has proposed a secondary ozone NAAQS that, if finalized as proposed, would be distinct from the primary ozone NAAQS that was proposed. It is also possible that in the future EPA will propose to establish distinct secondary NAAQS for other transportation-related pollutants.

The CAA does not establish specific attainment dates for secondary NAAQS. Instead, CAA section 172(a)(2)(B) requires that areas designated nonattainment for a secondary NAAQS attain this NAAQS as expeditiously as practicable. This means that an area's attainment date may be established in its attainment demonstration. For conformity purposes, the attainment date would be established and therefore, analyzed in the budget test, once EPA finds the budgets adequate or approves the SIP. However, an area designated for

a secondary NAAQS could be using the budget test even before those budgets are found adequate or approved if it has adequate or approved budgets for another NAAQS of the same pollutant. In this case, today's proposal would require that the area analyze a near-term year no more than five years in the future. Absent this requirement, the first analysis year for the secondary NAAQS in such an area could be as much as ten years in the future.

Although this proposed requirement may add some analytical burden to some areas, EPA does not believe that it would be significant. This proposal would continue to ensure that the budget test, when required, would continue to analyze emissions near the attainment year when it has passed or a near-term year in cases where the attainment date has not been established.

VIII. How does this proposal affect conformity SIPs?

Today's proposal would not affect existing conformity SIPs that were prepared in accordance with CAA requirements, as amended by SAFETEA-LU²³ because today's proposal does not affect the three provisions that are required to be in a conformity SIP (40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c)). A conformity SIP contains the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

In general, § 51.390 of the conformity rule specifies that after EPA approves any conformity SIP revisions, the conformity rule no longer governs conformity determinations (for the sections of the conformity rule that are covered by the approved conformity SIP).

In addition, 40 CFR 51.390(c) requires states to submit a new or revised conformity SIP to EPA within 12 months of the **Federal Register** publication date of any final conformity amendments if a state's conformity SIP includes the provisions of such final amendments. However, EPA encourages states to revise their conformity SIP to include only the three required sections so that future changes to the conformity rule do not require further revisions to conformity SIPs. EPA will continue to work with states to approve such

revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing and direct final rulemaking.

Finally, any state that has not previously been required to submit a conformity SIP to EPA must submit a conformity SIP within 12 months of an area's nonattainment designation (40 CFR 51.390(c)).

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's Web site at <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), this action is a "significant regulatory action" because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects." The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies

²³ SAFETEA-LU stands for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted August 10, 2005.

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects Federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. Therefore, this proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposal merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of \$100 million or more in any year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for

metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this proposed action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997.) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. Further, this rule is not likely to have any adverse energy effects because it does not raise novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in Executive Orders 12866 and 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: August 6, 2010.

Lisa P. Jackson,
Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 93 as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 93.101 is amended by removing paragraphs (1) through (6) of the definition for “National ambient air quality standards (NAAQS)” and by revising the definition for “Clean data” to read as follows:

§ 93.101 Definitions.

* * * * *

Clean data means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR parts 50 and 58 and to indicate attainment of a national ambient air quality standard.

* * * * *

§ 93.105 [Amended]

3. Section 93.105(c)(1)(vi) is amended by removing the citation “§ 93.109(n)(2)(iii)” and adding in its place the citation “§ 93.109(g)(2)(iii)”.

4. Section 93.109 is amended as follows:

- a. By revising paragraphs (b) introductory text, (c), and (d);
- b. By removing paragraphs (e) through (k), and redesignating paragraphs (l),

(m), and (n) as paragraphs (e), (f), and (g);

c. In newly redesignated paragraph (g)(2),

i. In paragraph (g)(2) introductory text, by removing the citation “paragraphs (c) through (m)” and adding in its place “paragraph (c)”;

ii. In paragraph (g)(2)(iii), by removing the citation “paragraph (n)(2)(ii)” and adding in its place “paragraph (g)(2)(ii)”;

iii. In paragraph (g)(2)(iii), by removing the citation “paragraph (n)(2)(ii)(C)” and adding in its place “paragraph (g)(2)(ii)(C)”.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraph (c) of this section explains when the budget and interim emissions tests are required for each pollutant and NAAQS. Paragraph (d) of this section explains when a hot-spot test is required. Paragraph (e) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (f) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

* * * * *

(c) *Regional conformity test requirements for all nonattainment and maintenance areas.* This provision applies one year after the effective date of EPA’s nonattainment designation for a NAAQS in accordance with § 93.102(d) and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In all nonattainment and maintenance areas for a NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations for such NAAQS made on or after:

(i) The effective date of EPA’s finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for such NAAQS is

adequate for transportation conformity purposes;

(ii) The publication date of EPA’s approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA’s approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (c)(1) of this section applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(i) If the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(ii) If the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by § 93.118 for either:

(A) The nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(iii) If the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either (A) or (B) must be met:

(A)(1) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and

(2) the interim emissions tests as required by § 93.119 for one of the following areas: The portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor

vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(B) The budget test as required by § 93.118 for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS.

(iv) If the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(A) The budget test as required by § 93.118 for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: The portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multi-state nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by § 93.119 must be satisfied for a NAAQS if neither paragraph (c)(1) nor paragraph (c)(2) of this section applies for such NAAQS.

(4) An ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that does not include a motor vehicle emissions budget for NO_x. The implementation plan for an ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in the SIP's baseline year.

(5) Notwithstanding paragraphs (c)(1), (c)(2), and (c)(3) of this section, nonattainment areas with clean data for a NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements

for that NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 as described in paragraphs (c)(2) and (c)(3) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the NAAQS for which the area is designated nonattainment (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in conjunction with the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM₁₀ NAAQS only, the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if the submitted implementation plan revision for a PM₁₀ nonattainment area is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(d) *Hot-spot conformity test requirements for CO, PM_{2.5}, and PM₁₀ nonattainment and maintenance areas.* This provision applies in accordance with § 93.102(d) for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, project-level conformity determinations in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas must include a demonstration that the hot-spot tests for the applicable NAAQS are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by § 93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by § 93.116(b).

(2) FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the appropriate hot-spot test as required by § 93.116(a).

(3) FHWA/FTA projects in PM_{2.5} nonattainment or maintenance areas

must satisfy the appropriate hot-spot test required by § 93.116(a).

* * * * *

§ 93.116 [Amended]

5. Section 93.116(b) is amended by removing the citation “§ 93.109(f)(1)” and adding in its place the citation “§ 93.109(d)(1)”.

6. Section 93.118 is amended:

a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;

b. By revising paragraph (b) introductory text;

c. In paragraph (d)(2), by adding a new sentence after the first sentence to read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes a motor vehicle emissions budget(s), and for each year for which a regional emissions analysis is performed to fulfill the requirements in paragraph (d) of this section, as follows:

* * * * *

(d) * * *

(2) * * * If the attainment year is no longer in the timeframe of the transportation plan and conformity determination, or if the attainment date has not yet been established, the first analysis year must be no more than five years beyond the year in which the conformity determination is being made. * * *

* * * * *

7. Section 93.119 is amended as follows:

a. In paragraph (a), by removing the citation “§ 93.109(c) through (n)” and adding in its place the citation “§ 93.109(c) through (g)”;

b. In paragraph (b) introductory text, by removing “1-hour ozone and 8-hour”;

c. By revising paragraphs (b)(1)(ii) and (b)(2)(ii);

d. By revising paragraphs (c)(1)(ii) and (c)(2)(ii);

e. In paragraph (d),

i. By revising the heading of paragraph (d) to read “PM_{2.5}, PM₁₀, and NO₂ areas.”;

ii. In paragraph (d) introductory text, by removing “PM₁₀ and NO₂” and adding in its place “PM_{2.5}, PM₁₀, and NO₂”;

iii. By revising paragraph (d)(2); and
g. By revising paragraph (e).

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

(b) * * *

(1) * * *

(ii) The emissions predicted in the "Action" scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) * * *

(ii) The emissions predicted in the "Action" scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(c) * * *

(1) * * *

(ii) The emissions predicted in the "Action" scenario are lower than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section by any nonzero amount.

(2) * * *

(ii) The emissions predicted in the "Action" scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(d) * * *

(2) The emissions predicted in the "Action" scenario are not greater than emissions in the baseline year for that NAAQS as described in paragraph (e) of this section.

(e) *Baseline year for various NAAQS.* The baseline year is defined as follows:

(1) 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO₂ NAAQS.

(2) 1990, in areas designated nonattainment for the 1990 PM₁₀ NAAQS, unless the conformity implementation plan revision required by § 51.390 of this chapter defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(3) 2002, in areas designated nonattainment for the 1997 ozone NAAQS or 1997 PM_{2.5} NAAQS.

(4) The most recent year for which EPA's Air Emission Reporting Rule (40 CFR part 51, subpart A) requires submission of on-road mobile source emissions inventories as of the effective date of designations, in areas designated nonattainment for a NAAQS that is promulgated after 1997.

* * *

§ 93.121 [Amended]

8. Section 93.121 is amended:

a. In paragraph (b) introductory text, by removing the citation "§ 93.109(n)" and adding in its place the citation "§ 93.109(g)".

b. In paragraph (c) introductory text, by removing the citation "§ 93.109(l) or (m)" and adding in its place the citation "§ 93.109(e) or (f)".

[FR Doc. 2010-19928 Filed 8-12-10; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 0907271170-0314-02]

RIN 0648-AY10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 17A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would establish an annual catch limit (ACL) for red snapper of zero, which means all harvest and possession of red snapper in or from the South Atlantic EEZ would be prohibited, and for a vessel with a Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, harvest and possession of red snapper would be prohibited in or from state or Federal waters. To constrain red snapper harvest to the ACL, this rule would implement an area closure for South Atlantic snapper-grouper that extends from southern Georgia to northern Florida where all harvest and possession of snapper-grouper would be prohibited (except when fishing with black sea bass pots or spearfishing gear for species other than red snapper), and require the use of non-stainless steel circle hooks north of 28° N. lat. Additionally, Amendment 17A would establish a rebuilding plan for red snapper, require a monitoring program as the accountability measure (AM) for red snapper, and specify a proxy for the fishing mortality rate that will produce the maximum sustainable yield (MSY) and specify optimum yield (OY). The intended effects of this rule

are to end overfishing of South Atlantic red snapper and rebuild the stock.

DATES: Comments must be received no later than 5 p.m., eastern time, on September 27, 2010.

ADDRESSES: You may submit comments, identified by "0648-AY10", by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>

Fax: 727-824-5308, Attn: Kate Michie

Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2010-0035" in the keyword search, then check the box labeled "Select to find documents accepting comments or submissions", then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 17A may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: safmc@safmc.net. Amendment 17A includes an Environmental Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305; fax: 727-824-5308; e-mail: Kate.Michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management