(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5284–5]

RIN 2060–AF95

Transportation Conformity Rule Amendments: Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes in this action to make several changes to its current regulation requiring certain transportation actions to conform to the state's air quality plan. This action proposes to amend the November 24, 1993, transportation conformity rule in order to allow transportation control measures (TCMs) to proceed even if the conformity status of the transportation plan and program has lapsed, provided the TCM is included in an approved state implementation plan or federal implementation plan and was included in a previously conforming transportation plan and program. Such TCMs would be halted under the existing transportation conformity rule should a conformity lapse occur.

This proposal would also extend the grace period before which areas must determine conformity to a submitted control strategy implementation plan. This extension would provide relief most immediately to some moderate and above ozone nonattainment areas, for which conformity otherwise would lapse on November 15, 1995, should such areas fail to demonstrate conformity.

This action proposes to align the date of conformity lapse with the date of application of Clean Air Act highway sanctions for any failure to submit or submission of an incomplete control strategy state implementation plan (SIP).

This proposal would also correct the nitrogen oxides (NO_X) provisions of the transportation conformity rule consistent with previous commitments made by EPA in **Federal Register** notices concerning transportation conformity NO_X waivers. This proposal to change the statutory authority for NO_X waivers is also published as an interim final rule in the final rule section of today's **Federal Register**, and is effective immediately.

Finally, this action proposes to establish a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; clarify certain wording; and make certain technical corrections.

EPA proposes that a transportation conformity SIP revision consistent with these amendments would be required to be submitted to EPA by 12 months following the date of publication of the final rule.

DATES: Comments on this action must be received by September 28, 1995.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A–95–05, 401 M Street, S.W., Washington, DC 20460.

Materials relevant to this proposal have been placed in Public Docket A–95–05 by EPA. The docket is located at the above address in room M–1500 Waterside Mall (ground floor) and may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668–4441.

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

I. Background on Transportation Conformity Rule
II. Transportation Control Measures (TCMs)
III. Requirement to Redetermine Conformity to Submitted Control Strategy SIP
IV. Grace Period for Use of Submitted Motor Vehicle Emissions Budgets
V. Alignment With Clean Air Act Highway Sanctions
VI. Applicability of Nitrogen Oxides (NO_X) Provisions
VII. Grace Period for Newly Designated Nonattainment Areas
VIII. Wording Clarifications to 40 CFR 51.448 and 93.128
IX. Technical Corrections to 40 CFR 51.452 and 93.130
X. Conformity SIPs
XI. Administrative Requirements

I. Background on Transportation Conformity Rule

The transportation conformity rule, ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,'' was published November 24, 1993, (58 FR 62188) and amended 40 CFR parts 51 and 93. The Notice of Proposed Rulemaking was published on January 11, 1993 (58 FR 3768).

Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations determine the conformity of federally funded or approved highway and transit plans, programs, and projects to SIPs. According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

On February 8, 1995, EPA published an interim final rule entitled, ''Transportation Conformity Rule Amendments: Transition to the Control Strategy Period.'' This interim final rule, which was effective immediately and applied until August 8, 1995, aligned the dates of certain adverse consequences that are imposed by the transportation conformity rule with the date that Clean Air Act section 179(b) highway sanctions become effective. A proposal to make the alignment of these dates permanent was also published February 8, 1995, and the final rule was published **.

Since publication of the transportation conformity rule in November 1993, EPA, DOT, and state and local air and transportation officials have had considerable experience implementing the criteria and procedures in the rule. It is that mutual experience which leads to the amendments which EPA is proposing today. In each case, the amendments are needed to clarify ambiguities, correct errors, or make the conformity process more logical and feasible.

EPA intends to propose further amendments to the transportation conformity rule to address concerns raised by conformity stakeholders, such as the build/no-build test, non-federal projects, adding projects between plan/TIP cycles, and rural nonattainment areas.

II. Transportation Control Measures (TCMs)

A. Background

The November 1993 transportation conformity rule does not allow TCMs to be federally funded, accepted, or approved without a conforming transportation plan and transportation improvement program (TIP) in place.

Clean Air Act sections 176(c)(2) (C) and (D) require that conforming transportation plans and TIPs be used to determine whether projects are in conformity. According to the November 1993 transportation conformity rule, the only federally funded or approved projects which may proceed in the absence of a conforming plan and TIP are those which have already been found to conform and those which the rule exempts because of their de minimis emission impacts. TCMs in general are not exempt projects.

EPA acknowledged in the preamble to the final rule that it may appear intuitively counterproductive to delay transportation projects which benefit air quality just because an area is unable to develop a conforming transportation plan and TIP. However, EPA asserted that allowing project-by-project approvals in the absence of a conforming transportation plan and TIP is contrary to the underlying philosophy that transportation actions must be planned and evaluated for emissions effects in the aggregate and for the long term. If TCMs proceeded outside the context of the transportation plan and TIP, EPA feared that there would be no assurance that the analysis of reasonable alternatives had been properly conducted and that the effect of the TCM on the flow within the network had been properly accounted for.

Furthermore, EPA stated its concern that allowing TCMs to proceed without a conforming transportation plan and TIP may undermine the cooperative transportation planning process. All constituencies should have a stake in the development of a conforming transportation plan and TIP, particularly given that compromises and tradeoffs among involved parties are often necessary.

B. Description of Proposal for TCMs

This proposal would allow TCMs which are in an approved SIP and have been included in a previously conforming transportation plan and TIP to proceed even if the conformity status of the current transportation plan or TIP lapses. Specifically, it would allow a project-level conformity determination to be made for a TCM specifically included in an approved SIP even if there were no currently conforming transportation plan and TIP in place (as presently required by 40 CFR 51.420 and 93.114), provided that the TCM was previously included in a conforming plan and TIP and all other relevant criteria for a project from a transportation plan and TIP have been satisfied (e.g., hot-spot analysis was performed as necessary).

According to this proposal, a TCM that had been included in a conforming plan and TIP would be considered to come from a plan and TIP (as required by 40 CFR 51.422 and 93.115) even if the conformity status of that transportation plan and TIP had subsequently lapsed. However, the other requirements in 40 CFR 51.422 and 93.115 defining what projects ''come from'' a transportation plan and TIP would continue to apply, including the requirement that the project's design concept and scope have not changed significantly from those which were described in the transportation plan/TIP.

C. Rationale

Even if an area's conformity status lapses, this proposal would allow work to continue on TCMs which have completed the metropolitan transportation planning process and are included in an approved SIP, but have not completed the National Environmental Policy Act process. EPA believes that it would be counterproductive to overcoming future difficulties in demonstrating conformity to halt progress on a TCM which has been approved through the air quality planning process and has met the metropolitan transportation planning process' requirements. Such a TCM has been endorsed by both the transportation and air quality communities as a project beneficial for air quality, and stopping its progress would make it more difficult to implement the SIP, develop a revised plan and TIP which can be found to conform, and attain the national ambient air quality standards.

EPA's previously expressed concerns about allowing TCMs to proceed in the absence of a conforming transportation plan and TIP do not apply in the context of this proposal, because this proposal's applicability is limited to TCMs which have been in a conforming transportation plan and TIP. Such TCMs have been considered in the long term and in the aggregate, in the context of the transportation plan and TIP and the cooperative transportation planning process. This amendment would not allow TCMs to circumvent the metropolitan transportation planning process; it would simply prevent the consequences of conformity failures from disrupting further project development activities for the implementation of TCMs.

Furthermore, EPA believes that this proposal is consistent with the Clean Air Act conformity provisions. Conformity is defined in Clean Air Act section 176(c)(1) as conformity to the implementation plan's purpose. Accordingly, implementation of a measure specifically included in the implementation plan should conform.

The subsequent requirement in section 176(c)(2)(C)(i) for a project to come from a conforming plan and program is an elaboration of the general definition in section 176(c)(1) and should not prevent actions obviously consistent with the general definition from proceeding.

D. Impact

At the present time, few control strategy SIPs (e.g., attainment demonstrations, 15% volatile organic compound emission reduction SIPs) have been approved by EPA. As a result, there are currently few TCMs which would be affected by this proposal. However, EPA expects that in the future there will be a number of TCMs which are included in an approved SIP and have been included in a conforming transportation plan and TIP which might be jeopardized by subsequent plan/TIP conformity lapses.

In particular, major highway and transit infrastructure projects which have been designated as TCMs in the SIP frequently have a lengthy period for project planning and development, including the federal environmental review. As a result, these major infrastructure investments are especially susceptible to being delayed by future lapses in transportation plan and TIP conformity status, despite their role in contributing to the conformity status of previously approved transportation plans and TIPs. This proposal would allow such projects to complete the project development process even if subsequent conformity difficulties caused an area's plan or TIP conformity status to lapse.

III. Requirement to Redetermine Conformity to Submitted Control Strategy SIP

A. Background

40 CFR 51.448(a)(1) and 93.128(a)(1) require the transportation plan and TIP to be found to conform to a submitted control strategy SIP revision within one year from the date the Clean Air Act requires its submission. Thus, in areas required to submit ozone attainment/3% rate-of-progress SIPs, which were generally due November 15, 1994, the current transportation conformity rule requires conformity to those SIPs to be determined by November 15, 1995, or else conformity status will lapse.

B. Description of Proposal

This proposal would amend 40 CFR 51.448(a)(1) and 93.128(a)(1) to allow areas 18 months to determine conformity, starting from the date of the State's initial submission to EPA of a control strategy SIP revision establishing a motor vehicle emissions budget. If conformity is not demonstrated within 18 months following such submission, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

This deadline for determining conformity to a submitted control strategy SIP would apply to the initial submission of each type of control strategy SIP. Ozone 15% SIPs, ozone 3% rate-of-progress SIPS, and attainment demonstrations (for any pollutant) are all control strategy SIPs whose initial submission would require conformity to be determined within 18 months.

The 18-month time period for determining conformity would not be affected by subsequent changes to the submitted control strategy SIP. For example, if within the 18-month period the initial submission is revised before conformity has been determined, the 18-month clock would not be restarted. However, when conformity is eventually determined, the relevant motor vehicle emissions budget must be used. If conformity to the initial submission has been demonstrated and that submission is subsequently revised, no 18-month clock would be started until, as required in § 51.400(a)(3) (93.104(a)(3)), ''Frequency,'' the SIP is approved by EPA.

C. Rationale

This proposal is consistent with the existing transportation conformity rule in that it imposes a one-time requirement to determine conformity after the initial submission of a control strategy SIP. EPA is proposing to redefine the beginning and length of the grace period before conformity to a newly submitted SIP must be demonstrated in order to be consistent with flexibility EPA is allowing on submission deadlines for ozone attainment SIPs.

EPA has provided flexibility regarding the deadline for submission of ozone attainment/3% SIPs because of unavoidable delays in their development (see March 2, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to EPA Regional Administrators, titled, ''Ozone Attainment Demonstrations''). The existing conformity rule requires conformity to these SIPs to be determined by November 15, 1995, but many ozone areas have not even submitted such SIPs yet. As a result, EPA believes it is more appropriate to begin the grace period with a State's actual submission, rather than the Clean Air Act deadline for submission.

In addition, EPA is proposing to extend the grace period from 12 months to 18 months because experience with the existing conformity rule indicates that 18 months is a more reasonable timeframe. Also, the 18-month grace period is consistent with the grace period allowed in 40 CFR 51.400 and 93.104 after publication of the final rule and after EPA approval of control strategy SIP revisions.

EPA notes that there is a possibility that the agency will be unable to complete final rulemaking on these proposed amendments by November 15, 1995, in light of the date of this proposal and the need to respond to any comments submitted on the proposal. However, EPA believes that even should this proposed change not be effective by November 15, 1995, the conformity status of plans and TIPs would not lapse for certain areas taking advantage of the flexibilities provided in the March 2, 1995, memorandum. This is because in the March 2 memorandum EPA interpreted the statute as not requiring such areas to submit attainment demonstrations on November 15, 1994.

In the March 2 memorandum, EPA acknowledged that circumstances beyond the control of the States had precluded the States from completing the SIP submittals within the deadline (November 15, 1994) prescribed in the Act. Moreover, the deadline had passed and States could not reasonably be expected to complete the submissions in the immediate future. EPA emphasized that much of the problem stemmed from technical issues that arose in compiling the inventories and conducting modeling, particularly in light of the complexities of accounting for ozone transport.

In light of this unique situation, EPA implemented the statutory requirements for SIP submissions in a more flexible manner. EPA, in effect, extended the submission date and established new, staggered submission deadlines for various components of the required submittals. The lapsing provisions of the current conformity rule impose a lapse one year from the date the Clean Air Act requires submission of a control strategy implementation plan revision. Since under EPA's interpretation of the Act in the circumstances just described the statute does not require submissions for such states in November 1994, the conformity status of plans and TIPs in such areas will not lapse in November 1995, but rather would lapse one year from the various dates described in the March 2, 1995, policy referred to above. Prior to any of those dates, EPA will

have ample time to complete final action on the rule change proposed today.

However, those areas which are not taking advantage of the flexibility of the March 2 memorandum are still required under the current rule to determine conformity by November 15, 1995. These areas will lapse on November 15, 1995, if final action on this proposal is not effective by then and they have not determined conformity.

D. Effect on Deadline to Determine Conformity to Submitted 15% SIPs

The current conformity rule requires conformity to submitted 15% SIPs to be demonstrated by November 15, 1994. Conformity status in some areas has already lapsed because of failure to meet this deadline. This proposal would affect the deadline to determine conformity to submitted 15% SIPs in only a very few areas, because most 15% SIPs were submitted more than 18 months ago. For the few areas that submitted very late 15% SIPs, this proposal would extend by a few months the time allowed to demonstrate conformity to the 15% SIP.

IV. Grace Period for Use of Submitted Motor Vehicle Emissions Budgets

This proposal would clarify the existing transportation conformity rule's 90-day grace period before motor vehicle emissions budgets in newly submitted control strategy SIPs are required to be used to demonstrate conformity (presently section 51.448(a)(1)(ii) and 93.128(a)(1)(ii)).

This proposal clarifies that although areas are not required to use motor vehicle emissions budgets in the first 90 days following their submission, they may do so if EPA agrees the budgets are adequate for transportation conformity purposes. Newly submitted motor vehicle emissions budgets are required to be used in transportation conformity determinations beginning 90 days after their submission, provided EPA has not rejected the use of such submitted budgets for the purposes of transportation conformity.

V. Alignment With Clean Air Act Highway Sanctions

A. Description of Proposal

This proposal would not impose a transportation plan/TIP conformity lapse as a result of failure to submit or submission of an incomplete ozone, CO, PM–10, or NO_2 control strategy SIP until the date that Clean Air Act section 179(b) highway sanctions are applied as a result of such failure.

The February 8, 1995, interim final rule aligned transportation plan/TIP conformity lapse with application of Clean Air Act highway sanctions only in the cases of incomplete 15% SIPs with protective findings, failure to submit or submission of incomplete ozone attainment/3% SIPs, and disapproval of control strategy SIPs with a protective finding. This proposal would also align with application of Clean Air Act highway sanctions the conformity lapse resulting from failure to submit a 15% SIP, submission of an incomplete 15% SIP without a protective finding, and failure to submit or submission of an incomplete CO, PM–10, or NO_2 attainment SIP.

This proposal would not align the conformity lapse resulting from disapproval of a control strategy SIP without a protective finding. EPA will continue to consider this issue in the context of future conformity rule amendments addressing conformity stakeholders' concerns.

B. Rationale

EPA did not previously propose to align the conformity lapse in the cases of failure to submit a 15% SIP or incomplete 15% SIP without a protective finding because in these cases there is no other motor vehicle emissions budget to be used for the purposes of demonstrating transportation conformity. Since the February 8, 1995, interim final rule, EPA has made protective findings for all incomplete 15% SIPs, and areas which failed to submit required 15% SIPs are expected to submit such SIPs very shortly. As a result, aligning conformity lapse with highway sanctions for these cases will have no real impact, and by aligning conformity lapse for all ozone control strategy SIPs, the complexity of the regulatory text is greatly reduced.

EPA did not previously propose to align conformity lapse with application of highway sanctions for failure to submit or submission of incomplete CO, PM–10 and NO_2 attainment SIPs because there were no such SIP failures, and these cases therefore did not qualify for the interim final rule's emergency exception to the Administrative Procedures Act. The CO, PM–10 and NO_2 attainment SIPs required to date are complete, and there are some PM–10 attainment SIPs which are not due yet. Aligning conformity lapse and highway sanctions for these control strategy SIPs would reduce the complexity of the conformity regulation and is not anticipated to have any other significant impact.

C. Federal Implementation Plans (FIPs)

This proposal would prevent or remove the conformity lapse imposed as a result of a control strategy SIP failure on the date EPA promulgates a FIP with motor vehicle emissions budget(s) addressing that failure. Promulgation of a FIP with motor vehicle emissions budget(s) would serve as an appropriate basis for conformity determinations. EPA does not believe it is appropriate to impose a conformity lapse where a budget is in place against which conformity can be assessed. Moreover, nothing in section 176(c) suggests that such a lapse would be appropriate.

VI. Applicability of Nitrogen Oxides (NOx) Provisions

A. Background

Clean Air Act section 176(c)(3)(A)(iii) requires that transportation plans and TIPs contribute to emissions reductions in ozone and carbon monoxide areas before control strategy SIPs are approved. This requirement is implemented in 40 CFR 51.436 through 51.440 (and 93.122 through 93.124), which establishes the so-called ''build/no-build test.'' This test requires a demonstration that the ''Action'' scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the ''Baseline'' scenario (representing the implementation of the current transportation plan/TIP). In addition, the ''Action'' scenario must result in emissions lower than 1990 levels.

The November 1993 final transportation conformity rule does not require the build/no-build test and less-than-1990 test for NOx as an ozone precursor in ozone nonattainment areas where the Administrator determines that additional reductions of NOx would not contribute to attainment. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets are approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of VOC and NOx emissions ''as necessary'' to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NOx for those ozone nonattainment areas for which EPA determines that additional reductions of NOx would not contribute to attainment.

On June 17, 1994 (59 FR 31238), EPA issued guidance in the form of a general preamble specifically focusing on how the agency intended to process

conformity NOx waiver requests for nonclassifiable ozone nonattainment areas located outside the Ozone Transport Region. For other ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 EPA document ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' and the May 27, 1994, and February 8, 1995, memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled ''Section 182(f) NOx Exemptions—Revised Process and Criteria.''

B. Applicability of Motor Vehicle NOx Emission Budgets Following a NOx Waiver

This proposal would make it clear that consistency with NOx motor vehicle emissions budgets in control strategy SIPs and maintenance plans is still required in ozone nonattainment or maintenance areas which previously received a conformity NOx waiver. Although the NOx build/no-build test and less-than-1990 test would not apply for ozone nonattainment areas with a conformity NOx waiver, consistency with the NOx motor vehicle emissions budget in a submitted control strategy SIP (e.g., attainment demonstration) or approved maintenance plan would be required for transportation conformity demonstrations, regardless of the conformity NOx waiver. Before approving any conformity NOx waivers, EPA stated in the June 17, 1994, **Federal Register** notice that EPA intended to propose to amend the transportation conformity rule in this manner. In addition, the Natural Resources Defense Council, on behalf of several environmental groups, commented on this issue during EPA's rulemaking process for granting area-specific NOx waivers, and EPA in its response to comments acknowledged the error in EPA's transportation conformity rule and stated EPA's intent to propose amending the rule.

Although when EPA promulgated the November 24, 1993, final conformity rule EPA intended the conformity NO_X waiver to provide relief from the NO_X build/no-build test only, due to a drafting oversight in the final conformity rule, none of the provisions related to NO_X apply under that rule if an area had received a conformity NO_X waiver. This proposal would delete the phrase ''unless the Administrator determines that additional reductions of NO_X would not contribute to attainment'' in the ''Applicability'' section of the rule (40 CFR 51.394(b)(3)(i) and 93.102(b)(3)(i)) and in the ''Motor vehicle emissions budget (transportation plan)'' section (40 CFR 51.428(b)(1)(ii) and 93.118(b)(1)(ii)). A revised version of this phrase would be retained only in the sections requiring the build/no-build and less-than-1990 tests, in order to continue to allow relief from that requirement if a NO_X waiver is granted, consistent with EPA's original intent.

EPA is proposing this change in order to properly implement the Clean Air Act. The requirement for consistency with the SIP's motor vehicle emissions budget is required in section 176(c)(2)(A) of the conformity provisions. That section specifically requires conformity determinations to show that ''emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan.'' SIP demonstrations of reasonable further progress, attainment, and maintenance contain these emissions estimates and ''necessary emission reductions.'' Since the Act specifically requires an emissions-based comparison between the transportation plan/TIP and the SIP, EPA believes the emissions budget is the appropriate mechanism for carrying out the demonstration of consistency. This is true even with respect to regional-scale pollutants, since the air quality analysis in the SIP can be relied upon to show that the SIP emission levels will not cause or exacerbate violations.

EPA believes that it is crucial for areas with attainment demonstrations or maintenance plans to demonstrate consistency with the NO_X motor vehicle emissions budgets in those plans in order to demonstrate conformity with the SIP. EPA requires ozone attainment demonstrations and most ozone maintenance plans to include estimates of NO_X emissions in order to adequately demonstrate attainment of the ozone standard by the Clean Air Act deadline or maintenance of the ozone standard. The resulting motor vehicle NO_X emissions budgets may not necessarily represent reductions in motor vehicle NO_X emissions, but these budgets are the motor vehicle NO_X emission levels consistent with attainment and/or maintenance, and they must not be exceeded.

C. Authority for NO_X Waivers and Process for Application and Approval

1. Change in Authority From Clean Air Act Section 182(f) to 182(b)(1)

This proposal would also change the conformity rule's reference to Clean Air Act section 182(f) as the authority for waiving the NO_X build/no-build and less-than-1990 tests for certain areas based on EPA's determination that additional reductions of NO_X would not contribute to attainment. This change is also made in an interim final rule that is published in the ''Final rules'' section of today's **Federal Register** and is effective immediately.

As described in paragraph V.A. ''Background,'' above, the stated authority for such a determination to provide relief from the interim-reductions requirements of the Clean Air Act is actually Clean Air Act section 182(b)(1), which is specifically referenced in section 176(c)(3)(A)(iii) of the conformity provisions. The Natural Resources Defense Council brought this to EPA's attention in its comments on EPA's rulemakings for area-specific NO_X waivers.

EPA agrees with the commenters, but also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, EPA believes that the interim-reductions requirements of section 176(c)(3)(A)(iii), and hence the authority provided in section 182(b)(1) to grant relief from those interim-reductions requirements, apply only with respect to those areas that are subject to section 182(b)(1). As explained further below, for areas not subject to section 182(b)(1) (e.g., marginal and below ozone nonattainment areas), EPA intends to continue to apply the transportation conformity rule's build/no-build test and less-than-1990 tests for purposes of implementing the requirements of section 176(c)(1), and EPA intends to continue to provide relief from these requirements under section 182(f). In addition, because general federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), EPA will also continue to offer relief under section 182(f) from the applicable NO_X requirements of the general conformity rule.

In order to demonstrate conformity, transportation-related federal actions that are taken in ozone nonattainment areas not subject to section 182(b)(1) (and hence, not subject to section 176(c)(3)(A)(iii)) must still be consistent with the criteria specified under section 176(c)(1). Specifically, these actions

must not, with respect to any standard, cause or contribute to new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, such actions must comply with the relevant requirements and milestones contained in the applicable SIP, such as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, numerical emissions limits or prohibitions. EPA believes that the build/no-build and less-than-1990 tests provide an appropriate basis for such areas to demonstrate compliance with the above criteria.

As stated earlier, EPA intends to continue to offer relief under section 182(f) from the interim NO_X requirements of the conformity rules that would apply under section 176(c)(1) for the areas not subject to section 182(b)(1). EPA believes this approach is consistent both with the way NO_X requirements in ozone nonattainment areas are treated under the Act generally, and under section 182(f) in particular. The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for EPA to determine when NO_X requirements should not apply. There is no substantive difference in the technical analysis required to make an assessment of NO_X impact on attainment in a particular area with respect to mobile source or stationary source NO_X emissions. Moreover, where EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the Agency believes it would be unreasonable to insist on NO_X reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even as to the conformity requirements of section 176(c)(1), EPA believes it is reasonable and appropriate, first, to offer relief from the applicable NO_X requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial and, second, to rely in doing so on the exemption tests provided in section 182(f).

2. Implications of Change in Statutory Authority

The change in authority for granting NO_X waivers from section 182(f) to section 182(b)(1) for areas subject to section 182(b)(1) has different impacts depending on whether the petitioning area is relying on ''clean'' air quality data or on modeling data. According to EPA's current information, almost all areas which intended to request a conformity NO_X waiver have already applied. Most areas that are eligible for a conformity NO_X waiver on the basis of ''clean data'' have already applied for (and in most cases, received) their waivers. There are less than ten areas which are eligible for a ''clean data'' conformity NO_X waiver but which have not applied and do not have a pending redesignation request.

Moderate and above ''clean data'' areas that have pending redesignation requests and are subject to section 182(b)(1) could be relieved of the NO_X build/no-build and less-than-1990 tests under section 182(f) when EPA takes final action implementing its recently-issued policy concerning, among other things, the applicability of section 182(b)(1) requirements for the areas that are demonstrating attainment of the ozone standard based on ''clean data.'' The May 10, 1995, memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' should be referred to for a more thorough discussion. The aspect of the policy that is relevant here is EPA's determination that the section 182(b)(1) provisions regarding reasonable further progress and attainment demonstrations may be interpreted so as not to require the SIP submissions otherwise called for in section 182(b)(1) if an ozone nonattainment area that would otherwise be subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the standard is demonstrated with three consecutive years of complete, quality-assured air-quality monitoring data). Any such ''clean data'' areas, under this interpretation, would no longer be subject to the requirements of section 182(b)(1) once EPA takes final rulemaking action adopting the interpretation in conjunction with its determination that the area has attained the standard. At that time, such areas would be treated like ozone nonattainment areas classified marginal and below, and hence eligible for NO_X waivers from the interim-period transportation conformity requirements by obtaining a waiver under section 182(f), as described above.

For moderate and above ozone nonattainment areas which are relying on modeling data in petitioning for a transportation conformity NO_X exemption, the proposed change affects the process for applying for such waivers. Unlike section 182(f)(3), section 182(b)(1) requires that EPA approve a NO_X waiver (i.e., determine that additional reductions of NO_X would not contribute to attainment) as part of a SIP revision. In discussing the NO_X (and VOC) reductions required under its provisions, section 182(b)(1) states that SIP revisions must be submitted which provide for ''such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone'' by the applicable attainment date. The requirement does not apply in the case of NO_X if the EPA makes a determination that additional reductions of NO_X would not contribute to attainment. The Act also states that this determination must be made ''when the Administrator approves the plan or plan revision.'' The phrase ''the plan or plan revision'' clearly refers to the plan required under this subsection that must provide for the specific annual VOC and NO_X reductions determined to be necessary for the area to attain the ozone national ambient air quality standard. EPA believes, consistent with its existing NO_X exemption guidance, that this language can be interpreted to encompass approvals of SIP submittals containing NO_X exemption requests based on adequate modeling. If the modeling demonstration for such requests is submitted as part of a SIP revision and provides adequate evidence that for the relevant area specific additional annual reductions of NO_X are not ''necessary'' for that area to attain the NAAQS, EPA believes such a demonstration would be consistent with the requirements of the NO_X exemption test provided in section 182(b)(1).

3. New Process for Conformity NO_X Waiver Application

As discussed in the previous section, under Clean Air Act section 182(b)(1), petitions for transportation conformity NO_X waivers for areas subject to that section must be submitted as formal SIP revisions by the Governor (or designee) and following a public hearing. As explained previously, EPA will continue to process and approve under section 182(f)(3) conformity NO_X waivers for areas not subject to section 182(b)(1), without public hearings or submission by the Governor.

Except for the requirement for modeling data petitions to be submitted as part of a SIP revision for ozone areas subject to section 182(b)(1), previous guidance on section 182(f) NO_X waivers continues to apply for the purpose of

conformity NO_X waivers. As described in paragraph V.A. ''Background,'' above, this guidance includes the June 17, 1994 (59 FR 31238), general preamble entitled, ''Conformity; General Preamble for Exemption for Nitrogen Oxides Provisions,'' the December 1993 EPA document ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' and the May 27, 1994, and February 8, 1995 memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled ''Section 182(f) NO_X Exemptions—Revised Process and Criteria.''

EPA believes that the new procedural requirement for a public hearing and submission by the Governor (or designee) for these ozone nonattainment areas will not adversely affect states applying for transportation conformity NO_X waivers since only two areas are awaiting an exemption based on modeling data.

4. General Conformity

As noted earlier, the NO_X provisions of the general conformity rule, ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans'' (58 FR 63214, November 30, 1993), would not be affected by this proposal. A NO_X waiver under Clean Air Act section 182(f) removes the NO_X general conformity requirements entirely and would continue to do so. The Clean Air Act's provision for transportation conformity NO_X waivers stems from section 176(c)(3)(A)(iii), which addresses only transportation conformity, and not general conformity. Therefore, the statutory authority for general conformity NO_X waivers is not required to be Clean Air Act section 182(b) for any areas and may continue to be section 182(f) for all areas.

VII. Grace Period for Newly Designated Nonattainment Areas

This proposal would allow areas which have been redesignated from attainment to nonattainment a 12-month grace period after final redesignation during which to determine the conformity of the transportation plan and TIP.

Section 176(c)(3)(B)(i) of the Clean Air Act as amended in 1990 allowed a similar grace period for 12 months after the date of enactment of the Clean Air Act Amendments of 1990. EPA believes it is appropriate to allow newly designated nonattainment areas this grace period to determine transportation plan/TIP conformity. Otherwise, no transportation projects could be found to conform in a newly designated nonattainment area until the conformity of the transportation plan and TIP had been demonstrated. Transportation plan/TIP conformity determinations take time, particularly for an area's first time, and EPA believes not allowing a grace period would unduly disrupt implementation of transportation projects.

EPA believes it has authority under *Sierra Club* v. *EPA*, 719F.2d 436 (DC Cir. 1983) to provide grandfathering from new requirements where the new rule is an abrupt departure from prior practice parties have relied on, the application of the new rule would impose a burden on parties, and there is not a strong interest in applying the new rule immediately.

VIII. Wording Clarifications to 40 CFR 51.448 and 93.128

A. Introductory Paragraph (a)(1) of §§ 51.448 and 93.128

This proposal would clarify EPA's original intention that if conformity status lapses due to failure to redetermine conformity after a control strategy SIP submission, that lapse is remedied when transportation plan and TIP conformity to the new submission is eventually determined (although lapsing for other reasons would not be remedied). There is no reason to maintain a conformity lapse once conformity to a new budget has been demonstrated.

B. §§ 51.448(g) and 93.128(g)

Paragraph (g) in §§ 51.448 and 93.128 would be deleted, because the other amendments in this proposal make paragraph (g)'s clarifications irrelevant and unnecessary.

IX. Technical Corrections to 40 CFR 51.452 and 93.130

A. Consistency With SIPs

The preamble to the November 1993 transportation conformity rule states that for all areas there must be consistency between the SIP and the conformity analysis regarding temperature, season, time period, and other inputs (58 FR 62195, November 24, 1993). However, this regulatory requirement is by error stated in section 51.452(b) (93.130(b)), which applies only to serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.

EPA indicated in an October 14, 1994, memorandum from Philip A. Lorang to EPA Branch Chiefs entitled ''Transportation Conformity Q & A's'' that EPA's intent was for this requirement to apply to all areas. This proposal would redesignate paragraph (b)(5) as paragraph (a)(6), because paragraph (a) is titled ''General requirements.'' This would clarify that the provision applies in all areas pursuant to EPA's original intention as stated in the preamble to the November 1993 rule.

B. Cross-References in Section 51.452(c)(1) and 93.130(c)(1)

As EPA has indicated in the October 14, 1994, ''Transportation Conformity Q & A's'' memorandum cited above, section 51.452(c)(1) (93.130(c)(1)), contains two incorrect references to paragraph (a). It should instead reference paragraph (b) of section 51.452 (93.130). EPA's intent was to require areas not subject to paragraph (b) (ozone and CO areas not serious and above or before January 1, 1995) to continue using the procedures which satisfy some or all of the requirements of paragraph (b) (applying to serious and above ozone and CO areas after January 1, 1995) where those procedures have been the previous practice of the MPO. The current cross-reference does not make sense because it refers to ''General requirements,'' which apply to all areas. This proposal would correct the incorrect reference.

X. Conformity SIPs

A conformity SIP revision consistent with these amendments would be required to be submitted to EPA 12 months from the date of publication of the final rule. Section 176(c)(4)(C) of the Clean Air Act as amended in 1990 allowed States 12 months from the promulgation of the original transportation conformity rule to submit conformity SIP revisions. EPA believes that it is consistent with the statute to provide states a similar time period to revise their conformity SIPs.

XI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. This proposal consists of additional flexibilities and clarifications. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: August 17, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 51 and 93 are proposed to be amended as follows:

PARTS 51 AND 93—[AMENDED]

1. The authority citation for parts 51 and 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. The identical text of §§ 51.392 and 93.101 is amended by adding a definition in alphabetical order to read as follows:

§ . Definitions.

* * * * *

Protective finding means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

* * * * *

3. The identical text of §§ 51.394 and 93.102 is amended by revising paragraph (b)(3)(i) and adding paragraph (d) to read as follows:

§ . Applicability.

* * * * *

(b) * * *

(3) * * *

(i) Volatile organic compounds and nitrogen oxides in ozone areas;

* * * * *

(d) *Grace period for new nonattainment areas.* For areas which have been in attainment for either ozone, CO, PM–10 or NO_2 since 1990 and are subsequently redesignated to nonattainment for any of these pollutants, the provisions of this subpart shall not apply for 12 months following the date of final designation to nonattainment for such pollutant.

4. § 51.396(a) is amended by adding a sentence after the second sentence to read as follows:

§ 51.396 Implementation plan revision.

(a) * * * Further revisions to the implementation plan required by amendments to this subpart must be submitted within 12 months of the date of publication of final amendments to this subpart.* * *

* * * * *

5. § 51.420 is revised to read as follows:

§ 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 51.400.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that the TCM was included in a transportation plan and TIP previously found to conform, and all other relevant criteria of this subpart are satisfied.

6. Section 93.114 is revised to read as follows:

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project

approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that the TCM was included in a transportation plan and TIP previously found to conform, and all other relevant criteria of this subpart are satisfied.

7. The identical text of §§ 51.422 and 93.115 are amended by adding a sentence to the end of paragraph (a) and by adding paragraph (d) to read as follows:

§. Criteria and procedures: Projects from a plan and TIP.

(a) * * * Special provisions for TCMs are provided in paragraph (d) of this section.

* * * * *

(d) *TCMs.* If the conformity status of the transportation plan or TIP has lapsed, a TCM may be considered to satisfy this criterion if it meets the requirements of paragraphs (b) and (c) of this section with respect to a previously conforming transportation plan and TIP.

8. The identical text of §§ 51.428 and 93.118 is amended by revising paragraph (b)(1)(ii) to read as follows:

§. Criteria and procedures: Motor vehicle emissions budget (transportation plan).

* * * * *

(b) * * *

(1) * * *

(ii) NO_X as an ozone precursor;

* * * * *

9. Section 51.448 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as (g) and (h), and revising paragraphs (a) through (d) and the newly designated paragraph (g) to read as follows:

§ 51.448 Transition from the interim period to the control strategy period.

(a) *Control strategy implementation plan submissions.* (1) The transportation plan and TIP must be demonstrated to conform by eighteen months from the date of the State's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

(2) For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(b) *Disapprovals.* (1) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) Notwithstanding paragraph (b)(1) of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(c) *Failure to submit and incompleteness.* For areas where EPA notifies the State, MPO, and DOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(d) *Federal implementation plans.* When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

* * * * *

(g) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 51.464 are not required to demonstrate reasonable further progress and attainment the provisions of paragraphs (b) and (c) of this section do not apply to these areas at any time.

* * * * *

10. Section 93.128 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as (g) and (h), and revising paragraphs (a) through (d) and the newly designated paragraph (g) to read as follows:

§ 93.128 Transition from the interim period to the control strategy period.

(a) *Control strategy implementation plan submissions.*

(1) The transportation plan and TIP must be demonstrated to conform by eighteen months from the date of the State's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

(2) For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle

emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(b) *Disapprovals.* (1) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) Notwithstanding paragraph (b)(1) of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(c) *Failure to submit and incompleteness.* For areas where EPA notifies the State, MPO, and DOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(d) *Federal implementation plans.* When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

* * * * *

(g) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment the provisions of paragraphs (b) and (c) of this section do not apply to these areas at any time.

* * * * *

§§ 51.452, 93.130 [Amended]

11. The identical text of §§ 51.452 and 93.130 is amended by redesignating paragraph (b)(5) as paragraph (a)(6); and in paragraph (c)(1) by revising the references, ''paragraph (a)'' to read ''paragraph (b)'' in two places.

[FR Doc. 95–21405 Filed 8–28–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 70

[AD-FRL–5287–8]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by West Virginia. This program was submitted by West Virginia for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. The rationale for proposing interim approval is set forth in this notice; additional information is available at the address indicated below. This action is being taken in accordance with the provisions of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by September 28, 1995.

ADDRESSES: Comments should be addressed to Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of West Virginia's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70 and require states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and the July 21, 1992 version of Part 70, which together outline the currently applicable criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if West Virginia fails to submit a complete corrective program for full approval by 6 months before the interim approval