Waste Incinerators. The Alabama State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Alabama HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 62.100 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(5) Alabama Department of Environmental Management Plan for the Control of Hospital/Medical/Infectious Waste Incinerators, submitted on April 20, 1999, by the Alabama Department of Environmental Management.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart B is amended by adding a new § 62.104 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.104 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–8142 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–6574–7]

RIN 2060–AI76

Transportation Conformity Amendment: Deletion of Grace Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule we (EPA) are eliminating a provision of the transportation conformity rule that was overturned by the U.S. Court of Appeals for the District of Columbia Circuit (*Sierra Club* v. *EPA, et al.,* 129 F.3d 137 (D.C. Cir. 1997)). In compliance with the court's ruling, today's final rule formally deletes the 1995 amendment that allowed new nonattainment areas a one-year grace period before transportation conformity began applying.

In addition, we discuss in the preamble four issues that were raised in

a Petition for Reconsideration of the original transportation conformity rule that was finalized November 24, 1993. Although we are not taking any regulatory action in response to these issues at this time, the preamble clarifies our policies on the issues raised in the Petition.

Transportation conformity is a Clean Air Act requirement for transportation plans, programs, and projects to conform to state air quality plans. Conformity to a state air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.

Our transportation conformity rule establishes the criteria and procedures for determining whether or not transportation activities conform to the state air quality plan.

EFFECTIVE DATE: May 10, 2000.

ADDRESSES: Docket No. A–99–35 contains materials relevant to today's action and is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor). The docket is open and supporting materials are available for review between 8:00 a.m. and 5:30 p.m. on all federal government workdays . You may have to pay a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Denise Kearns, Transportation and Market Incentives Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, kearns.denise@epa.gov. (734–214–4240).

SUPPLEMENTARY INFORMATION: The text of this rulemaking and certain supporting documents used to develop the rule also can be accessed and downloaded from the Internet at http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature) OR http://www.epa.gov/OMSWWW/ (look in What's New or under the Conformity file area). Please note that there may be format changes in the documents on the web due to differences in software.

Regulated Entities

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

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration and Federal Transit Administration).

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

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

I. Background
II. How Soon Does Conformity Apply to a New Nonattainment Area?
III. What Are the Effects of Deleting the Grace Period and EPA's Response to Comments?
IV. What Are the Issues From the Petition for Reconsideration and EPA's Response to Comments?
A. Fiscal Constraint
B. Horizon Years for Hot-Spot Analyses
C. Assumptions Regarding Regional Distribution of Emissions
D. Credit for Delayed TCMs
V. How Would This Action Affect Conformity SIPs?
VI. Administrative Requirements and EPA's Response to Comments on Small Business and Environmental Justice Impacts of Rule
A. Executive Order 12866
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis and EPA's Response to Comments on Impact of Grace Period Deletion on Small Entities
D. Unfunded Mandates
E. National Technology Transfer and Advancement Act of 1995
F. Executive Order 13045
G. Executive Order 13084
H. Executive Orders on Federalism
I. Executive Order 12898 and EPA's Response to Comments on Environmental Justice Impacts of Grace Period Deletion
J. Submission to Congress and the Comptroller General
K. Petitions for Judicial Review

I. Background

The original conformity rule was finalized on November 24, 1993 (58 FR 62188). That rule has been subsequently amended on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780).

In 1998, we entered into a settlement with Environmental Defense (ED) in response to litigation. In that settlement, we agreed to repeal the grace period which had been established by the November 14, 1995 amendments and was permitted under 40 CFR 93.102(d) of the conformity rule. This grace period was overturned by the United States Court of Appeals in 1997.

We also agreed to respond to four issues raised in a Petition for Reconsideration that was submitted by the ED, Natural Resources Defense Council, and Sierra Club. That petition was filed with us on May 26, 1994 and addressed various provisions of the original conformity rule (58 FR 62188).

The Notice of Proposed Rulemaking for today's rule was published on November 30, 1999 (64 FR 66832). The comment period for the proposal ended December 30, 1999.

We received four comments on our proposal. Most commenters addressed issues relating to the rule's effect in areas subject to conformity. However, one commenter focused exclusively on our discussion of the four issues raised in the 1994 petition. Copies of the comments in their entirety can be obtained from the docket for this rule (see **ADDRESSES**).

This docket also includes a complete Response to Comments document for this rule. We summarize our response to comments below in parts III, IV and V of this preamble.

II. How Soon Does Conformity Apply to a New Nonattainment Area?

Conformity applies as soon as we formally designate an area nonattainment. In this final rule we are deleting § 93.102(d), which had provided a one-year grace period following nonattainment designation. On November 4, 1997, the U.S. Court of Appeals for the District of Columbia Circuit overturned § 93.102(d) of the conformity rule, and ruled that the

Clean Air Act requires conformity to apply upon designation. Because the court overturned § 93.102(d), we must delete this provision from our rules.

Therefore, as soon as a nonattainment designation is effective for your area, you must have a conforming transportation plan and transportation improvement plan (TIP) in order to approve transportation projects. This plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment. You may have to delay approving projects until this is done.

III. What Are the Effects of Deleting the Grace Period and EPA's Response to Comments?

Under today's rule, new nonattainment areas must have a conforming plan and TIP in place as soon as their designations become effective. As a practical matter, this requirement has been in effect since November 14, 1997, when the court ruled to delete the one-hour grace period.

Two commenters expressed concern that transportation planning agencies will not have enough time to respond to a new nonattainment designation and ensure that their plans and TIPs conform. These commenters were concerned that without a grace period, virtually all transportation projects in new nonattainment areas could be stopped upon the effective date of a designation.

We believe that new nonattainment areas will have ample time to develop a conforming plan and TIP before nonattainment designations are final and effective. There are generally several opportunities for transportation agencies to become aware that we are preparing to designate an area nonattainment, and as a consequence to prepare for conformity as needed.

For example, on October 25, 1999, we published a proposal to reinstate the one-hour ozone standard in areas that had previously been designated nonattainment. In that proposal, we stated that designations would not become effective until 90 days after we publish the final rule reinstating our one-hour ozone standard. In these areas, state and local transportation agencies will have been notified more than six months in advance of our decision to reinstate the nonattainment designations.

In addition, we point out that we do pursue a public process before we formally designate an area as nonattainment for the first time. We seek recommendations from the state regarding nonattainment designations and boundaries. If we modify the state's recommendations, we notify the state at least 120 days before finalizing the designation.

State and local transportation agencies and air quality agencies also are working to coordinate their planning processes and avoid situations that would result in a conformity lapse. We and the U.S. Department of Transportation (DOT) will work with areas to process their conformity determinations expeditiously. Although we acknowledge the timing issues and other concerns expressed by commenters regarding the deletion of the grace period, we believe that all partners involved in the conformity process can share information and effectively find ways to avoid significant delays in transportation projects resulting from the court's interpretation of the Clean Air Act.

We also note some transportation projects can proceed in the absence of a conforming plan and TIP, including exempt projects (§§ 93.126 and 93.127) and transportation control measures in an approved state implementation plan. These projects would not be affected by a new nonattainment designation.

IV. What Are the Issues From the Petition for Reconsideration and EPA's Response to Comments?

On May 26, 1994, Environmental Defense (ED), Natural Resources Defense Council, and Sierra Club Legal Defense Fund submitted to us a Petition for Reconsideration of the November 1993 conformity rule. We have responded to all issues raised in this petition through previous conformity amendments, with the exception of four issues addressed in this preamble. In a 1998 court settlement, EPA and ED agreed to address these four issues through today's rulemaking. A copy of the 1998 settlement and the full Petition for Reconsideration are included in the docket for this rulemaking see (**ADDRESSES**). As proposed, we are not taking any regulatory action in today's rule in response to the four issues raised in the 1994 Petition. However, in the discussion below we do clarify certain existing EPA policies, where we feel such clarification is necessary to address concerns raised by commenters on our proposed response to the Petition for Reconsideration.

A. Fiscal Constraint

1. What Is the Issue?

As discussed in the November proposal, in issue 6 of the Petition for Reconsideration, the petitioners requested that we adopt our own regulatory language requiring transportation plans and TIPs to be fiscally constrained, rather than referencing the Department of Transportation's (DOT's) metropolitan planning regulations. The existing conformity rule requires plans and TIPs to be fiscally constrained as required by DOT's metropolitan planning rule at 23 CFR part 450. These DOT regulations require that proposed projects in plans and TIPs be consistent with already available or projected sources of revenue.

2. What Comments Did EPA Receive on Fiscal Constraint, and What Is EPA's Response?

In response to our proposal, one of the petitioners reiterates their position that by referencing DOT's planning regulations, we have unlawfully delegated our rulemaking authority to DOT. Another commenter on the issue concurs with our belief that it is not necessary for us to establish our own language regarding fiscal constraint.

As we discussed in the proposal, we believe it is appropriate to refer to DOT's regulations on fiscal constraint for several reasons. First, we believe DOT's definition of fiscal constraint substantively meets the goals of our conformity rule. We also maintain that by referencing DOT's definition, we have met our procedural obligation to provide criteria and procedures for determining conformity, as required under section 176(c)(4)(A) of the Clean Air Act. We disagree with the commenter's contention that the Clean Air Act directs us to issue regulations specifically regarding fiscal constraint.

Again, we note that we rely on many other DOT definitions and rules, including some that are even more fundamental to the implementation of conformity (*e.g.,* DOT definitions and requirements for plans and TIPs). We also note that the petitioner's comments agree with us that DOT's existing fiscal constraint definition is acceptable for the purposes of conformity.

The commenter's real concern seems to be that future changes to the definition may be unacceptable, and that the conformity rule will automatically incorporate any future changes without EPA action. To remedy this situation, the commenter suggests that we adopt by reference DOT's existing definition of fiscal constraint and specifically exclude any changes that may be made in future DOT rules.

Although we agree that we do not have a concurrence role on DOT's metropolitan planning rule, we point out that there are effective, non-

statutory mechanisms in place to ensure federal coordination. We are fully utilizing these mechanisms and actively working with DOT on their new metropolitan planning regulations, including those provisions that address the definition of fiscal constraint. DOT is proposing to amend these regulations under the Transportation Equity Act for the 21st Century. Petitioners will have an opportunity to comment directly on any changes DOT may propose to their regulation on fiscal constraint through DOT's regulatory process.

As described in the proposal, we also believe that it is appropriate and efficient to rely on DOT's definition of fiscal constraint. It would be impractical to require plans and TIPs to satisfy two different definitions of fiscal constraint. If we refer only to the current definition of fiscal constraint, to ensure consistency we would have to amend the conformity rule whenever DOT's regulations change.

In summary, we believe that by referencing DOT's fiscal constraint definition we are meeting our statutory duty under the Clean Air Act. We also believe that it is reasonable to rely on the framework for federal coordination to ensure that DOT's regulations are appropriate in the conformity context. Lastly, we also believe that wherever it makes sense, we have a responsibility to provide state and local agencies involved in transportation conformity with clear and consistent rules. By referencing DOT's regulations in this case, and coordinating with DOT on any changes they may be contemplating, we believe the goals of conformity and the needs of the public will be effectively met.

B. Horizon Years for Hot-Spot Analyses

1. What Is the Issue?

As discussed in the proposal, issue 9B of the Petition for Reconsideration requested that we require hot-spot analyses to examine the 20-year timeframe of the transportation plan. The existing transportation conformity rule does not clearly specify the horizon for hot-spot analyses.

2. What Comments Did We Receive on the Hot-Spot Analysis Issue?

One of the petitioners explained that their intention was to request that EPA require hot-spot reviews of transportation projects to be consistent with plan and TIP time horizons, and with the time horizons for emissions analyses required by our general conformity rule. To ensure that projects do not cause or worsen hot-spots during the timeframe of the transportation plan, the petitioner suggests that we require an analysis to be conducted for the year during which peak emissions from the action are expected.

3. What Is Our Policy on the Horizon for Hot-Spot Analysis?

As discussed in the proposal to this rule, the conformity rule allows flexibility for areas to decide through the interagency consultation process how to demonstrate that hot-spots are not caused or worsened in any area. Although most areas conduct hot-spot analyses for the year of project completion, many areas also examine other analysis years in the future. For example, some areas do analyze the last year of a currently conforming transportation plan, or another year within the timeframe of that plan, whichever year emissions are highest.

In response to comments on the proposal, we acknowledge the need to clarify that the hot-spot analysis must demonstrate that no hot-spots will be caused or worsened during the timeframe of the transportation plan. Nonetheless, we continue to believe that the specific year examined in the hot-spot analysis to make this demonstration should be decided through interagency consultation, as appropriate to the individual area, on a case-by-case basis. This is allowed by our conformity rule. We also reiterate that it is not necessary in all cases to model the last year of the transportation plan in a hot-spot analysis. Rather, the hot-spot analysis should examine the year in which peak emissions are expected, which may not necessarily be the last year of the conforming plan.

We believe that it would be useful for § 93.116 of the conformity rule to specify that a demonstration that local violations will not be caused or worsened should cover the timeframe of the transportation plan. We agree that without this clarification, it is difficult for implementers to decide which years to examine in order to demonstrate that the conformity requirement is satisfied. For example, some could read the existing requirement to mean that the demonstration regarding local violations must consider only the year of project completion, or in contrast that it consider all future years.

Because we need to propose a regulatory clarification before finalizing it, we are not making any changes to § 93.116 or § 93.123 in this rule. However, we will propose clarifying regulatory text on this issue in an upcoming proposal to amend the conformity rule in response to the March 2, 1999 court decision (*Environmental Defense Fund* v. *EPA, et al.,* 167 F. 3d 641, D.C. Cir. 1999). That proposal would codify existing EPA guidance, issued in a May 14, 1999 memorandum from Gay MacGregor, Director of the Regional and State Programs Division in the Office of Transportation and Air Quality, to Regional Air Division Directors, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' Based on the court's decision that guidance outlines our approach for notifying and providing the public an opportunity to participate in the conformity process. It also provides criteria for transportation projects that may proceed during a conformity lapse.

In the interim, until this proposal is advanced, we believe our interpretation of § 93.116 and § 93.123 is consistent with our existing conformity rule, and that selection of the year of peak emissions should continue to be decided through the consultation process. We and DOT will implement the hot-spot requirements of the conformity rule as described in this preamble in all future conformity determinations.

C. Assumptions Regarding the Regional Distribution of Emissions

1. What Is the Issue?

In issue 12 of the Petition for Reconsideration, petitioners requested that we require metropolitan planning organizations (MPOs) to demonstrate that regional land use policies and proposed transportation plans achieve the same spatial distribution of motor vehicle emissions as was used in the state implementation plan (SIP) for demonstrating attainment. As discussed in the proposed rule, we had interpreted issue 12 of the Petition for Reconsideration to mean that the petitioners were in effect requesting that we should always require SIPs to establish subarea budgets that MPOs would have to conform to.

2. What Are the Conformity Rule's Requirements on the Use of Subarea Budgets?

Our existing conformity rule does not require states to establish subarea budgets in their SIPs. However, the conformity rule does support the development and use subarea budgets where states choose to do so, and it requires conformity to such budgets if they are established.

3. What Comments Did We Receive?

One commenter supported our current requirement that subarea budgets be established only at the state's

discretion. One of the petitioners commented that we had misconstrued this issue as presented in the Petition for Reconsideration.

The petitioner states that they did not mean to request that subarea budgets be established in all cases. Rather, the petitioner intended to request that we require MPOs to determine whether the emissions it projects for an area are going to be spatially distributed in the same way their distribution has been assumed in a SIP, whether or not there are subarea budgets. The petitioner also suggests that we develop screening criteria to help MPOs identify what is a significant magnitude of variance. In cases where the variance is significant, the petitioner believes we should require MPOs to perform an updated air quality analysis.

4. What Is Our Response to These Comments?

We do not believe that the Clean Air Act directs us to require analyses of spatial distribution or regional air quality analyses as a means for ensuring that transportation activities will not cause or contribute to new or increased violations, or delay timely attainment. The Clean Air Act simply requires a comparison with the SIP's estimates of emissions. We do not believe that the Clean Air Act ever intended MPOs to routinely perform regional air quality analyses, such as photochemical grid modeling, as part of a conformity determination.[1]

As a practical matter, we also note the SIP's assumptions about spatial distribution of emissions would not necessarily be clear to an MPO unless subarea budgets had been established. This is because not all SIPs are required to specifically document their assumptions about spatial distribution, and these assumptions are not always developed or presented in a form that is useful for other agencies, such as MPOs. Spatial distributions of emissions in SIPs are generally developed strictly to serve as an input to the SIP's dispersion modeling, and these emissions distributions are not designed or required to be used for any other purpose.

Again, neither the Clean Air Act nor the conformity rule requires states to develop subarea budgets. We have always interpreted the Clean Air Act to allow for a single budget for a nonattainment area for a given criteria pollutant or precursor, although states have the option to disaggregate and establish subarea budgets at their discretion (see our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13448, April 16, 1992).

To conclude, we do not believe that the Clean Air Act directs us to require the analysis suggested in the petitioner's comments as a means to ensuring that conformity is properly implemented. We also believe that the analysis suggested by petitioners would in effect require states to establish subarea budgets. Although EPA recognizes that there may be some areas that would benefit by conducting emissions analyses that rely on subarea budgets, we believe these areas will be identified through the interagency consultation process and that it is not necessary for us to issue regulations imposing these kinds of requirements.

D. Credit for Delayed TCMs

1. What Is the Issue?

As described in issue 15 of the Petition for Reconsideration, the petitioners believe that where a transportation control measure (TCM) has been delayed beyond the scheduled implementation date(s) in the SIP, an area's conformity determination should not be allowed to take emissions reduction credit for the TCM until after the TCM has actually been brought into service.

2. What Are the Conformity Rule's Requirements on the Timely Implementation of TCMs?

Under the current conformity rule, emission reduction credit may be taken at ''such time as implementation has been assured'' (see § 93.122(a)(2)). Once implementation has been assured, emissions analyses can take credit for the TCM in the analysis years during which the TCM would actually be in service (under the revised schedule). In the preamble discussion of the November 30, 1999 proposed rule, we clarified that an assurance of implementation would require at least the following: (a) Past obstacles to implementation of the TCM have been overcome; (b) state and local agencies are giving maximum priority to approval or funding of TCMs over other projects within their control; (c) funding for the TCM is identified and reasonably expected to be available; and (d) the legal or regulatory authority necessary to implement the TCM has been secured or appropriate commitments are in place.

3. What Comments Did EPA Receive on the Timely Implementation of TCMs, and What Is EPA's Response?

In response to our discussion on requirements for assuring the timely implementation of TCMs in the proposal, commenters seemed satisfied that EPA's existing requirements were appropriate. However, a petitioner suggested that we include the criteria listed in the November 1999 proposal as a regulatory definition for assurance of implementation.

EPA does not believe that it is necessary to amend the conformity rule to include such a regulatory definition. We believe that § 93.113 of the conformity rule as written is clear, and that this preamble is an appropriate place to elaborate on the rule. We note that a previous preamble discussion on the timely implementation of TCMs (58 FR 62197, November 24, 1993) has provided additional guidance on our implementation of the conformity rule to date. EPA and DOT have effectively used this 1993 preamble discussion to implement conformity, and we will continue to do so with the language in today's preamble.

V. How Would This Action Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs in order to include the criteria and procedures for determining conformity.

If we approved your area's conformity SIP and it includes a provision for a one-year grace period (§ 93.102(d)), that provision cannot be implemented. This has been the case ever since the November 4, 1997, court decision, which found such provisions to be inconsistent with the Clean Air Act. Future conformity SIP submissions may not include § 93.102(d).

If your area has submitted a conformity SIP to us that contains this provision (and we have not yet approved the conformity SIP), we will not approve such a provision as part of the SIP.

VI. Administrative Requirements and EPA's Response to Comments on Small Business and Environmental Justice Impacts of Rule

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

[1] One state has opted to require dispersion modeling for conformity for its own purposes.

''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 otherwise 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 legal 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 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Analysis and EPA's Response to Comments on Impact of Grace Period Deletion on Small Entities

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions. EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities.

One commenter questioned our determination that the proposal to delete the grace period will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA). We found no such impact because the conformity rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. The commenter alleged that both the RFA, the courts, and our own implementing guidance require us to consider the indirect impacts of a proposed rule as well.

We do not agree with the commenter that the agency must consider the indirect impacts of a regulation under the RFA. EPA has consistently interpreted the RFA as requiring the agency only to assess the impacts of proposed rules on the small entities directly regulated by the proposed rule, and this position has been upheld by the courts. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule); *American Trucking Associations, Inc., et al.,* v. *EPA, et al.,* 175 F.3d 1027 (D.C. Cir. 1999) (court has consistently interpreted RFA to impose no obligation on agency to assess impacts on entities it does not regulate).

In addition, the commenter misreads EPA's guidance concerning consideration of indirect impacts. The sentence the commenter quotes from EPA's guidance directs agency staff to consider indirect impacts as part of any broader economic analysis conducted for the rule, such as a Regulatory Impact Analysis if one is conducted. However, the immediately preceding sentence of the guidance clarifies that if a rule is applicable only to large entities but indirectly impacts small entities, the agency can still certify no significant impact on small entities under the RFA. See Revised Interim Guidance for EPA Rulewriters: Regulatory Flexibility Act, March 29, 1999, p. 17. In any event, the document to which the commenter refers is only guidance; it does not establish any legally binding requirements.

It is also clear that the conformity rule applies directly only to federal agencies and MPOs and does not directly regulate small entities, such as the road builders represented by the commenter. These entities will only be adversely effected by the deletion of the grace period if DOT and the MPOs fail to develop a conforming transportation plan and program by the effective date of a nonattainment designation. In light of the advance warning areas will have of pending designations during the notice and comment period, and the delayed effective date EPA intends to provide for such designations, EPA believes that DOT and MPOs will be able to develop conforming plans and programs in a timely fashion.

Finally, the commenter's allegation is incorrect that the court which ordered EPA to delete the grace period determined that such a change would adversely effect small entities. The court in *Sierra Club* did find that the fact that an intervening governmental agency could alleviate any potential impact on private individuals was not sufficient to deprive such individuals of standing to challenge the grace period in court. However, the standard for showing harm sufficient to support legal standing to sue has no bearing on the impact necessary to mandate a finding of significant impacts under the RFA. The RFA only requires an agency to assess the impacts of a proposed rule on entities directly subject to the proposed rule. The analysis under the RFA need not cover any entities not directly subject to the proposed rule notwithstanding any indirect impacts that may result to other entities, regardless of whether any such impacts could support legal standing to challenge the rule.

EPA therefore concludes that it correctly interpreted the RFA and correctly found that the proposal to delete the grace period would not have a significant impact on a substantial number of small entities. Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that 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. Furthermore, this rule simply formalizes what the court has already decided as a legal matter, and which is already being implemented in practice.

This rule affects only those areas that are newly designated as nonattainment, and it simply applies conformity one year earlier than our previous rule had required. Therefore, this rule could require a limited number of areas to perform perhaps one additional transportation plan/TIP conformity determination each.

A 1992 DOT survey of metropolitan planning organizations (MPOs) found that most MPOs spend less than $50,000 per transportation plan/TIP conformity determination. The largest MPOs (serving a population over one million) spent up to $250,000. Thus, even if EPA were to designate 200 areas as nonattainment in one year and each one incurred the maximum costs, the expenditures would not exceed $100 million.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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.,* materials 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

F. Executive Order 13045

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 rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this regulatory change is required by statute. Furthermore, today's rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Orders on Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency

consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's Prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, which is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the 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 nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this rule is codifying in regulation the statutory interpretation by the court that is currently in effect. Consequently, this rule is required by statute, and by itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 12898 and EPA's Response to Comments on Environmental Justice Impacts of Grace Period Deletion

One commenter indicated that we failed to consider the disproportionate impact the deletion of the grace period would have on minority and low income groups as required by Executive Order 12898 on environmental justice. The commenter argued that we recently found that minorities and low income populations were disproportionately represented in nonattainment areas, and that we are required by the Executive Order to consider the economic impact on such populations of job loss resulting from deletion of the grace period.

We do not agree that Executive Order 12898 requires us to consider the economic impact of the grace period deletion on minorities and low income populations in this case. The Executive Order only requires agencies to assess adverse impacts on minorities and low income populations where the action the agency is taking will cause disproportionate human health or environmental impacts on such populations. In this case the regulatory action we are taking to delete the grace period from our conformity regulations will not have such impacts, since we are only formally correcting our regulations to reflect the action taken by the United States Court of Appeals in 1997. Any potential adverse impacts on minority and low income populations resulting from deletion of the grace period were caused by the court when it found the grace period to be illegal and overturned it. Since the court decision in 1997, the grace period has effectively been nullified and any areas newly redesignated to nonattainment have been subject to conformity requirements immediately upon the effective date of any redesignation. In addition, since this deletion is mandated by the court's ruling, we could not effectively address any potential adverse impacts from EPA action even if an environmental justice analysis disclosed any.

J. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: March 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is removed.

[FR Doc. 00–8712 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6570–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a petition submitted by Rhodia, Inc. (Rhodia), to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition originally submitted by Rhodia to delist the Filter Cake Sludge on a ''generator specific'' basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in subtitle D landfills/surface impoundments. This exclusion applies to Filter Cake Sludge generated at Rhodia's Houston, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in subtitle D landfills/surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.