

## Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.833 is revised to read as follows:

#### § 117.833 Pasquotank River.

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

Dated: July 12, 1995.

**N.V. Scurria, Jr.,**

*Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.*

[FR Doc. 95-19346 Filed 8-4-95; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 93

[FRL-5273-8]

#### Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action permanently aligns the timing of certain consequences of state air quality planning failures under EPA's transportation conformity rule with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan; and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding,

the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action makes permanent the interim final rule issued on February 8, 1995 (60 FR 7449), which was effective for only six months. The lapse in conformity status which this action delays for some areas would otherwise prevent approval of new highway and transit projects.

**EFFECTIVE DATE:** This final rule is effective August 8, 1995.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A-95-02. The docket is located in room M-1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket 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:

##### I. Background

On February 8, 1995, EPA issued an interim final rule entitled, "Transportation Conformity Rule Amendments: Transition to the Control Strategy Period," which was effective from February 8, 1995, until August 8, 1995 (60 FR 7449). Because the interim final rule took effect without prior notice and comment, EPA limited its effectiveness to a six-month period, during which full notice and comment was to occur.

EPA also issued on February 8, 1995, a proposed rule to apply the provisions of the interim final rule permanently (60 FR 7508). The public comment period on the proposed rule lasted until March 10, 1995, and a public hearing was held on February 22, 1995.

The February 8, 1995, interim final rule delayed the conformity lapse imposed as a result of the following: an incomplete 15% rate-of-progress SIP with a "protective finding" (described below); a failure to submit or submission of an incomplete ozone attainment/3% rate-of-progress SIP; and a disapproval of any control strategy SIP (i.e., 15% rate-of-progress SIP, reasonable further progress SIP, or attainment demonstration) with a protective finding.

The interim final rule did not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

When the conformity status of the transportation plan and transportation improvement program (TIP) lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

EPA is delaying the conformity lapse resulting from the specific SIP deficiencies listed above because EPA has recognized that in practice, the twelve-month time period which the November 24, 1993, transportation conformity rule allowed for areas to correct those SIP deficiencies is too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

Today's final rule amends 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" (58 FR 62188, November 24, 1993). 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 (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (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.

##### II. Description of Final Rule

This final rule makes no substantive changes from the proposed rule. This final rule permanently applies the provisions of the February 8, 1995, interim final rule by eliminating the six-month limit to the interim final rule's

applicability. The regulatory language is somewhat modified from the interim final rule's language as a result of the elimination of the six-month limit on applicability of certain provisions.

Like the interim final rule and proposed rule, this final rule affects areas with a 15% SIP which EPA found incomplete but noted in the finding (according to 40 CFR 51.448(c)(1)(iii)) that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A) (i.e., incomplete with a "protective finding"); ozone nonattainment areas which fail to submit an ozone attainment SIP and/or a 3% rate-of-progress SIP revision; ozone nonattainment areas with an incomplete ozone attainment SIP and/or an incomplete 3% rate-of-progress SIP; and areas with a disapproved control strategy SIP with a "protective finding" as described in 40 CFR 51.448 (a)(3) and (d)(3). Conformity lapse as a result of these SIP failures is delayed until Clean Air Act section 179(b) highway sanctions for these failures are applied. If the interim final rule expired on August 8, 1995, without today's final rule, conformity would lapse immediately in approximately twenty areas without complete 15% SIPs.

Like the interim final rule and proposed rule, this final rule does not change the timing of conformity lapse for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete carbon monoxide (CO), particulate matter (PM-10), or nitrogen dioxide (NO<sub>2</sub>) attainment demonstrations; for failure to submit 15% SIPs; or for submission of incomplete 15% SIPs without protective findings.

Like the interim final rule and the proposed rule, this final rule does not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

This final rule deletes paragraphs (g)(1) and (g)(2) in 51.448(g) (93.128(g)), because these provisions are no longer relevant given the other changes of this final rule.

Today's final rule will be effective August 8, 1995. Today's final rule will prevent the conformity status of certain plans and TIPs from lapsing

immediately upon expiration of the interim final rule on August 8, 1995, in approximately twenty ozone nonattainment areas currently without complete 15% SIPs. This conformity lapse would be contrary to the public interest because EPA believes that halting of transportation plan, program, and project implementation in these cases is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c). If EPA did not make this rule effective August 8, 1995, conformity lapse which is contrary to the public interest could occur in some areas during the 30-day period between publication and the effective date which is ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA therefore finds good cause to make this final rule effective August 8, 1995. In addition, this rule relieves a restriction and therefore qualifies for an exemption from the APA's 30-day advance-notice period under 5 U.S.C. 553(d)(1).

### III. Response to Comments

Fourteen comments on the proposed rule were submitted, including comments from MPOs and state and local air and transportation agencies. The majority of the comments supported the proposed rule. A complete response to comments document is in the docket.

One commenter opposed the proposed rule for a number of reasons, including the concern that the proposed rule would encourage further delays in development and submission of control strategy SIPs. EPA agrees that the submission of control strategy SIPs (and thus motor vehicle emissions budgets) is of critical importance for conformity purposes. However, EPA believes that Clean Air Act section 179(b) sanctions continue to provide appropriate incentive to submit complete and approvable control strategy SIPs.

The commenter also suggested that EPA consider options such as retaining the lapsing provisions but allowing extensions in certain circumstances, or retaining the conformity lapse but allowing a longer grace period (such as 18 or 24 months) following an EPA finding of a SIP failure. In fact, because Clean Air Act highway sanctions apply 24 months following an EPA finding of a SIP failure, today's amendments aligning conformity lapse with Clean Air Act highway sanctions implement the commenter's latter suggestion. Although the commenter was also concerned that tying conformity to sanctions would make EPA more hesitant to apply sanctions, section

179(b) sanctions are mandatory within the prescribed periods following EPA's findings of State failures, under the Clean Air Act and EPA's regulations.

Other commenters suggested that EPA should align all conformity lapses due to SIP failures with Clean Air Act sanctions. Alignment for more cases than originally proposed would require another rulemaking. EPA currently intends to issue in the future a proposal to align with Clean Air Act highway sanctions the conformity lapse which results from failure to submit a 15% SIP; an incomplete 15% SIP without a protective finding; and failure to submit or incomplete CO, PM-10, or NO<sub>2</sub> attainment demonstrations. This change would also dramatically decrease the complexity of the regulatory language in section 51.448 (93.128) of the conformity rule, which was a concern expressed by some commenters. EPA will be considering comments advocating alignment of the lapse which follows SIP disapprovals without protective findings, but the agency has not yet decided whether to propose amending that provision.

Some commenters suggested that every conformity lapse for any reason, including failure to demonstrate conformity to a submitted SIP, should be delayed. These suggestions are beyond the scope of the proposed rule and would also require another proposed rule. Again, EPA will be considering these comments in the context of future conformity rule amendments.

Several commenters also raised concerns about aspects of the conformity rule which are not relevant to this action, including transportation control measures and non-federal projects. These comments do not affect whether EPA should proceed with today's action, but EPA will be considering them in the context of future conformity rule amendments.

### IV. Administrative Requirements

#### A. Administrative Designation

##### 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; or

(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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted 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 the Office of Management and Budget (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 moderate and above ozone nonattainment areas, which are almost exclusively urban areas of substantial population, and 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.

Because this action will delay conformity lapses that would otherwise occur under existing regulations, 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. 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 1, 1995.

**Carol M. Browner,**  
*Administrator.*

40 CFR parts 51 and 93 are amended as follows:

**PART 51—[AMENDED]**

1. The authority citation for part 51 is amended to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**PART 93—[AMENDED]**

2. The authority citation for part 93 is amended to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**§§ 51.448 and 93.128 [Amended]**

3. The identical texts of §§ 51.448 and 93.128 are amended as follows:

a. By redesignating paragraphs (b)(2) and (c)(2) as (b)(3) and (c)(3);

b. By removing paragraphs (g)(1) and (g)(2) and redesignating paragraph (g)(3) as (g)(1) and reserving paragraph (g)(2); and

c. By revising paragraphs (a)(3), (b)(1) introductory text, and (d)(3), and adding new paragraphs (b)(2) and (c)(2).

The identical text of additions and revisions reads as follows:

§ \_\_\_\_\_. \_\_\_\_ Transition from the interim period to the control strategy period.

(a) \* \* \*

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), 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, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.*

(1) For CO, PM<sub>10</sub> and NO<sub>2</sub> areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) \* \* \*

(ii) \* \* \*

(2) For ozone nonattainment areas where EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision required by Clean Air Act sections 182(c)(2)(A) and/or 182(c)(2)(B), failure to submit an attainment demonstration for an intrastate moderate ozone nonattainment area that chose to use the Urban Airshed Model for such demonstration, or failure to submit an attainment demonstration for a multistate moderate ozone nonattainment area, 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.

\* \* \* \* \*

(c) \* \* \*

(2) In lieu of the provisions of paragraph (c)(1) of this section, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area under section

179(b)(1) of the Clean Air Act as a result of incompleteness, in ozone nonattainment areas where EPA notifies the State, MPO, and DOT that the following control strategy implementation plan revisions are incomplete:

(i) The implementation plan revision due November 15, 1994, as required by Clean Air Act sections 182(c)(2)(A), and/or 182(c)(2)(B);

(ii) The attainment demonstration required for moderate intrastate ozone nonattainment areas which chose to use the Urban Airshed Model for such demonstration and for multistate moderate ozone nonattainment areas; or

(iii) The VOC reasonable further progress demonstration due November 15, 1993, as required by Clean Air Act section 182(b)(1), if EPA notes in its incompleteness finding as described in paragraph (c)(1)(iii) of this section that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

(iv) The consequences described in paragraph (c)(1) of this section shall be nullified if such provisions have been applied as a result of a failure described in paragraph (c)(2) of this section, and paragraph (c)(2) of this section shall henceforth apply with respect to any such failure.

\* \* \* \* \*

(d) \* \* \*

(3) Notwithstanding paragraph (d)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), 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, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

\* \* \* \* \*

[FR Doc. 95-19400 Filed 8-4-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[FRL-5274-3]

**Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements: Withdrawal**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of final rule.

**SUMMARY:** On June 22, 1995, the EPA published a proposed rule (60 FR 32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on that determination, the EPA also determined that requirements of section 182(b)(1) of the Clean Air Act (Act) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) of the Act concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard. The EPA is removing the final rule due to adverse comments regarding the Northern Kentucky (Cincinnati) area and will summarize and address all public comments received in a subsequent final rule (based upon the proposed rule cited above). Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. A final rule will be published regarding the Nashville area for which no adverse comments were received.

**EFFECTIVE DATE:** The direct final rule published at 60 FR 32466, June 22, 1995, is withdrawn effective August 7, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347-3555, extension 4221.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 1995.

**R.F. McGhee,**

*Acting Regional Administrator.*

[FR Doc. 95-19487 Filed 8-4-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 70**

[AD-FRL-5274-2]

**Title V Clean Air Act Final Interim Approval of Operating Permits Program; District of Columbia**

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final interim approval.

**SUMMARY:** EPA is promulgating interim approval of the operating permits program submitted by the District of Columbia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

**EFFECTIVE DATE:** September 6, 1995.

**ADDRESSES:** Copies of the District's submittal and other supporting information used in developing the final 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**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the CAA")), and