

matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 15, 1999.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 99-30781 Filed 11-29-99; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 93**

[FRL-6481-9]

RIN 2060-A176

**Transportation Conformity Amendment: Deletion of Grace Period**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to delete 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 1995, we amended the conformity rule so that new nonattainment areas would have a one-year grace period before transportation conformity began applying. In 1997, the court overturned this grace period. This action formally deletes the provision from the transportation conformity rule in compliance with the court ruling.

In addition, we discuss in this document some issues that were raised in a Petition for Reconsideration of the

original transportation conformity rule (finalized November 24, 1993). We are not proposing any changes to the conformity rule in response to these issues.

We are required by a court settlement to finalize rulemaking on these issues by December 31, 1999. We agreed to this settlement in 1998 in response to litigation by the Environmental Defense Fund.

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.

**DATES:** Written comments on this proposal must be submitted on or before December 30, 1999.

**ADDRESSES:** Interested parties may submit written comments in response to this rule (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-99-35, 401 M Street, SW., Washington, DC 20460. (Those desiring notification of receipt of comments must include a self-addressed, stamped postcard).

Materials relevant to this rulemaking are in Public Docket A-99-35 at the above EPA address in room M-1500

Waterside Mall (ground floor). You may look at them from 8:00 a.m. to 5:30 p.m. on weekdays, except holidays. You may have to pay a reasonable fee for copying docket material.

The notice of proposed rulemaking is also available electronically from our web site. See **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

**FOR FURTHER INFORMATION CONTACT:** Laura Voss, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, voss.laura@epa.gov. (734) 214-4858.

**SUPPLEMENTARY INFORMATION:** You can access and download files on your first call using a personal computer according to the following information:

*Internet Web Sites*

<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)

A version should be available today on any of the above-listed sites. Please note that you may see format changes 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. Issues From Petition for Reconsideration
  - A. Fiscal Constraint
  - B. Horizon Years for Hot-Spot Analyses
  - C. Assumptions Regarding Regional Distribution of Emissions
  - D. Credit for Delayed TCMs
- IV. How Would this Action Affect Conformity SIPs?
- V. Administrative Requirements

**I. Background**

In 1998, we entered into a settlement with the Environmental Defense Fund (EDF) in response to litigation. We

agreed to finalize rulemaking by December 31, 1999, to repeal the grace period in 40 CFR 93.102(d) and respond to four issues identified in EDF's May 1994 Petition for Reconsideration of the original conformity rule.

Section 93.102(d) and the four issues from the petition for reconsideration are described below.

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

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

According to a November 4, 1997, court decision, conformity must apply as soon as we designate an area nonattainment. As a result, we are proposing to delete § 93.102(d) of the conformity rule. This section allowed newly designated nonattainment areas a one-year grace period before conformity starts applying.

We included this provision in our November 14, 1995, conformity amendments (60 FR 57179). However, the Sierra Club challenged it and the court overturned it.

Therefore, as soon as we designate your area as nonattainment, you must have a conforming transportation plan and transportation improvement program (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.

Since designation is done through notice-and-comment rulemaking, you will be aware of pending designations at the time of proposal and will have the time until the final designation is effective to develop a conforming plan and TIP.

## III. Issues From Petition for Reconsideration

On May 26, 1994, the Environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club Legal Defense Fund submitted to EPA a Petition for Reconsideration of the November 1993 conformity rule. We have already responded to most of the concerns raised in this petition through previous conformity amendments.

However, there are four outstanding issues which we agreed to reconsider and respond to through this rulemaking. As explained below, we have now reconsidered these issues. However, we are not proposing any changes to the existing conformity rule as a result of our reconsideration.

The full Petition for Reconsideration is in the docket for this proposal (see **ADDRESSES**).

### A. Fiscal Constraint

#### 1. What Is the Issue?

As described in issue 6 of the Petition for Reconsideration, the petitioners believe that we should have adopted 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. These DOT regulations require fiscally constrained transportation plans and TIPs; that is, that the proposed projects in plans and TIPs must be consistent with already available or projected sources of revenue.

The petitioners are concerned that DOT could unilaterally modify its regulations. The petitioners believe that by referencing DOT's planning regulations, we have unlawfully delegated our rulemaking authority to DOT.

In addition, the petitioners object that DOT's metropolitan planning regulations do not properly implement the Intermodal Surface Transportation Efficiency Act's (ISTEA's) funding requirements for TIPs. ISTEA has since been reauthorized as the Transportation Equity Act for the 21st Century, or TEA-21.

#### 2. What Is EPA's Response?

We believe that it is appropriate to refer to DOT's regulations on fiscal constraint for several reasons. First, the Clean Air Act does not direct us to issue regulations regarding fiscal constraint. Congress has given DOT the authority to create the regulations that implement ISTEA and TEA-21. Second, it would not be practical for our fiscal constraint requirements to be different from DOT's rules; in order to be effectively implemented and enforced, they need to be exactly the same.

Third, the conformity rule as a whole is based on DOT's transportation planning process as it is outlined in DOT's metropolitan planning regulations, including the rules for developing plans and TIPs. Although these planning regulations provide a foundation for the conformity rule, it is not necessary or appropriate for us to use the conformity rule to issue our own interpretation of ISTEA's planning requirements. Our reliance on DOT's fiscal constraint requirements is an illustration of this general principle. Therefore, EPA believes it is appropriate to defer to DOT's interpretation of the requirements for fiscal constraint as adopted in DOT's planning regulations.

Finally, we do not share the petitioners' concern that DOT will unilaterally change its regulations. EPA and DOT are federal partners in transportation and air quality planning. There are mechanisms to ensure federal coordination, and we are involved in DOT's drafting of the metropolitan planning regulations. Further, 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.

## B. Horizon Years for Hot-Spot Analyses

### 1. What Is the Issue?

In issue 9B of the Petition for Reconsideration, the petitioners state that we should require hot-spot analyses to examine the 20-year timeframe of the transportation plan.

The existing transportation conformity rule does not specify the horizon for hot-spot analyses.

### 2. What Are the Conformity Rule's Requirements About Hot Spots?

The rule requires carbon monoxide (CO) and particulate matter (PM-10) areas to demonstrate that transportation projects will not cause or contribute to new hot spots or increase the frequency or severity of existing hot spots. In some cases, CO nonattainment areas must demonstrate that they reduce localized CO violations. The conformity rule requires these demonstrations to be based on modeling procedures and assumptions that are decided through interagency consultation.

At the present time, quantitative PM-10 hot-spot analysis is not required. According to § 93.123(b)(4) of the conformity rule, quantitative PM-10 hot-spot analysis is not required until EPA releases modeling guidance on this subject. However, projects' impact on localized PM-10 violations must be qualitatively considered.

### 3. What Is EPA's Response?

In most areas, hot-spot analyses are done for the year of project completion. Areas decide whether they should examine other analysis years in the future. For example, some areas analyze the last year of the transportation plan (i.e., the twentieth year) or the tenth year after the project's date of completion.

We do not believe it is necessary to specify that hot-spot analyses must model the twentieth year of the transportation plan in all cases. We allow a considerable amount of flexibility for areas to decide through the interagency consultation process how to demonstrate that hot spots are not caused or worsened in any area. There is even an opportunity for qualitative demonstrations.

Because current emissions models show that CO emissions per vehicle are decreasing over time, it may be most conservative to analyze a year in the nearer term, rather than a year that is 20 years distant. Thus, it would not be appropriate for us to mandate that all hot-spot analyses must examine the twentieth year. Instead, we believe the horizon year of the hot-spot analysis should be decided through interagency

consultation, as appropriate to the individual area, on a case-by-case basis.

### *C. Assumptions Regarding Regional Distribution of Emissions*

#### 1. What Is the Issue?

As described in issue 12 of the Petition for Reconsideration, the petitioners believe that Metropolitan Planning Organizations (MPOs) should be required to demonstrate that regional land use policies and the proposed transportation plan will achieve the same spatial distribution of motor vehicle emissions as was used in the state implementation plan (SIP) to demonstrate attainment.

We believe that the petitioners are in effect requesting that we should always require SIPs to establish subarea budgets, and that we should then require MPOs and DOT to show conformity to these subarea budgets. The petitioners request that we eliminate § 93.124(d) of the conformity rule, which states that when the SIP includes emissions estimates by subarea, these are not considered to be budgets for conformity purposes unless the SIP explicitly states that intent.

#### 2. What Is EPA's Response?

We believe that the conformity rule's provisions should be retained. The Clean Air Act does not require 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 the budget 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).

If we were to compel states to include subarea budgets in their SIPs, it is not clear what level of disaggregation would be appropriate. Creating budgets for each grid cell used in the photochemical modeling would be impractical, because each grid cell is small. Grid cells can be as small as one square kilometer. The transportation plan and TIP would have to be apportioned into subareas, and the transportation model would have to be altered so it could produce estimates for each separate subarea.

We believe the costs of this requirement would generally outweigh the benefits. Where spatial distribution of emissions is very important to the attainment of the standards, states should specify subarea budgets in their SIPs as necessary to demonstrate attainment, according to the degree of disaggregation they deem appropriate. Where such subarea budgets are

identified, all plans and TIPs would have to show conformity to each subarea budget. On the other hand, if subarea budgets are not necessary for attainment demonstration purposes, EPA believes that the conformity rule need not require them.

### *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. This would be more stringent than the current conformity rule, which prohibits emission reduction credit only until "such time as implementation has been assured" (see § 93.122(a)(2)).

#### 2. What Is EPA's Response?

We believe that in general, it is appropriate for areas to take credit for measures even before they have been implemented, provided that there are good reasons to believe that the measures will be implemented on the anticipated schedule. The main purpose of conformity is to prospectively analyze the impacts of future transportation activities, whether their impacts are positive or negative.

The conformity rule has a number of provisions to ensure that areas analyze only those projects that are reasonably expected to occur. For example, we do not allow areas to take credit for TCMs on their original implementation schedule when they have already been delayed. We do not allow areas to take credit for regulatory measures until they have been adopted or committed to in a SIP.

However, the petitioners' suggestion would not allow for any prospective credit for any TCM that had been delayed at any point in its life. Although the petitioners' suggestion could perhaps provide an incentive to avoid TCM delays, we believe that the requirements for timely implementation of TCMs already serve that purpose.

We believe that the petitioners' suggestion would be punitive in nature and is not necessary to fulfill the requirements of Clean Air Act section 176(c). We do not see any reason to forbid areas to take credit for a TCM if all obstacles have been overcome and its implementation is assured, even if the project is not on its original implementation schedule.

Once implementation has been assured, emissions analyses could take credit for the TCM in the analysis years during which the TCM would actually be in service (under the revised schedule). Obviously, an area would not be allowed to take credit for the TCM according to its original schedule, unless the area could demonstrate how it was making up for the past delays.

The petitioners do point out that we have not defined what we mean by the phrase, "such time as implementation has been assured." Although the interpretation of this phrase will vary from case to case, 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.

Section 93.113 of the conformity rule requires that if TCMs in an approved SIP are behind schedule, the area must demonstrate that past obstacles to implementation of the TCM have been overcome and that the TCM is receiving maximum priority. This demonstration must be based on consultation among the federal, state, and local air and transportation agencies.

The preamble to the 1993 conformity rule (58 FR 62197, November 24, 1993) provides more explanation of these points, including guidance on what is considered "maximum priority."

We take this opportunity to also address some other questions that have arisen about timely TCM implementation. First, what does it mean for a TCM or other measure in the SIP to be "delayed beyond the scheduled date(s)" We consider a measure "delayed" if the current schedule for its implementation (for example, as described in the TIP) indicates that the upcoming scheduled dates in the SIP will be missed.

In other words, a measure can be considered delayed even before the implementation date is actually missed. If current projections indicate the project will miss scheduled implementation dates, it is considered delayed.

In addition, we would like to clarify that once a TCM has been implemented, this implementation must continue permanently unless the approved SIP specifically stipulates that

implementation will cease at a specific time.

#### IV. 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 are not able to approve such a provision as part of the SIP.

#### V. 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 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 proposal 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

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 proposed 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. 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. These organizations do not constitute small entities. The Regulatory Flexibility Act defines "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000.

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 proposal 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. NTTAA

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., 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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

#### G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a

mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

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 regulation is required by statute. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### H. 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 regulation 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.

#### I. Executive Orders on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 proposed 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 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 proposed 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. 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 itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### **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: November 22, 1999.

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

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be 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.

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