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 [FR Doc. 02-19798 Filed 8-5-02; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 93**

[FRL-7256-3]

RIN 2060-AJ70

**Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating two minor revisions to the transportation conformity rule. Transportation conformity is required by the Clean Air Act to ensure that federally supported highway and transit project activities are consistent with (“conform to”) the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA’s transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

First, today’s final rule will implement a Clean Air Act amendment that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. This Clean Air Act amendment was enacted on October 27, 2000. Although the grace period is already available to newly designated nonattainment areas as a matter of law, EPA is today incorporating the one-year conformity grace period into the conformity rule.

Second, today’s final rule will change the point by which a conformity determination must be made following a State’s submission of a control strategy implementation plan or maintenance plan for the first time (an “initial” SIP submission). Today’s rule requires conformity to be determined within 18 months of EPA’s affirmative finding that the SIP’s motor vehicle emissions budgets are adequate. Prior to today’s action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP.

This change to the conformity rule better aligns when the 18-month requirement for conformity to initial SIP submissions is implemented, so that state and local agencies have sufficient time to redetermine conformity when initial SIPs are submitted and after EPA finds the SIP budgets adequate.

**EFFECTIVE DATE:** This final rule is effective on September 5, 2002.

**ADDRESSES:** Materials relevant to this rulemaking are in Public Docket

A-2001-12 located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor). Ph: 202-260-7548. The docket is open and supporting materials are available for review between 8 a.m. and 5:30 p.m. on all federal government workdays. You may have to pay a reasonable fee for copying docket materials.

This final rule is available electronically from EPA’s Web site. See **SUPPLEMENTARY INFORMATION** for information on accessing and downloading files.

**FOR FURTHER INFORMATION CONTACT:** Angela Spickard, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *spickard.angela@epa.gov*, (734) 214-4283.

**SUPPLEMENTARY INFORMATION:** You can access and download today’s final rule on your computer by going to the following address on EPA’s Internet Web site: <http://www.epa.gov/otaq/traq> (Once at the site, click on “conformity.”).

**Regulated Entities**

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

| Category                 | Examples of regulated entities                                                                                                                                                                                                                                      |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local government .....   | Local transportation and air quality agencies, including metropolitan planning organizations. State transportation and air quality agencies. Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)) and EPA. |
| State government .....   |                                                                                                                                                                                                                                                                     |
| Federal government ..... |                                                                                                                                                                                                                                                                     |

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 of which EPA is aware that 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 40 CFR 93.102 of the transportation 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. One-year Conformity Grace Period for Newly Designated Nonattainment Areas
- III. Conformity Determinations for Initial SIP Submissions
- IV. What Comments That Addressed Topics Other Than Those Covered in This Rulemaking Did We Receive?
- V. How Does Today’s Final Rule Affect Conformity SIPs?
- VI. Administrative Requirements

**I. Background**

Transportation conformity is required under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit

project activities are consistent with (“conform to”) the purpose of a state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. EPA’s transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188), and made subsequent minor revisions to the rule in 1995 (60

FR 40098, August 7, 1995, and 60 FR 57179, November 14, 1995). On August 15, 1997, however, EPA published a comprehensive set of amendments that clarified and streamlined language from the 1993 transportation conformity rule and 1995 amendments (62 FR 43780). Since the publication of the 1997 rule, we made one additional minor revision to the conformity rule in 2000 (65 FR 18911, April 10, 2000).

As described in the October 5, 2001, proposal to this final rule (66 FR 50954), EPA's 1995 conformity rule provided a one-year conformity grace period to areas that were designated nonattainment for a given air quality standard for the first time (§ 93.102(d) of the November 14, 1995, final rule; 60 FR 57179). However, this provision was challenged by the Sierra Club under the Clean Air Act as amended in 1990, and the U.S. Court of Appeals for the District of Columbia Circuit overturned the grace period on statutory grounds on November 4, 1997 (*Sierra Club v. EPA, et al.*, 129 F. 3d 137, D.C. Cir. 1997). As a result of the court's decision, the one-year conformity grace period was no longer available to areas and EPA removed it from the conformity rule in 2000 (65 FR 18911). Subsequently, Congress amended the Clean Air Act on October 27, 2000, to reinstate the grace period as a matter of law. Today's final rule amends the conformity regulation by reinstating the grace period provision to be consistent with the October 2000 Clean Air Act amendment, and therefore will provide newly designated nonattainment areas with a one-year grace period before the conformity regulation applies.

Today's action also amends the conformity rule to respond, in part, to the impact of a decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Circuit that affected several provisions of the 1997 rulemaking (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). Specifically, today's final rule addresses the indirect impact of this court decision on one provision of the conformity rule (§ 93.104(e)), the provision that requires conformity to be redetermined within 18 months of an initial SIP submission. In addition to today's minor rule revision, we are currently preparing a future rulemaking to respond to the remaining issues addressed by the March 1999 court decision that will be separately proposed in the **Federal Register**.

In the interim, areas where conformity applies are currently operating under administrative guidance that EPA and the U.S. Department of Transportation (DOT) issued to address the provisions

directly affected by the court decision. See EPA's web site listed in the **SUPPLEMENTARY INFORMATION** section to download an electronic version of EPA's May 14, 1999, and DOT's January 2, 2002, memoranda implementing the March 1999 court decision.

Today's final rule is based on the October 5, 2001, proposed rule entitled, "Transportation Conformity Rule Amendments: Minor Revision of 18-month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas" (66 FR 50954) and comments received on that proposal. The public comment period for the proposed rule ended on November 5, 2001. EPA received twelve public comments on the proposed rule from metropolitan planning organizations, state transportation and air quality agencies, and an environmental group.

This final rule makes two minor changes to the October 5, 2001, proposed rule that further clarify the applicability of the one-year conformity grace period to newly designated nonattainment areas. No other modifications to the proposed rule, however, have been made in today's final rule. EPA will not restate here its rationale for the changes to the conformity rule that are identical to the October 5 proposal. The reader is referred to the proposal notice for such discussions.

## **II. One-year Conformity Grace Period for Newly Designated Nonattainment Areas**

### *A. What Are We Finalizing?*

Today, EPA is adding the existing one-year conformity grace period for newly designated nonattainment areas for a given air quality standard to the transportation conformity rule. We are finalizing this change to make the transportation conformity rule consistent with an October 27, 2000, amendment to the Clean Air Act (42 U.S.C. 7506(c)(6)).

Specifically, the October 2000 amendment provides areas, that for the first time are designated nonattainment for a given air quality standard, with a one-year grace period before the conformity regulation applies with respect to that standard. This grace period begins upon the effective date of EPA's published notice in the **Federal Register** that designates an area as nonattainment. Although today's final rule incorporates the grace period into the transportation conformity rule, it has been available to newly designated nonattainment areas as a matter of law

since Congress enacted the October 2000 amendment to the Act. For more information on what defines a "newly designated" nonattainment area, see the October 5, 2001, proposal to today's rulemaking.

### *B. How Soon Does Conformity Apply in a Newly Designated Nonattainment Area?*

Under the current Clean Air Act as amended in October 2000, conformity applies one year after EPA first designates an area or portion of an area as nonattainment for a given air quality standard. More specifically, conformity applies one year after the effective date of EPA's final nonattainment designation, as published in the **Federal Register**.

Therefore, one year after the effective date of EPA's designation of an area to nonattainment for the first time for a given standard, metropolitan areas must have a conforming transportation plan and Transportation Improvement Program (TIP) in place to fund or approve transportation projects. If, at the conclusion of the one-year grace period, a metropolitan area is not able to make a conformity determination for its plan and TIP, the area will be in what is known as a "conformity lapse."

In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. According to existing guidance, during a conformity lapse exempt projects listed in § 93.126 (e.g., safety projects), projects listed in § 93.127 and § 93.128, and project phases that have received all applicable funding commitments or approvals from the FHWA, FTA or state and local authorizing agencies can proceed toward implementation. Transportation control measures (TCMs) that EPA has approved into a SIP can also proceed during a lapse. TCMs are projects that support air quality goals by reducing travel or relieving congestion.

The transportation plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment to end the conformity lapse. Transportation conformity applies in areas that are designated nonattainment or maintenance for ozone, carbon monoxide, particulate matter, and nitrogen dioxide. For example, a carbon monoxide nonattainment area that is subsequently designated nonattainment for ozone has a one-year grace period before conformity determinations must be made for ozone; conformity would continue to apply in the interim for carbon monoxide. By the end of the one-year grace period, a conforming

transportation plan and TIP must be in place for all pollutants in a given area, in this case, for carbon monoxide and ozone.

### C. What Comments Did We Receive?

In general, commenters supported amending the conformity rule to include the one-year conformity grace period for newly designated nonattainment areas. Most commenters believe that newly designated areas, especially those with little or no conformity experience, need the additional time to evaluate their long range transportation plans, TIPs and projects, and to complete the conformity process. Although the grace period has been available to newly designated areas since the enactment of the October 2000 Clean Air Act amendment, several commenters felt that its inclusion into the conformity rule will help to reduce confusion and provide assurance to future newly designated areas.

Though most commenters agreed with amending the conformity rule to include the one-year grace period, some commenters argued that one year is not enough time to complete the transportation planning and conformity processes when an area becomes designated nonattainment for a given air quality standard for the first time. Some of these commenters believe that a longer grace period of three years is more appropriate.

The October 2000 Clean Air Act amendment specifically provides newly designated areas with a one-year grace period, after which conformity applies. Therefore, we believe that the statutory language precludes EPA from extending the conformity grace period beyond one year for new areas. We should also emphasize, however, that areas will have prior notification of their pending designation well before the **Federal Register** notice announcing their designation is published. We encourage areas to use the time provided by the designation process to begin preparing themselves for implementing the conformity regulation.

One commenter also requested that EPA consider delaying the effective date of designation to 60–90 days after a **Federal Register** notice is published, so that areas will have more time beyond the one-year grace period to meet the conformity requirements. Generally, the amount of time between publication and effective date is established through EPA's administrative discretion on a case-by-case basis. Therefore, we do intend to consider how areas are designated, particularly for areas designated under new air quality standards, so that the transition to

implementing the conformity regulation will be reasonable. Furthermore, as previously stated, the designation process will provide areas advanced notification of their pending designation. Areas should use this additional time prior to the one-year conformity grace period to prepare for the implementation of the conformity regulation and other Clean Air Act requirements. EPA can not now determine the appropriate effective date for all future designations, but will continue to do so, as appropriate on a case-by-case basis, in the course of future designation rulemaking.

Finally, EPA received a comment questioning whether the proposed rule text included in our October 5, 2001, proposal is consistent with the statutory language in the Clean Air Act, section 176(c)(6). Specifically, one commenter suggested that the proposed rule language does not incorporate the limitation that the one-year grace period only applies to areas that are designated nonattainment for a given pollutant for the "first" time. This commenter argued that the Clean Air Act precludes the availability of the grace period to areas that were once nonattainment for a standard, redesignated to attainment under Clean Air Act section 107(d)(3), but then designated back to nonattainment because they again violated the same air quality standard.

EPA agrees with this commenter's interpretation of the statutory language; we do not believe that the grace period is available to areas that are designated nonattainment for a given pollutant and standard more than one time. The preamble to the October 5, 2001, proposal further supports this limitation by stating that the conformity grace period is not available to areas that have been previously designated nonattainment for a given pollutant and standard.

Although EPA continues to believe that the proposed regulatory language for § 93.102(d) is consistent with the Clean Air Act, we are finalizing two minor clarifying changes to the proposed rule to ensure that the grace period is correctly implemented. Specifically, we have clarified in the final rule language that the grace period is only available to areas that have been "continuously" designated attainment for a given standard since 1990, or have not been designated at all for a given standard for that same period. In addition, we specify that for areas that are designated nonattainment for the first time for a given air quality standard, the one-year conformity grace period only applies "with respect to that standard." These minor clarifications

ensure that the regulatory language limits the applicability of the one-year grace period to only areas that have been designated nonattainment for a given pollutant and standard for the first time, and therefore, is consistent with our interpretation and implementation of the Clean Air Act section 176(c)(6). EPA believes that a reproposal is not necessary to incorporate these minor clarifying changes in today's final rule, as these clarifications are consistent with EPA's original intentions and stakeholders' understanding of the proposed regulatory language.

### III. Conformity Determinations for Initial SIP Submissions

#### A. What Are We Finalizing?

As in the proposed rule, this final rule revises § 93.104(e)(2) to change the trigger point or starting point of the requirement to determine conformity after an initial SIP submission is made. With this rule change, conformity must be determined within 18 months of the effective date of the **Federal Register** notice announcing EPA's finding that the budgets in an initial SIP submission are adequate. Today's action changes the 1997 conformity rule that required conformity to be determined within 18 months of the submission date for an initial SIP. The net effect is that areas will have the full 18 months to satisfy the conformity requirement for initial submissions once adequate budgets have become available for conformity. EPA is promulgating this minor rule revision to provide a reasonable response to an indirect impact of the March 2, 1999, court decision that requires EPA to first find the budgets from an initial SIP submission adequate before such budgets can be used in a conformity determination.

Today's final rule will also change the starting point for 18-month clocks that are currently running for areas with initial SIP submissions, so that these areas are given the full 18 months to determine conformity to their initial SIPs. In other words, in areas where a SIP has been submitted and EPA is currently reviewing it for adequacy, the 18-month clock required by § 93.104(e)(2) will not start until the effective date of our adequacy finding (*i.e.*, today's action voids the current 18-month clock that started from the SIP submission date for these areas). If we are currently reviewing the adequacy of a submitted SIP, and subsequently find it inadequate, the 18-month clock will not start because today's rule requires EPA to first find budgets in initial SIP submissions adequate before § 93.104(e)(2) applies. Finally, for areas

that have submitted initial SIPs that EPA has already found adequate and to which conformity has not yet been determined, this final rule will restart the 18-month clock from the effective date of EPA's positive adequacy finding.

Consistent with the proposed rule, today's final rule will not require an 18-month clock to begin if budgets from an initial SIP submission are found inadequate. Furthermore, this rule will void any 18-month clocks that are running for initial SIP submissions that EPA finds adequate, but subsequently finds inadequate before a conformity determination is made, at the time that EPA finds such budgets inadequate.

Today's action does not change the current requirement to redetermine conformity for each initial SIP that is submitted for a given pollutant, standard, and Clean Air Act requirement. For example, an 18-month clock will still be triggered for the first attainment demonstration that an area submits and EPA subsequently finds adequate, as well as for the first rate-of-progress SIP for a given year and maintenance plan that is submitted and found adequate. Today's rule changes only the date on which these 18-month clocks begin to run.

In addition, today's action does not change the current rule's requirement that an area need only satisfy the 18-month requirement to determine conformity to an initial SIP submission once for a given Clean Air Act requirement. Once § 93.104(e)(2) is satisfied, areas do not have to satisfy this requirement again for subsequent submissions of the same type prior to EPA approval. EPA believes that the requirement to update conformity every three years (40 CFR 93.104), along with other transportation planning and conformity requirements, provides sufficient additional opportunity for periodically introducing new air quality information into the conformity process. Furthermore, this action does not change the conformity rule's requirement of 40 CFR 93.104(e)(3); areas are still required to demonstrate conformity within 18 months of EPA's approval of a SIP containing revised budgets.

Finally, as indicated in the proposal, today's final rule will not affect those SIPs that are submitted to reflect additional control measures or to update MOBILE5 interim estimates of federal Tier 2 vehicle and fuel standards with MOBILE6. EPA has already stated that these SIP revisions are not initial SIP submissions that start 18-month clocks under 40 CFR 93.104(e)(2). EPA addressed this issue in the July 28, 2000, supplemental notice of proposed

rulemaking (65 FR 46386) for certain ozone attainment areas.

For more information on what defines an "initial SIP submission," see the October 5, 2001, proposal to today's final rule.

#### *B. Why Is This Rule Change Necessary?*

Today's rule change is necessary because it provides a reasonable response to an indirect impact of the March 2, 1999, court decision. In its March 1999, decision, the court ruled that EPA must first find newly submitted motor vehicle emissions budgets adequate before such budgets can be used in a conformity determination. An effect of the combination of the court decision and EPA's previous rule was that a significant portion of the 18-month period for demonstrating conformity could elapse prior to the time EPA made a determination that the submitted budgets were adequate.

As described in our May 14, 1999, guidance implementing the court's decision, EPA's current adequacy process for a newly submitted initial SIP starts when the SIP is submitted and ends with the effective date of our adequacy finding, which we formally announce through a **Federal Register** notice. EPA tries to complete an adequacy review in approximately three months, although in some cases additional time is needed. During the adequacy review period, the public is provided at least 30 days to comment on the appropriateness of the newly submitted budgets. EPA must then address all comments received for the submitted budgets before we can make our adequacy finding. Areas cannot begin the process of determining conformity using the submitted budgets with certainty until EPA has determined that the budgets are adequate.

Under the conformity rule prior to today and the court decision, a conformity determination cannot be made until budgets are found adequate, and therefore, transportation agencies should not be expected to invest valuable time and resources completing a regional emissions analysis and conformity determination prior to knowing which SIP budgets apply. As a result, under the prior rule, areas had a maximum of 15 months to determine conformity following an initial SIP submission (*i.e.*, the 18-month conformity clock for initial submissions minus the three months minimally required for EPA to determine adequacy). Where adequacy review was complex and subsequently delayed, particularly in situations with significant public involvement, areas

may have had even less time to determine conformity under the previous rule. As a consequence, the shortening of the 18-month period by the amount of time needed for the adequacy review process could lead to significant difficulties for those that implement the conformity program.

If budgets cannot be used until EPA completes its adequacy review and the finding becomes effective, the 18-month clock for conformity should not start until that time. EPA believes this rule change is reasonable and necessary, given that this additional time needed for adequacy review was not contemplated when the original 18-month initial SIP conformity requirement was established.

There can also be situations where EPA finds submitted budgets adequate, but later finds them inadequate because new information has become available that affects the adequacy of the budgets. In these situations, conformity implementers may try in good faith to determine conformity to adequate budgets in an initial SIP submission within 18 months, only to have the budgets found inadequate before a conformity determination is made.

To address the situations described above and based on our experience in implementing conformity to date, EPA continues to believe that areas should have the full 18 months to determine conformity. In these cases, an 18-month period provides areas with the time needed to assess new information contained in a SIP, perform additional emissions analyses and provide the public with an opportunity to review new changes to the transportation plan and TIP and conformity determination. We continue to encourage air quality and transportation planners to coordinate their processes so that new air quality plans can be used expeditiously in the transportation conformity and planning processes.

For more information on EPA's adequacy process for initial SIP submissions, see the **SUPPLEMENTARY INFORMATION** section in this final rule to download a copy of EPA's May 14, 1999 memorandum implementing the court's decision.

#### *C. What Comments Did We Receive?*

The majority of commenters agreed that the 18-month requirement for conformity to initial SIP submissions should be aligned with EPA's adequacy finding for such submitted budgets. Most commenters supported this rule change, as it will allow for greater certainty in the conformity process and will provide transportation planners sufficient time to incorporate new

information into the transportation planning and conformity processes.

One commenter, however, believed that the proposed rule is arbitrary and capricious because it could potentially delay implementing new budgets in nonattainment areas where expeditious emissions reductions are necessary to meet statutory requirements and deadlines. The commenter asserted that 18 months is an excessive amount of time to allow for a revision of the plan and TIP to take place, and that the time frame for redetermining conformity when new budgets become available should be tailored to the time remaining before a required milestone or attainment year.

In addition, the commenter stated that EPA's proposal is inconsistent with the Clean Air Act's requirements for how often conformity determinations should be conducted. The commenter acknowledged that Clean Air Act section 176(c)(4)(B)(ii) provides EPA discretion in determining the frequency of conformity determinations, but believed that EPA must also consider Congress' intention to have transportation agencies be "active players" in implementing the emission reductions required for reasonable further progress or attainment. The commenter cited Congressional records from the development of the 1990 Clean Air Act that stated that transportation activities can only be accepted by DOT if they are consistent with the SIP's air quality goals; if a transportation plan and TIP does not meet the emissions targets set by the SIP and further motor vehicle emission reductions are needed to reach attainment, the plan and TIP must be modified to achieve the SIP's budgets.

EPA does not agree that the final rule will further delay the use of new budgets in the transportation planning and conformity processes. We are finalizing today's rule change to provide a reasonable response to an indirect effect of the March 2, 1999, court decision that requires EPA to formally review and find initially submitted budgets adequate before they can be used in a conformity determination. As a result of the court's ruling, we do not believe that starting an 18-month clock from the submission of a budget that may or may not be adequate and available for use for conformity purposes is environmentally sensible. We believe that good air quality results will be most effectively achieved by ensuring that new budgets are consistent with timely attainment or maintenance through the adequacy process before requiring their use in the

transportation planning and conformity processes.

EPA also believes that the final rule is consistent with the Clean Air Act. While EPA agrees that the Clean Air Act requires transportation activities to conform to the SIP before federal funding and approval occurs and that the latest SIP budget should be used in such a conformity determination, the Clean Air Act does not specifically require conformity determinations to be done more often than every three years. Clean Air Act section 176(c)(4)(B) requires EPA to promulgate conformity procedures and criteria that "shall, at a minimum, \* \* \* address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years \* \* \*".

EPA established the frequency requirements for conformity determinations covered by 40 CFR 93.104 in previous rulemakings, including the requirements to determine plan/TIP conformity within 18 months of certain SIP actions (*e.g.*, initial SIP submissions, EPA SIP approvals). The conformity rule's frequency requirements meet the statutory minimum and, along with the requirement that new plans, TIPs, and plan/TIP amendments must demonstrate conformity before they can be implemented in between 3-year update cycles, provide sufficient opportunities for reevaluating plans and TIPs in relation to new SIPs, especially in areas that have more significant air quality challenges. Therefore, even in cases where EPA's adequacy findings require more than three months to complete, existing conformity and transportation planning requirements provide a safeguard to prevent negative impacts on air quality.

Moreover, areas typically begin considering new air quality information during the transportation planning process prior to EPA's formal adequacy finding for initial SIP submissions, as our pending adequacy finding on newly submitted budgets may necessitate additional emissions reductions or alterations to an area's current plan and TIP. In other words, transportation planners frequently become aware through early consultation with their air quality partners of when new, more stringent budgets are being developed, and thus, have the opportunity to consider changes to the transportation plan and TIP to ensure conformity to those new budgets in the future. Therefore, EPA continues to believe that the iterative nature of the conformity

and transportation planning processes, along with early and effective interagency consultation, allows for new transportation activities to be continuously evaluated to ensure that attainment is not delayed.

Furthermore, it is important to understand the role that transportation conformity plays in ensuring clean air. The transportation conformity process is one of many mechanisms established by the Clean Air Act for protecting public health. Although transportation conformity ensures that the SIP's motor vehicle emissions targets are achieved through the transportation planning process, air quality planners and EPA are primarily responsible for ensuring that SIPs containing sufficient emissions reductions to meet applicable air quality requirements are developed according to statutory requirements and are available in the transportation planning process in a timely manner.

This rule change will not have a significant impact on air quality because it in no way affects the overall statutory requirements and deadlines established to attain the air quality standards. The Clean Air Act defines the dates by which nonattainment areas must attain the air quality standards. It is the responsibility of EPA and the state and local air quality agencies to ensure that SIPs can achieve the necessary reductions to meet these deadlines, taking into account, among other factors, control measure implementation schedules and the timing of conformity.

EPA also believes that the suggested approach of tailoring the amount of time that an area has to redetermine conformity with the amount of time remaining before an area's next required milestone or attainment year would lead to inconsistencies and confusion in implementing the conformity rule. Moreover, the practical implementation of adjusting the time allowed to redetermine conformity following the submission of each initial SIP would introduce a great deal of uncertainty in the air quality and transportation planning processes, and would be logistically difficult and burdensome to implement.

Transportation conformity is a process that coordinates two different planning processes—transportation and air quality planning. As a result, EPA has an obligation to balance the need to incorporate new air quality planning information and the need of transportation planners to have sufficient time to incorporate this new information into their planning process. We believe that today's rule change regarding the conformity requirement for initial SIP submissions will achieve

this balance, as well as remain within the boundaries of the statutory requirements.

The same commenter also claimed that EPA provided no rational basis in the proposal for providing areas with an 18-month time period for redetermining conformity to an initial SIP submission. Alternatively, the commenter suggested providing areas with a shorter time period of nine months to meet the conformity requirement for initial SIP submissions, particularly when the time between submission of a SIP budget and a statutory attainment or reasonable further progress deadline is less than 24–36 months, or when such deadlines have not been met. According to the commenter, expediting conformity determinations in these situations would ensure that motor vehicle emissions control measures, such as transportation control measures and transit capital investments, will be in place in time to achieve necessary emissions reductions.

EPA does not believe that the role of conformity, or of this rule change in particular, is to facilitate emissions reductions in the manner in which this commenter has suggested. The conformity provisions of the statute merely require that transportation activities conform to the SIP, and that such determinations include new transportation activities and are conducted at least every three years.

For this rulemaking, EPA did not propose extending or reducing the 18-month time period that is already provided to areas to redetermine conformity to initially submitted SIPs under existing federal rules. The 18-month time period for initial SIP submissions was established through the November 14, 1995, final rule (60 FR 57182). When EPA promulgated this rulemaking, we concluded that 18-months was an appropriate time frame in which to incorporate new SIP submissions into the transportation planning process. Since that time, no new information has indicated that the 18-month time period is inappropriate, as explained further below. Today's final rule only changes the starting point of the 18-month time period for initial SIP submissions. This change is needed to respond to an indirect impact of the March 2, 1999, court decision in which the court ruled that budgets could not be used for conformity purposes until EPA has found them adequate.

Moreover, from EPA's experience implementing the conformity rule to date, providing areas with 18 months to determine conformity to new SIP budgets is a reasonable time period, given the amount of time, resources and

public participation that is required for the transportation planning and conformity processes. Prior to our November 14, 1995, amendment to the conformity rule, areas only had 12 months to redetermine conformity to an initial SIP submission. Due to the overwhelming difficulties areas had in meeting these 12-month clocks, EPA proposed, considered public comment, and finalized extending the conformity requirement for initial SIP submissions to 18 months. As a result, EPA continues to believe that 18 months from an initial SIP conformity trigger for all areas is the most reasonable and workable time frame for redetermining conformity to initial SIPs. For more information regarding EPA's rationale and response to comments for extending the initial SIP conformity trigger to 18 months, see our November 1995 rulemaking. An electronic version of this rulemaking can be downloaded from EPA's web site listed in the **SUPPLEMENTARY INFORMATION** section of this rule.

In addition, EPA believes that the existing transportation and air quality planning requirements do ensure that motor vehicle control measures that are approved into a SIP are implemented in such a manner that achieves the necessary emissions reductions in a timely fashion. Therefore, we do not believe that conformity determinations need to be expedited specifically for this purpose. Clean Air Act sections 174(a) and 176(c)(4) require the inclusion of transportation planners in the SIP development process and the formal establishment of consultation procedures among state and local transportation and air quality agencies involved in the conformity process, respectively. This required consultation among transportation and air quality agencies is intended to ensure that the transportation planning process becomes a routine component of any analysis (*e.g.*, determining implementation schedules, evaluating emissions benefits, *etc.*) involving transportation control measures slated for inclusion in a SIP. Furthermore, as a practical matter, transportation projects, including those that have emissions reduction benefits, cannot receive federal funding or approval unless they are contained in a fiscally constrained and conforming transportation plan and TIP that has been approved through the transportation planning process, pursuant to 23 CFR part 450 and 49 CFR part 613. Therefore, these transportation and air quality planning requirements ensure that any transportation measure

that EPA approves into a SIP has been coordinated through the transportation planning process and is designed to timely reduce emissions in accordance with the SIP's purpose of achieving further progress, attainment or maintenance.

The same commenter expressed concern over not requiring a new 18-month clock when a conformity determination is made using budgets that EPA has found adequate, but not yet approved, prior to a subsequent submission of new, more stringent budgets for the same Clean Air Act requirement. In this particular case, the commenter believes that § 93.104(e)(2) should be triggered again, thus requiring areas to revise their plan and TIP to conform to the newly submitted revised budgets upon EPA's adequacy finding. By not requiring § 93.104(e)(2) to apply in this situation, the commenter argues that this rule will sever the link between the conformity process and the obligation of transportation agencies to revise plans and TIPs to achieve the Clean Air Act's objectives.

EPA disagrees. EPA did not propose the additional 18-month requirement for the unique situation the commenter describes, and therefore can not address this issue in today's final rule. Moreover, this suggested requirement is contrary to the historic position that EPA has held on this issue, as described in the preamble to our August 29, 1995 proposed rulemaking initially establishing the 18-month requirement (60 FR 44792). In that proposal to extend the conformity requirement for initial SIP submissions to within 18 months of their submissions, EPA states: "If conformity to the initial submission has been demonstrated and that submission is subsequently revised, no 18-month clock would start until \* \* \* the SIP is approved by EPA." EPA's intent and implementation of § 93.104(e)(2) of the conformity rule has always been to serve as a one-time conformity requirement for initial SIP submissions, so that areas can use new motor vehicle emissions budgets in a conformity determination when no budgets for a particular year and/or purpose had previously existed. Historically, we have never considered § 93.104(e)(2) to be an iterative requirement that mandates continual conformity updates outside of the normal transportation planning process. Therefore, EPA continues to maintain that once conformity is determined and § 93.104(e)(2) is satisfied for a SIP having a given purpose (*e.g.*, attainment, rate-of-progress, maintenance), it is not necessary for areas to meet this requirement again for subsequent

submissions of the same type of SIP prior to EPA's approval. Areas will again be required to determine conformity within 18 months of EPA's approval of any revised budgets. However, in this situation, if new transportation activities are proposed after EPA finds the revised budgets adequate, but before SIP approval, a conformity determination based on the revised budgets along with all other applicable budgets would be required before such activities could be implemented. In other words, the revised budgets must be used (along with all other existing applicable budgets) in any determination after they have been found adequate, even though they are not subject to a new 18-month clock, pursuant to § 93.104(e)(2).

Furthermore, we do not agree that the integration of air quality and transportation planning via the conformity process will be compromised as a result of implementing § 93.104(e)(2) as a one-time requirement for each initial SIP consistent with the current rule. Due to the iterative nature of the transportation planning and conformity processes, the most current air quality information is incorporated on a regular and consistent basis. The three-year conformity requirement for transportation plans and TIPs, along with other transportation planning and conformity requirements, provides for the reasonable and timely introduction of the most current information into the conformity process.

The same commenter also requested from EPA a clarification that § 93.118(a) requires a conformity determination for a plan and TIP to show consistency with all applicable adequate and approved budgets at the time a conformity determination is made. EPA agrees that this requirement applies for all conformity determinations, including those made for TIPs that rely on a previous emissions analysis pursuant to § 93.122(e).

Like all conformity determinations, a determination for a TIP that relies on a previous emissions analysis must satisfy the emissions test requirements of § 93.118 (or § 93.119, if no applicable adequate or approved budgets exist), and must do so over the time frame of the transportation plan. EPA agrees with this clarification of § 93.118(a) and its requirement for demonstrating conformity using all applicable budgets, and will consider elaborating on this proposed clarification in a future rulemaking. Since EPA did not propose such a change, EPA is not making any changes in this final rule with regard to the described interpretation of

§ 93.118(a). Nonetheless, EPA reiterates that this clarification is the intent of the existing rule.

Finally, one commenter indicated that the October 2001 proposal was not clear as to how the one-year conformity grace period and the 18-month requirement for initial SIPs relate to one another. From the commenter's reading of the proposed rule amendments, it appeared that the one-year grace period and 18-month requirement for initial SIP submissions overlap.

In response, the one-year conformity grace period and the 18-month conformity requirement for initial SIPs are not interrelated. Typically, when areas are newly designated they do not have a submitted SIP for which an 18-month clock would start. In the unique situation where an area is newly designated and submits an initial SIP during the one-year grace period, conformity of the plan and TIP would still need to be demonstrated at the conclusion of the one-year grace period. If EPA has found adequate or approved the submitted SIP and budgets before the grace period expires, those adequate or approved budgets must be used for conformity. Therefore in this situation, both conformity requirements—a conforming plan and TIP one year after designation and the 18-month conformity requirement for the submitted SIP—would be satisfied if a conformity determination using the adequate or approved budgets is made prior to the expiration date of the one-year grace period.

If no adequate or approved budgets exist at the time that the one-year grace period expires, areas should use the conformity test(s) that EPA has deemed appropriate for satisfying the conformity requirement. EPA is currently considering what conformity test(s) will apply for areas that are designated nonattainment under new air quality standards (e.g., EPA's ozone and particulate matter standards issued in 1997) and will address this issue in future guidance documents and rulemakings prior to area designations. In this situation, an 18-month conformity clock pursuant to § 93.104(e)(2) as amended today would not start until these areas submit an initial SIP and EPA has found the submitted budgets adequate for conformity purposes.

#### **IV. What Comments That Addressed Topics Other Than Those Covered in This Rulemaking Did We Receive?**

Several commenters raised concerns about aspects of the transportation conformity rule that are not germane to this specific rulemaking, including the

implementation of the conformity regulation under EPA's new 8-hour ozone and PM-2.5 (particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) standards, and the impact of the March 2, 1999, court decision on projects that can proceed during a conformity lapse. These comments do not affect whether EPA should proceed with this final action, but EPA will be considering these comments when we develop policy guidance and future rulemakings to address these larger issues.

In addition, one commenter requested that EPA consider eliminating two additional conformity SIP triggers required in § 93.104(e). Specifically, the commenter requested that we eliminate the 18-month conformity frequency requirements for SIP approvals that establish new budgets (§ 93.104(e)(3)) and for SIP approvals that revise TCMs (§ 93.104(e)(4)). This commenter characterized these additional SIP requirements as being superfluous and onerous to the transportation planning process.

For today's rulemaking, EPA did not propose eliminating the conformity triggers outlined in 93.104(e)(3) and 93.104(e)(4), nor have we provided the public with an opportunity to comment on the suggested deletion of these provisions from the conformity rule. Therefore, we are not making any changes to these requirements at this time. However, we will consider this flexibility, along with others, for future rulemakings. A complete response to comments documents is in the docket for this rulemaking (see **ADDRESSES** for more information regarding the docket and additional documents relevant to this rulemaking).

#### **V. How Does Today's Final Rule Affect Conformity SIPs?**

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs to reflect the criteria and procedures for determining conformity. Section 51.390(b) of the conformity rule specifies that after EPA approves a conformity SIP revision (including those that have been approved as a Memorandum of Understanding or Memorandum of Agreement), the federal conformity rule no longer governs conformity determinations (for the parts of the rule that are covered by the approved conformity SIP). In some areas, EPA has already approved conformity SIPs that include § 93.104(e)(2) from the 1997 transportation conformity rule (62 FR 43780). In these areas, today's final rule changes will be effective only when EPA approves a conformity SIP revision

that includes the amendment to align the 18-month clock for initial SIP submissions with EPA's adequacy finding. EPA will work with states as appropriate to approve such revisions as expeditiously as possible through flexible administrative techniques such as parallel processing and direct final rulemaking to insure that all areas will be able to benefit from this rule change in a timely manner.

In some areas, however, EPA may have approved such provisions in error, if EPA had approved a conformity SIP that included § 93.104(e)(2) after the March 2, 1999, court decision, but prior to today. In these areas, EPA will publish, as appropriate, a technical correction in the **Federal Register** under section 110(k)(6) of the Clean Air Act to limit EPA's approval of such SIPs and clarify that § 93.104(e)(2) should not have been approved into a conformity SIP since the court's ruling indirectly affected this provision by requiring EPA to find submitted budgets adequate before the initial SIP requirement could be satisfied. Once EPA has corrected its approval of such SIPs to exclude the state's version of § 93.104(e)(2), these areas will become subject to the amended version of § 93.104(e)(2) and 18 month clocks will immediately begin to run from EPA's adequacy determination rather than from the submission date of an initial SIP.

In contrast, the one-year conformity grace period currently applies as a statutory matter for all newly designated nonattainment areas, including areas that have EPA-approved conformity SIPs, since this grace period was required as a matter of law once the Act was amended even prior to today's final rule.

## VI. Administrative Requirements

### A. Executive Order 12866

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

(1) Have an annual effect on the economy of \$100 million or more, or 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 final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB.

### B. Paperwork Reduction Act

This final rule does not impose any new information collection requirements from EPA that 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 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 rule will not have a significant impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that 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 a "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 final 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 EPA promulgates a 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 of 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 final 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. These rule amendments simplify the conformity rule and make it more practicable to implement, in accordance with the Clean Air Act and our

reasonable and thoughtful approach to an indirect impact of the court's decision. They do not impose any additional burdens. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

#### *E. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard 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 rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this final rule.

#### *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 final rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not require the consideration of relative environmental health or safety risks.

#### *G. Executive Order 13175*

Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure

"meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The Clean Air Act requires transportation conformity to apply in areas designated nonattainment and maintenance by EPA. Today's minor amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments. Specifically, this rulemaking will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

#### *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 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, that amends a regulation that 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 directed EPA to affirmatively find the motor vehicle emissions budgets contained in a SIP adequate before the budgets can be used in conformity determinations. To effectively implement the court's directive on this matter, we believe it is necessary to modify the timing of when one of our existing frequency requirements for conformity is required. The rule will also provide newly designated nonattainment areas with a one-year grace period before conformity becomes applicable, as required by an October 2000 amendment to the Clean Air Act.

In summary, one of the provisions in this final rule is required by statute and one provision will provide a reasonable response to an indirect impact of the court's decision, and by themselves will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking.

#### *I. Executive Order 13211*

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66

FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*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 October 7, 2002. 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 a 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: July 31, 2002.

**Christine Todd Whitman,**  
*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.

2. Section 93.102 is amended by adding paragraph (d) to read as follows:

**§ 93.102 Applicability.**

\* \* \* \* \*

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub> or NO<sub>2</sub> since 1990 and

are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply with respect to that standard for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

3. Section 93.104 is amended by revising paragraph (e)(2) to read as follows:

**§ 93.104 Frequency of conformity determinations.**

\* \* \* \* \*

(e) \* \* \*

(2) The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to § 93.118(e) and can be used for transportation conformity purposes;

\* \* \* \* \*

[FR Doc. 02–19797 Filed 8–5–02; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

**44 CFR Part 64**

[Docket No. FEMA–7789]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Edward Pasterick, Division Director,

Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the