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

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

Like the interim final rule and proposed rule, this final rule does not change the timing of conformity lapse for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete carbon monoxide (CO), particulate matter (PM–10), or nitrogen dioxide (NO₂) attainment demonstrations; for failure to submit 15% SIPs; or for submission of incomplete 15% SIPs without protective findings.

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

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

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

III. Response to Comments

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

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

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

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

Other commenters suggested that EPA should align all conformity lapses due to SIP failures with Clean Air Act sanctions. Alignment for more cases than originally proposed would require another rulemaking. EPA currently intends to issue in the future a proposal to align with Clean Air Act highway sanctions the conformity lapse which results from failure to submit a 15% SIP; an incomplete 15% SIP without a protective finding; and failure to submit or incomplete CO, PM-10, or NO₂ attainment demonstrations. This change would also dramatically decrease the complexity of the regulatory language in section 51.448 (93.128) of the conformity rule, which was a concern expressed by some commenters. EPA will be considering comments advocating alignment of the lapse which follows SIP disapprovals without protective findings, but the agency has not yet decided whether to propose amending that provision.

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

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

IV. Administrative Requirements

A. Administrative Designation

Executive Order 12866

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

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