

highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

As described in the preamble to the final transportation conformity rule (58 FR 62191-3), EPA developed these requirements in response to public comments which claimed that the proposed interim period conformity criteria (e.g., the "build/no-build test") did not ensure emissions reductions consistent with Clean Air Act requirements for reasonable further progress and attainment, and which emphasized the importance of emissions budgets in determining conformity. EPA imposed restrictions such as conformity lapsing where the State failed to establish emission budgets in a timely fashion, because EPA believed that in the prolonged absence of a control strategy SIP, preventing new conformity determinations and postponing new commitments of funds would prevent uncontrolled emissions increases while the State was establishing its control strategies.

B. Control Strategy SIP Requirements

Control strategy SIPs include 15% rate-of-progress plans, reasonable further progress plans, and attainment demonstrations.

Clean Air Act section 182(b)(1) required moderate and above ozone nonattainment areas to submit a 15% volatile organic compound emission reduction rate-of-progress plan by November 15, 1993. Moderate ozone areas were also required by that section to submit an attainment demonstration by this date if they were not using photochemical grid modeling to develop the demonstration.

Serious and above ozone nonattainment areas (and moderate ozone nonattainment areas using photochemical grid modeling under EPA's interpretation of section 182(b)(1)) were required to submit an attainment demonstration by November 15, 1994 under Clean Air Act section 182(c)(2)(A). Clean Air Act section 182(c)(2)(B) also required serious and above ozone nonattainment areas to submit by this date a reasonable-further-progress (or rate-of-progress) plan for 3% annual emission reductions until the attainment date.

Carbon monoxide (CO) nonattainment areas classified as moderate with design value greater than 12.7 parts per million or serious were required by Clean Air Act section 187(a)(7) to submit an attainment demonstration by November 15, 1992.

Areas in nonattainment for particulate matter less than a nominal 10 microns in aerodynamic diameter (PM-10) were required to submit an attainment demonstration at varying dates depending upon their date of classification, but Clean Air Act section 189(a)(1)(B) required many areas to submit the attainment demonstration by November 15, 1991.

Nitrogen dioxide (NO₂) areas were required by Clean Air Act section 191 to submit an attainment demonstration by May 15, 1992.

II. Description of Interim Final Rule

A. Incomplete 15% SIPs and Disapprovals With Protective Findings

This interim final rule delays the lapse in transportation plan/TIP conformity until Clean Air Act section 179(b) highway sanctions are effective, for 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"). EPA is also similarly delaying the conformity lapse which results from EPA disapproval of a control strategy SIP with a "protective finding" as described in 40 CFR 51.448(a)(3) and (d)(3). Clean Air Act highway sanctions will become effective in both types of areas two years following the date of EPA's incompleteness determination or disapproval, unless the State remedies the failure.

Under the November 1993 transportation conformity rule, the conformity status of the transportation plan and TIP lapses in such areas twelve months following the incompleteness determination or disapproval, unless another SIP is submitted to EPA and found to be complete. This interim final rule delays the transportation plan/TIP conformity lapse. It also restores the conformity status of transportation plans and TIPs for which twelve months have already elapsed since EPA made the incompleteness determination or disapproval with protective finding, provided conformity has not lapsed for other reasons under the transportation conformity rule. A list of areas with incomplete 15% SIPs with protective findings (and the dates of those EPA findings) is in the docket.

EPA is delaying the transportation plan/TIP conformity lapse in these areas because the agency now believes that a

twelve-month period to make these control strategy SIPs fully enforceable is a too stringent definition of "timely" SIP development in this particular context, given the lengthy legislative and administrative processes of many States. Although EPA believed this time period was appropriate at the time EPA promulgated the transportation conformity rule, EPA has now seen that in practice the time was too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

EPA believes it is appropriate to allow States more time to complete these SIPs before negative conformity consequences are imposed, particularly because in these areas with incompleteness findings or disapprovals with protective findings, the State has developed motor vehicle emissions budget(s) which are part of an overall strategy to achieve the required emission reductions and therefore are appropriate for use in conformity determinations. In these areas, lapsing is not necessary in the short term to prevent uncontrolled motor vehicle emissions increases while the State completes the SIP, because the motor vehicle emissions budget(s) are already applying in conformity determinations as a constraint.

However, EPA continues to believe that a conformity lapse is appropriate in the prolonged absence of a complete control strategy SIP. In such cases, EPA can no longer remain confident that states will be able to adopt and implement the rules necessary to support the SIP emissions budget. EPA believes that the application of Clean Air Act highway sanctions signifies that SIP development has not proceeded in a timely fashion and, therefore, that the conformity process should ensure that significant new transportation projects will not be undertaken.

B. Ozone Attainment/3% Rate-of-Progress SIPs

For ozone nonattainment areas which fail to submit an attainment SIP due November 15, 1994 (including moderate areas using photochemical grid modeling) and/or a 3% rate-of-progress SIP revision (hereafter called an "attainment/3% rate-of-progress SIP"), this interim final rule similarly delays the transportation plan/TIP conformity lapse until Clean Air Act highway sanctions are effective. Clean Air Act highway sanctions apply in these areas two years following the date of EPA's finding of failure to submit, unless the State remedies the failure. This rule also