

eliminates the transportation plan/TIP "freeze" in these areas.

Under the November 1993 transportation conformity rule, in ozone nonattainment areas where EPA finds a failure to submit the attainment/3% rate-of-progress SIP, no new or amended transportation plans or TIPs could be adopted after March 15, 1995 (i.e., the existing transportation plan/TIP would be "frozen"). The conformity status of the transportation plan and TIP would have lapsed November 15, 1995.

This interim final rule also delays the transportation plan/TIP conformity lapse until the application of Clean Air Act highway sanctions for ozone nonattainment areas with incomplete attainment/3% rate-of-progress SIPs. This rule also eliminates the transportation plan/TIP "freeze" for these areas.

Under the November 1993 transportation conformity rule, if EPA found an area's ozone attainment/3% rate-of-progress SIP incomplete without a protective finding, the transportation plan/TIP would have "frozen" 120 days following EPA's incompleteness finding, and the conformity status of the transportation plan/TIP would have lapsed November 15, 1995. For areas for which EPA made an incompleteness determination with a protective finding, the conformity status of the transportation plan/TIP would have lapsed twelve months from the date of the incompleteness finding (no "freeze" would have occurred).

Under this interim final rule, in any ozone nonattainment area with an incomplete attainment/3% rate-of-progress SIP, the conformity status of the transportation plan/TIP will not lapse until Clean Air Act section 179(b)(1) highway sanctions are effective as a result of the incompleteness (provided the conformity status of the transportation plan and TIP does not lapse for other reasons under the transportation conformity rule). Consequently, there will be no distinction among incompleteness determinations regarding protective findings.

EPA is delaying the transportation plan/TIP conformity lapse due to failure to submit and incomplete ozone attainment/3% rate-of-progress SIPs because unforeseeable delays in the development of these SIPs, including delays beyond the control of state air quality planning agencies due to the complexity of required modeling, have convinced the agency that the grace periods in the November 1993 rule constitute a too stringent definition of "timely" establishment of emissions budgets in this particular context. Since

states have been proceeding towards SIP development and delays have not been within their control, EPA now believes that the original grace period is unreasonable.

However, EPA continues to believe that conformity lapsing is appropriate in the prolonged absence of a complete ozone attainment/3% rate-of-progress SIP. 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.

C. Other Control Strategy SIPs

This interim final rule does not change the consequences in 40 CFR 51.448 for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete CO, PM-10, or NO₂ attainment demonstrations; or for failure to submit or submission of incomplete 15% SIPs without protective findings. EPA believes that transportation plan/TIP "freeze" and conformity lapse is appropriate as currently required because in these cases adequate emissions budgets have not been established in a timely fashion.

III. Rulemaking Process

A. Rulemaking Procedures

This rule is being published as an interim final rule without benefit of a prior proposal and public comment period because EPA finds that "good cause" exists for deferring those procedures until after publishing the changes as an interim final rule. Good cause exists for two reasons. First, it is contrary to the public interest for the transportation conformity rule to halt implementation of transportation plans, programs, and projects when for the reasons described above EPA believes that such delay is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c).

Furthermore, the conformity consequences for ozone areas which this interim final rule delays would have occurred before full notice-and-comment rulemaking could have been completed. EPA could not have initiated full notice-and-comment rulemaking far enough in advance to effectively delay the conformity consequences at issue because it was first necessary to evaluate the States' progress in control strategy SIP development and submission, and to determine whether the existing grace periods were

appropriate. In addition, it is possible that a disapproval with a protective finding could have occurred during the full notice-and-comment rulemaking process. Thus, it was impracticable to provide notice-and-comment procedures prior to the time by which EPA needs to implement these changes to avoid the conformity consequences that would otherwise result under the existing rule.

Although prior notice-and-comment rulemaking was impracticable, a draft of this rule was distributed to representatives of affected State and local transportation and air quality planning agencies and the public, and a conference call was held with stakeholders such as the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials, the American Association of State Highway and Transportation Officials, the American Public Transit Association, the National Association of Regional Councils, the American Association of Metropolitan Planning Organizations, the National Governors' Association, the Surface Transportation Policy Project, the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club Legal Defense Fund, the Highway Users Federation, and the American Road and Transportation Builders Association to solicit input on the interim final rule prior to promulgation.

In addition, the Secretary of Transportation reviewed and concurred with this interim final rule.

This interim final rule is taking effect immediately upon publication because, as described above, conformity lapsing which is contrary to the public interest would otherwise be occurring during the 30-day period between publication and the effective date ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA finds good cause to make this interim final rule effective immediately for the same reasons described above in justification of taking final action without prior proposal. 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).

The provisions of this interim final rule shall apply only for six months, during which time EPA will conduct full notice-and-comment rulemaking on these provisions and whether to make these provisions permanent. A proposed rule is published in the proposed rule section of this **Federal Register**, and the public comment period on this proposal will last until March 10, 1995. Public