comments will be addressed in a subsequent final rule, which will be promulgated before the six-month limit on the applicability of this interim final rule expires.

# B. Future Amendments to the Transportation Conformity Rule

EPA intends to make additional limited amendments to the transportation conformity rule. EPA intends to clarify certain ambiguous language in 40 CFR 51.448 and 93.128 to ensure implementation consistent with the intent of EPA and the Department of Transportation (DOT), as expressed in guidance memoranda issued since November 1993. These changes are necessary to have legal certainty that the amendments promulgated today will continue to have their intended effect.

In addition, EPA intends to amend the transportation conformity rule in order to allow transportation control measures which are in an approved SIP and have been included in a conforming transportation plan and TIP to proceed even if the conformity status of the current transportation plan and TIP has lapsed.

EPA is not issuing these amendments in this interim final rule because prior notice-and-comment rulemaking is not impracticable in these cases. EPA intends to propose these amendments in a Notice of Proposed Rulemaking within the next several months, and representatives from the organizations listed above will be given an opportunity to comment on a draft NPRM this month.

Since publication of the transportation conformity rule in November 1993, EPA, DOT, and state and local air and transportation officials have had experience implementing the criteria and procedures in the rule. It is that mutual experience which leads to the amendments which EPA will be proposing today and in the very near future. In each case, the amendments are needed to clarify ambiguities, correct errors, or make the conformity process more logical and feasible.

There are many other issues which were debated in the original rulemaking, some of which are the subject of litigation at this time. EPA does not intend its issuance of back-to-back rulemakings to imply a willingness to open the conformity rule to amendments which suit one or the other petitioners' purpose. Both EPA and DOT, of course, are very willing and eager to assist transportation and air quality planners in complying with the rule and the statutory intent.

### IV. 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 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 or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

# B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects moderate and above ozone nonattainment areas, which are almost exclusively urban areas of substantial population, and affects federal agencies and metropolitan planning organizations, which by definition are

designated only for metropolitan areas with a population of at least 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

# List of Subjects

## 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and Recordkeeping Requirements, Volatile organic compounds.

### 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: January 31, 1995.

#### Carol M. Browner,

Administrator.

40 CFR parts 51 and 93 are amended as follows:

## PARTS 51 AND 93—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 42 U.S.C. 7401(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7602.

2. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401-7671p.

- 3. The identical texts of §§ 51.448 and 93.128 are amended as follows:
- a. By redesignating paragraphs (b)(2) and (c)(2) as (b)(3) and (c)(3);
- b. In the newly redeisgnated paragraph (c)(3)(iii) by revising the reference "paragraphs (c)(2)(i) and (ii)" to read "paragraphs (c)(3)(i) and (ii); and
- c. By adding new paragraphs (a)(4), (b)(2), (c)(2), and (d)(4).

The identical text of additions reads as follows: § \_\_\_\_\_\_ Transition from the interim period to the control strategy period.

(a) \* \* \* \*

(4) Until August 8, 1995, for areas otherwise subject to paragraph (a)(3) of this section, the conformity lapse imposed by the final sentence of paragraph (a)(3) of this section shall not apply. The conformity status of the

transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation