

State of Tennessee, through the Department of Environment and Conservation (DEC), submitted the rules for transportation conformity. DEC gave notice of rule-making proceedings to the public on April 6, 1998, held a public hearing on May 18, 1998 and the rules were approved by the Tennessee Air Pollution Control Board on September 13, 2000. These amendments to Department of Environment and Conservation Rule Chapter 1200-3-34, filed on August 31, 2001, became effective November 14, 2001.

#### *B. What Is EPA Approving Today and Why?*

EPA is approving the Tennessee transportation conformity rule submitted to the EPA Region 4 office on March 19, 2002, by the Technical Secretary of the Tennessee Air Pollution Control Board. One exception is the approval of one provision in 1200-3-34-.01 (2), where subpart A of the conformity rule 40 CFR part 93 is adopted by reference. 40 CFR part 93.104(e), was amended after the state went through its public adoption process. EPA amended 93.104(e) in August 2002, changing the starting point for eighteen month clocks from the date of SIP submittal to the date of adequacy determination of the motor vehicle emissions budgets. Refer to the August 6, 2002, final rule (67 FR 50808) for more details. Therefore, the Tennessee rule incorporating by reference the 40 CFR part 93, subpart A, will not include section 93.104(e).

Furthermore, Tennessee's incorporation by reference of the conformity rule did not include portions of the regulations affected by the federal court decision in *Environmental Defense Fund v. Environmental Protection Agency*, 167 F.3d 641 (D.C. Cir. 1999) and *Sierra Club v. EPA, et. al.*, 129 F. 3d 137 (D.C. Cir. 1997). These include the following sections: 93.102(c)(1), 93.102(d), 93.118(e)(1), 93.120(a)(2), 93.121(a)(1) and 93.124(b). For all those portions not incorporated by reference, the Federal transportation conformity rule will take precedence.

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the Tennessee SIP.

#### *C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?*

EPA's rule requires the states to develop their own processes and procedures for interagency consultation

among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), local transit operators, the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, FHWA and FTA.

The State of Tennessee developed its statewide consultation rule based on the elements contained in state rule 1200-3-34 (3). The consultation process developed by the Tennessee Air Pollution Control Division (TAPCD) is unique to the state of Tennessee and is enforceable, effective November 14, 2001, signed by the City of Nashville Secretary of State on January 29, 2002.

#### **III. Final Action**

EPA is approving the aforementioned changes to the Tennessee SIP, with the exception of the incorporation of reference to 40 CFR part 93.104(e) in 1200-3-34-.01(3) which requires the state to comply with outdated conformity rule trigger provisions, because the state adopted this regulation prior to EPA's rulemaking amendment on August 6, 2002.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 15, 2003 without further notice unless the Agency receives adverse comments by June 16, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 15, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Statutory and Executive Order Reviews:**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.