

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL-7513-5]

RIN 2060-A156

Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today we (EPA) are proposing to amend the transportation conformity rule to address a March 2, 1999, ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, DC Cir. 1999; hereinafter referred to as the "court decision"). Our proposal would incorporate into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been used in place of certain regulatory provisions of the rule since the March 1999 court decision. EPA consulted with DOT on the development of our implementation strategy to address the court's decision and DOT concurs with this proposal.

Consistent with the court's ruling and existing federal guidance on transportation conformity, we are proposing that certain federal and non-federal highway and transit projects cannot be advanced in areas without a currently conforming transportation plan and transportation improvement program (TIP), unless they have previously received appropriate approvals and funding commitments. As directed by the court, our proposal also would modify the process for deciding whether the motor vehicle emissions budgets in newly submitted state air quality plans are adequate for use in the conformity process. Other provisions affected by the court decision and included in our proposal are the timing of conformity consequences following the disapproval of certain types of SIPs, and the use of submitted safety margins for transportation conformity in areas that have approved SIPs that were submitted prior to November 24, 1993.

The proposal also includes several additional amendments to provisions of the rule that the court decision did not directly affect. These amendments are being proposed to improve the rule and/or to provide clarification of existing requirements.

DATES: Written comments on this proposal must be received on or before July 30, 2003.

ADDRESSES: Comments may be submitted by mail to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR-2003-0063. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Angela Spickard, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, spickard.angela@epa.gov, (734) 214-4283; or, Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, patulski.meg@epa.gov, (734) 214-4842.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. General Information
 - A. Regulated Entities
 - B. How Can I Get Copies of This Document?
 - C. How and to Whom Do I Submit Comments?
 - D. How Should I Submit CBI to the Agency?
 - E. What Should I Consider as I Prepare My Comments for EPA?
- II. Background on the Transportation Conformity Rule
- III. Federal Projects
 - A. What Are We Proposing?
 - B. Why Are We Proposing These Changes?
 - C. What Is the Practical Impact of the Proposal?
- IV. Using Motor Vehicle Emissions Budgets from Submitted SIPs for Transportation Conformity Determinations
 - A. Background
 - B. What Are We Proposing?
 - C. Why Are We Proposing These Changes?
 - D. EPA's Adequacy Process
 - E. Why Is EPA Using the Website Instead of the **Federal Register** to Notify the Public in the Adequacy Process?
 - F. What Typical SIP Submissions Will We Review for Adequacy?
 - G. Does EPA Review Adequacy of SIPs That Do Not Establish Specific Budgets?
- V. Non-Federal Projects
 - A. What Are Non-federal Projects?
 - B. What Are We Proposing?
 - C. Why Are We Proposing This Change?
 - D. At What Point Is a Regionally Significant Non-federal Project "Approved"?

VI. Conformity Consequences of SIP Disapprovals

- A. What Are the Conformity Consequences of EPA Disapproving a Control Strategy SIP Without a Protective Finding?
- B. What Are We Proposing?
- C. Why Are We Proposing This Change?
- D. What Is the Practical Impact of This Change?

VII. Safety Margins

- A. What Is a Safety Margin?
- B. What Are We Proposing?
- C. Why Are We Proposing This Change?
- D. Can Safety Margins Still Be Allocated to Motor Vehicle Emissions Budgets for Use in Conformity Determinations?

VIII. Streamlining the Frequency of Conformity Determinations

- A. Eliminating the Requirement for Conformity of the TIP Within Six Months of the Transportation Plan
- B. Streamlining the 18-month SIP Triggers for New Conformity Determinations

IX. Latest Planning Assumptions

- A. What Are We Proposing?
- B. Why Are We Proposing this Change?

X. Horizon Years for Hot-spot Analyses

- A. What Are We Proposing?
- B. Why Are We Proposing This Clarification?

XI. Additional Changes and Clarifications to the Rule

- A. Definitions
- B. Budget Test Requirements for the Attainment Year
- C. Budget Test Requirements Once a Maintenance Plan is Submitted
- D. Relying on a Previous Regional Emissions Analysis
- E. Exempt Projects

XII. How Does Today's Proposal Affect Conformity SIPs?

XIII. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
- I. National Technology Transfer Advancement Act

I. General Information

A. Regulated Entities

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include: