

Preliminary engineering for project development activities that are necessary to assess social, economic, and environmental effects of the proposed action or alternatives as part of the NEPA process for a non-exempt project may continue during a lapse, since such activities are exempt according to 40 CFR 93.126. However, FHWA or FTA cannot approve a categorical exclusion (CE), finding of no significant impact (FONSI), or a record of decision (ROD) for a non-exempt project during a conformity lapse. The NEPA process for new projects can be completed only for exempt projects and TCMs in an approved SIP during a conformity lapse.

When an area is facing a lapse within six months, FHWA, FTA, and EPA will meet and jointly evaluate the potential consequences of the lapse and assess any concerns. FHWA, FTA, and EPA established consultation procedures to be used prior to a lapse in the April 19, 2000, National Memorandum of Understanding (MOU). The MOU can be found on EPA's conformity website as listed in section I.B.2. of this notice. As described in the MOU, the FHWA, FTA, and EPA will meet at least 90 days before a lapse to determine which projects could receive approvals or funding commitments before the lapse, which projects could potentially be delayed, and which actions would be necessary to correct the lapse.

IV. Using Motor Vehicle Emissions Budgets From Submitted SIPs for Transportation Conformity Determinations

A. Background

Control strategy SIPs and maintenance plans in ozone, CO, PM-10, and NO₂ areas create motor vehicle emission budgets for criteria pollutants and/or their precursors. Control strategy SIPs include reasonable further progress SIPs and attainment demonstrations. The budget is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions (40 CFR 93.101). In a conformity determination, the budget serves as a ceiling on emissions from an area's planned transportation system.

If an area does not have a budget that applies to a particular pollutant and standard it uses one or two of the emission reduction tests, depending on its classification (see 40 CFR 93.119). Prior to the 1997 conformity rule, if an area did not have a budget from an approved SIP to use for conformity, it had to use the emission reduction test(s). In 1995 and 1996, we consulted with conformity implementers and

determined that a budget in a submitted SIP is a more relevant basis for determining conformity than the "build/no-build" test, one of the emission reduction tests. (See 62 FR 43781—4 for this discussion.) In response to this input, we changed the rule in 1997 to allow the budget test to be used when an area had a submitted, but not yet approved, SIP. This change eliminated the use of the emission reduction test(s) sooner for many areas, since they could use the budget for conformity before the SIP is approved. Under the 1997 rule, if EPA had not yet made an adequacy finding within 45 days of receiving a SIP, the SIP's budgets automatically applied for conformity. The 1997 conformity rule also included provisions for EPA to review a budget(s) from a submitted SIP for adequacy.

B. What Are We Proposing?

Today's proposal would continue to allow budgets to be used before the SIP is approved, but would modify several provisions under 40 CFR 93.109 and 93.118, which are the sections of the conformity rule that address the use of SIP budgets for conformity purposes.

First, the proposal would eliminate those provisions in §§ 93.109 and 93.118(e) that require areas to use a budget from a submitted SIP in 45 days if EPA has not yet made an adequacy finding. Instead, we are proposing that before a budget from a submitted SIP can be used for conformity, EPA must find it adequate using the criteria in § 93.118(e)(4). The budget could not be used until the effective date of the **Federal Register** notice that announces that EPA has found the budget adequate, which we propose would be 15 days from the date of notice publication.

Second, today's proposal would incorporate into § 93.118 of the conformity rule the basic framework of the adequacy process described in EPA's May 14, 1999, guidance. A description of the adequacy process and the SIPs that are affected are found in section III.D and sections III.F. and G. of this preamble, respectively.

EPA is also adding a minor clarification to a sentence in § 93.118(e)(1). In paragraph (e), the rule explains that a submitted SIP cannot override an approved SIP until the submitted SIP is approved. Today's change more fully describes this point: Budgets from a submitted SIP cannot be used for conformity if an area already has an approved SIP that addresses the same pollutant and Clean Air Act requirement (e.g., rate-of-progress or attainment) and has budgets established for the same year. However, budgets from a submitted SIP are used for

conformity (once they are adequate) if the submitted SIP's budgets address either a different Clean Air Act requirement or are for a different year than budgets in an approved SIP, *i.e.*, the budgets are from an "initial SIP submission." Section III.F. includes further explanation. Discussion of initial SIP submissions can also be found at 66 FR 50956—50957, the preamble of the proposed rule titled, "Transportation Conformity Rule Amendments: Minor Revision of 18-Month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas."

Today's proposed changes to these sections are consistent with procedures already in place as a result of EPA's May 14, 1999, guidance issued to implement the court's decision. The guidance notified stakeholders that budgets in submitted SIPs could be used for conformity only after EPA has found them adequate. The guidance also outlined a process for determining adequacy of budgets that includes an opportunity for public comment. Today's proposal is consistent with that guidance. Therefore, under this proposed rule existing adequacy procedures would remain the same as they have been for the past several years.

We are not proposing any changes to the adequacy criteria in today's proposal; the existing criteria are being retained as described by the 1997 rule. The adequacy criteria were not affected by the court decision. These criteria include consideration of the technical details of the SIP, such as whether the budget is consistent with the SIP's purpose and the area's emissions inventory for all sources, and whether a clear relationship among the budget, control measures, and emissions inventory is shown. The adequacy criteria also include procedural criteria such as whether the SIP has been endorsed by the State governor or designee, whether the SIP was subject to a public hearing, and whether interagency consultation has occurred.

In addition to the adequacy criteria, the rule continues to provide that reliance on a submitted budget for determining conformity is deemed to be a statement by the MPO and DOT that they are not aware of any information that would indicate that emissions consistent with such a budget would cause or contribute to any new violation, increase the frequency or severity of an existing violation, or delay timely attainment of the relevant standards (§ 93.118(e)(6)). This provision provides another important check that helps to ensure that plans