

determinations because the budget is essentially unlimited. For more discussion of limited maintenance plans, please refer to 61 FR 36118 (the preamble of the July 9, 1996, proposed conformity rule).

Second, we will also review the adequacy of control strategy SIPs and maintenance plans that do not establish budgets because they claim that motor vehicle emissions are not a significant contributor to the area's air quality problems. Areas submitting these plans are required to demonstrate the insignificance of motor vehicle emissions based on a number of factors. In these areas, our adequacy review will focus on whether the SIP or maintenance plan demonstrates the claim of insignificance. In this case, a finding of adequacy means that EPA agrees that the motor vehicle emissions are insignificant. Additional discussion of SIPs that explicitly demonstrate motor vehicles to be an insignificant contributor can be found at 58 FR 62194 (November 24, 1993, final rule) and 61 FR 36118 (July 9, 1996, proposed rule).

In contrast, EPA will not review for adequacy a SIP that addresses only a localized hot-spot nonattainment problem (for example, in a CO area). These SIPs do not establish budgets and are not used as a basis for a conformity test for regional emissions. These SIPs only address localized emissions in areas where there is no regional air quality problem.

V. Non-Federal Projects

A. What Are Non-Federal Projects?

Non-federal projects are projects that are funded or approved by a recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) but that do not rely at all on any FHWA/FTA funding or approvals. A State DOT or public transit agency are examples of routine recipients of federal funds. The conformity rule only applies to non-federal projects that are considered regionally significant, in that these projects must be included in a conforming transportation plan and TIP and/or the regional emissions analysis supporting a conforming plan and TIP. Regionally significant, non-federal projects are not, however, subject to any of the requirements for project-level conformity, such as the requirements for hot-spot analysis found at § 93.116 and § 93.123 of the conformity rule.

We encourage areas to use the interagency consultation process to determine which entities are recipients of federal funds and whether a project is regionally significant. The terms

"recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws" and "regionally significant project" are defined under § 93.101 of the conformity rule.

B. What Are We Proposing?

EPA is proposing to amend § 93.121(a) of the 1997 conformity rule so that regionally significant non-federal projects can no longer advance during a conformity lapse unless they have received all necessary State and local approvals prior to the lapse. Under this proposal, recipients of federal funds designated under title 23 U.S.C or the Federal Transit Laws can not adopt or approve a regionally significant, non-federal project unless it is included in a currently conforming plan and TIP or in the regional emissions analysis supporting a currently conforming plan and TIP.

By amending § 93.121(a) as proposed, the conformity rule will again be consistent with the previous requirements of our 1993 rule. Today's proposal is also consistent with our May 14, 1999, guidance implementing the court decision, and does not affect the current, general implementation of non-federal projects.

C. Why Are We Proposing This Change?

In its ruling, the court found § 93.121(a)(1) of the 1997 conformity rule, that allowed State or local approval of transportation projects in the absence of a currently conforming plan/TIP, to be in violation of section 176(c)(2)(C) of the Clean Air Act. In its ruling the court asserted that all non-exempt projects subject to the conformity rule, including regionally significant non-federal projects, must come from a conforming plan and TIP (or their supporting regional emissions analysis). However, the court also noted that once a non-federal project receives all appropriate State or local approvals, it need not meet any further conformity requirements.

D. At What Point Is a Regionally Significant Non-Federal Project "Approved"?

The definition of non-federal project "approval" is decided on an area-specific basis at the State and local level through the interagency consultation process, and should be formalized in the area's "conformity SIP." Conformity SIPs are required by 40 CFR 51.390, and include area-specific conformity procedures tailored to State and local agency needs and consistent with our federal requirements for conformity. Conformity SIPs do not contain motor vehicle emissions budgets. If EPA has

not yet approved a conformity SIP for an area, the interagency consultation process should be used to determine the point of approval for non-federal projects.

EPA discussed defining non-federal project "approval" as a national matter in the preamble to the November 24, 1993, transportation conformity rule: "EPA believes that adoption/approval is never later than the execution of a contract for site preparation or construction. Adoption/approval will often be earlier, for example, when an elected or appointed commission or administrator takes a final action allowing or directing lower-level personnel to proceed" (58 FR 62205, November 24, 1993). Some examples of definitions used by areas to identify the point of final adoption/approval for a regionally significant highway or transit project include, but are not limited to, one of the following actions:

(a) The final policy board action or resolution that is necessary for a regionally significant project to proceed;

(b) Administrative permits issued under the authority of the agency, policy board, or commission for a regionally significant project;

(c) The execution of a contract to construct, or any final action by an elected or appointed commission or administrator directing or authorizing the commencement of construction of a regionally significant project; or

(d) Providing the grants, loans or similar financial support, necessary for the construction of a regionally significant project.

EPA believes that it is appropriate to define the point at which project approval occurs through the interagency consultation process, because areas have varying State and local requirements for determining when projects are approved. Specific questions about how a particular area defines the point of adoption/approval for non-federal projects should be directed to the appropriate local or State air or transportation agency.

Finally, as stated above, a regionally significant non-federal project must be included in a currently conforming transportation plan and TIP, or be included in the supporting regional emissions analysis for a conforming plan and TIP, to be approved.

VI. Conformity Consequences of SIP Disapprovals

A. What Are the Conformity Consequences of EPA Disapproving a Control Strategy SIP Without a Protective Finding?

When EPA disapproves a control strategy SIP, we may issue a protective