

finding for conformity purposes if the submitted SIP contains adopted control measures, or written commitments to adopt enforceable control measures, that fully satisfy the emission reduction requirements relevant to the statutory provision for which the SIP was submitted (see § 93.101 of the conformity rule for the definition of the term “protective finding”). A control strategy SIP that is disapproved with a protective finding generally possesses deficiencies such as a failure to include all control measures in a fully adopted, enforceable form. Such SIPs are not fully acceptable for SIP purposes, but are sufficient for conformity purposes since the State has adopted or committed to all measures necessary to meet all applicable SIP requirements.

In contrast, we will disapprove a submitted SIP without giving it a protective finding if it does not contain enough emission reduction measures, or commitments to these measures, to achieve its specific purpose of either demonstrating further progress or attainment.

In situations where EPA disapproves a control strategy SIP with a protective finding, the submitted motor vehicle emissions budgets can still be used in future conformity determinations. Conversely, if the EPA disapproves a SIP without giving it a protective finding the budgets cannot be used for conformity upon the effective date of EPA's disapproval action.

Control strategy SIPs include reasonable further progress SIPs and attainment demonstrations. The 1997 transportation conformity rule created a 120-day grace period following our disapproval of a control strategy SIP without a protective finding, after which conformity freezes. A conformity “freeze” means that only projects in the first three years of the transportation plan and TIP can proceed. No new plans, TIPs, or plan/TIP amendments can be found to conform during a conformity freeze. The transportation plan and TIP remain frozen until a new control strategy implementation plan fulfilling the same Clean Air Act requirement as that which EPA disapproved is submitted, and EPA finds the motor vehicle emissions budgets adequate for conformity. Failure to submit a new control strategy implementation plan within two years of the effective date of EPA's disapproval will result in the imposition of highway sanctions and a lapse of conformity. However, a conformity lapse could occur sooner, if during a freeze the transportation plan or TIP expires. We should also note that a conformity freeze does not result from

EPA's disapproval of a maintenance plan, as the Clean Air Act does not require nonattainment areas that have successfully demonstrated achievement of a given air quality standard to submit this type of air quality plan unless they request redesignation to attainment; *i.e.*, such submissions are discretionary. See the preamble to the 1997 conformity rule (62 FR 43796–43797) for more information about SIP disapprovals, protective findings, and conformity freezes.

#### *B. What Are We Proposing?*

We are proposing to change the point at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. Specifically, we are proposing to delete the 120-day grace period from § 93.120(a)(2) of the conformity rule, so that a conformity freeze would occur immediately upon the effective date of EPA's final disapproval.

Today's proposal, however, retains the 1997 conformity rule's flexibility that aligned conformity lapses with Clean Air Act highway sanctions. Like the 1997 rule, conformity of the plan/TIP would lapse when highway sanctions are imposed (usually two years after the effective date of EPA's final disapproval) as a result of a control strategy SIP disapproval, or when the applicable update of the plan and/or TIP was required under the transportation planning regulations, whichever comes first. See sections II. “Federal Projects” and IV. “Non-federal Projects” of this proposal for more details on what projects can advance during a conformity lapse.

Finally, this proposal does not impact the 1997 conformity rule's provisions for SIP disapprovals with a protective finding. Conformity consequences of control strategy SIP disapprovals with a protective finding would not occur unless highway sanctions are imposed; *i.e.*, conformity of an area's plan and TIP generally would not lapse until two years after the effective date of EPA's disapproval action with a protective finding.

#### *C. Why Are We Proposing This Change?*

In its ruling, the court found § 93.120(a)(2) of the 1997 conformity rule to be in violation of the Clean Air Act, section 176(c)(1), and remanded it to EPA for further rulemaking. Specifically, the court said that where EPA disapproves a SIP without a protective finding there is no basis to believe that conformity of transportation plans and TIPs to the submitted budgets in the disapproved SIP will not cause or contribute to new violations, increase

the frequency or severity of existing violations, or delay timely attainment of the air quality standards.

Under § 93.120(a)(2) of the current rule, if EPA disapproved a submitted SIP or SIP revision without a protective finding, areas could have used the 120-day grace period to complete a conformity determination that was already in progress, and therefore experience minimal disruption to the transportation planning process. The court felt that this grace period was not authorized by the statute because it would allow conformity to be demonstrated to a SIP that was deemed not protective of the air quality standards.

Therefore, after thorough consideration of the court's ruling, we are proposing to eliminate the 120-day grace period from the conformity rule; this change to the rule is consistent with our May 14, 1999, guidance implementing the court decision.

#### *D. What Is the Practical Impact of This Change?*

EPA anticipates minimal practical impacts from this proposed rule change. Since promulgating the 1997 conformity rule amendments, EPA has disapproved control strategy SIPs without a protective finding in only three instances and has no reason to believe that the future number of SIP disapprovals will significantly increase. Therefore, we believe this proposed rule will impact very few areas as did the guidance.

We also believe that the overall purpose of the 120-day grace period, that is, to minimize disruption to the transportation planning process, can still be achieved to an extent under this proposal. The notice-and-comment rulemaking process for disapproving SIPs provides transportation planners with advanced notice of when a SIP disapproval without a protective finding will occur. Prior to a conformity freeze, EPA proposes disapproval, provides for public comment, and then issues a final disapproval notice only after thorough consideration of any comments received has been completed. A proposed disapproval would address whether or not EPA plans to issue a protective finding for the SIP, so that transportation agencies would know well in advance if a conformity freeze is a possibility. This process generally provides sufficient notice for transportation agencies to prepare for the consequences of a disapproval without a protective finding by, for example, quickly completing any pending conformity determinations as appropriate.