

In addition, EPA has administrative discretion, where appropriate, to make disapprovals of control strategy SIPs effective 60–90 days after the publication of the disapproval in the **Federal Register**. There may be some situations where delaying the effective date for a short period of time beyond the usual 30 days is appropriate, for example, when transportation agencies are very close to completing a conformity determination that was well underway before EPA completed a SIP disapproval. Transportation plan and TIP updates and amendments must meet transportation planning and conformity requirements and undergo public review and comment; these processes typically require a significant amount of time. A relatively short delayed effective date could assist in finalizing the remaining administrative requirements for a determination that is nearing completion at the time of EPA's published notice for disapproval.

Sufficient notice also occurs in the limited case where a conditional SIP approval converts to disapproval without a protective finding. Unlike other types of SIP actions, conditional approvals automatically convert to SIP disapprovals if the condition of EPA's approval is not met within a fixed period not to exceed one year. In these cases, a conformity freeze would begin immediately upon the effective date of EPA's **Federal Register** notice of the conversion of a conditional approval to a disapproval without a protective finding.

Therefore, conditional approvals, by their very nature, inform transportation agencies well in advance that future conformity consequences could result if the conditions of the approval are not met. Because transportation agencies would be aware of potential conformity impacts generally at least one year before they could occur, EPA believes that there will be minimal practical impact of not providing a delayed effective date in these cases.

VII. Safety Margins

A. What Is a Safety Margin?

A safety margin is the amount by which the total projected level of emissions from all sources identified in a SIP for a given pollutant are less than the total emissions that would, at a minimum, satisfy the applicable Clean Air Act requirements for reasonable further progress, attainment or maintenance. For example, if an area projects that it will emit a total of 300 tons per day (tpd) of carbon monoxide (CO) from all sources, but the SIP demonstrates that the area can emit up

to 350 tpd of CO and still attain the air quality standard, the area has a safety margin of 50 tpd. In this example, CO emissions are estimated from all sources, including: Large stationary sources, such as steel mills; area sources, such as wood-burning stoves; on-road mobile sources, such as cars and trucks; and off-road mobile sources, such as construction and farm equipment. This area could allocate, through a revision to its SIP, all or some portion of the 50 tpd safety margin to their motor vehicle emissions budget for future conformity determinations, if desired.

B. What Are We Proposing?

We are proposing to delete § 93.124(b) of the conformity rule, that provided a narrowly targeted flexibility to areas with SIPs that had been submitted prior to the original publication date of the initial November 24, 1993 conformity rule. Under that provision, if the approved SIP had included a safety margin, but did not specify how the safety margin was to be used, an area could submit a revision to the SIP and specifically allocate all or a portion of the safety margin to the SIP's motor vehicle emissions budget(s). The 1997 rule allowed this SIP revision to become effective for conformity purposes before the revision had been approved by EPA. EPA is not aware of any nonattainment or maintenance areas that are currently affected by the elimination of this flexibility.

C. Why Are We Proposing This Change?

The court decision found that § 93.124(b) violates the Clean Air Act because it allows a submitted but unapproved SIP revision to supersede an approved SIP. The court ruled that EPA must fully approve these safety margin allocations into the SIP before they can be used for conformity.

D. Can Safety Margins Still Be Allocated to Motor Vehicle Emissions Budgets for Use in Conformity Determinations?

Yes. Although the court eliminated a narrowly targeted flexibility related to the use of safety margins in previously approved SIPs in § 93.124(b), the majority of areas that have allocated safety margins to their emissions budgets after November 24, 1993, are not affected by the court's ruling. For most of these areas, either EPA has already approved their safety margin allocations or they had no previously approved SIP. In general, areas that do not have approved SIPs can use submitted safety margins in conformity determinations once EPA finds the submitted SIP (and safety margin)

adequate. Areas with approved SIPs that want to reallocate their safety margin for conformity purposes can do so once EPA has approved a SIP revision that specifically allocates all or a portion of the safety margin to an emissions budget.

VIII. Streamlining the Frequency of Conformity Determinations

In addition to those provisions directly affected by the U.S. Court of Appeals decision, EPA is also proposing several changes to other provisions of the conformity regulation in this rulemaking. One of these additional proposals would affect several provisions under 40 CFR 93.104, the section of the rule that describes when conformity determinations must be made for transportation plans, TIPs, and projects. In the first conformity rule proposal made in January 1993, we stated, "EPA believes conformity determinations should be made frequently enough to ensure that the conformity process is meaningful. At the same time, EPA believes it is important to limit the number of triggers for conformity determinations in order to preserve the stability of the transportation planning process" (58 FR 3775). EPA continues to have these dual goals. Today we are proposing to eliminate some of the frequency requirements found in § 93.104, and streamline others. EPA believes that our proposal would simplify the current conformity requirements without compromising the benefits of the conformity program.

Under today's proposal EPA concludes that conformity determinations will continue to be required frequently enough to ensure that the process is meaningful and consistent with the Clean Air Act. EPA is not proposing to change the requirements to determine conformity of new or revised plans, TIPs, and projects before they can be adopted, and the requirement to determine conformity of transportation plans and TIPs at least every three years remains, as required by section 176(c) of the Clean Air Act. EPA proposes to eliminate only those frequency requirements which are not required by the Clean Air Act and which now we believe are either outdated or redundant with other requirements.

A. Eliminating the Requirement for Conformity of the TIP Within Six Months of the Transportation Plan

First, we propose to eliminate § 93.104(c)(4), which requires an MPO and DOT to determine conformity of the TIP within six months of the date that