

under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53).

D. Why Must the State Submit A Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Florida submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998.

States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation

conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local Air Quality Agencies, U.S. Environmental Protection Agency and U.S. Department of Transportation (USDOT) are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved motor vehicle emissions budget in order for USDOT to make a positive conformity determination with respect to the SIP.

III. Analysis of State's Submittal

A. What Did the State Submit?

The State of Florida chose to address the transportation conformity SIP requirements using State rules that incorporate by reference portions of the Federal conformity rule and a Memorandum of Agreement (MOA) that provides the procedures for interagency consultation. The Transportation conformity rule, part 93, section 105, requires the state to develop specific procedures for consultation, resolution of conflict and public consultation. On August 14, 1998, the State of Florida, through the Department of Environmental Protection (DEP), submitted the rules for transportation conformity. DEP gave notice of rule-making proceedings to the public on July 3, 1998, held a public hearing on August 5, 1998 and the rules were approved by the Department of Environmental Protection on August 6, 1998. These amendments to the Florida Administrative Code Rule Chapter 62–204.500, filed on August 12, 1998, became effective August 31, 1998.

B. What Is EPA Approving Today and Why?

EPA is approving the Florida transportation conformity rule submitted to the EPA Region 4 office on August 14, 1998, by the Secretary of the Florida Department of Environmental Protection with one exception. EPA amended 40 CFR part 93, section 104(e) in August 2002, changing the starting point for 18-month clock trigger for conformity from the date of the SIP submittal to the date of the motor vehicle emissions budget adequacy determination. This change was made after the State's public adoption process, and therefore the State has not adopted the most current version of 93.104(e). Therefore, EPA is not taking action on the portion of the Florida rule incorporating 93.104(e) by reference, and the Federal rule applies in its place. Refer to the August 6, 2002, final rule (67 FR 50808) for more details.

Furthermore, Florida's incorporation by reference of the conformity rule did not include portions of the regulations affected by the Federal court decision in *Environmental Defense Fund v. Environmental Protection Agency*, 167 F.3d 641 (DC Cir. 1999) and *Sierra Club v. EPA, et. al.*, 129 F. 3d 137 (DC Cir. 1997). These include the following sections: 93.102(c)(1), 93.102(d), 93.118(e)(1), 93.120(a)(2), 93.121(a)(1) and 93.124(b). For all those portions not incorporated by reference, the Federal transportation conformity rule will take precedence.

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the Florida SIP.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, FHWA, FTA, local transit operators, the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate