

preamble to the June 30, 2003 proposal (68 FR 38974).

XV. How Does Today's Proposal Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) currently requires states to submit revisions to their SIPs to reflect all of the federal criteria and procedures for determining conformity. States can choose to develop conformity SIPs as a memorandum of understanding (MOU), memorandum of agreement (MOA), or state rule. However, a state must have the authority to make an MOU or MOA enforceable as a matter of state law, if such mechanisms are used.

Section 51.390(b) of the conformity rule specifies that after EPA approves any conformity SIP revision, the federal conformity rule no longer governs conformity determinations (for the sections of the federal conformity rule that are covered by the approved conformity SIP). Areas without approved conformity SIPs will be able to use immediately any conformity amendments that are finalized in the future as a result of today's proposed action.

In contrast, EPA has already approved conformity SIPs in some areas that include sections from previous conformity rulemakings. In general, amendments to a section of the federal rule other than those compelled by a court decision become effective in states with approved conformity SIPs only when the State includes the amended section in a conformity SIP revision and EPA approves that SIP revision. EPA will continue to work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing or direct final rulemaking.

There are, however, aspects of today's proposal that should not already be in any approved conformity SIPs, since new provisions are being proposed to implement the 8-hour ozone and PM_{2.5} standards. For these new provisions, all 8-hour ozone and PM_{2.5} areas will be able to use such amendments upon the effective date of a final rule based on this proposal. When a final rule is issued, EPA will provide guidance on when sections of the rule can be used in the conformity process in areas with approved conformity SIPs.

XVI. Public Hearing

Anyone who wants to present testimony about this proposal at the public hearing (*see DATES*) should, if possible, notify the contact persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposal at least

seven days prior to the day of the hearing. The contact person(s) should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the EPA contact(s) earlier. This testimony will be scheduled on a first-come, first-serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. Such advance copies would give EPA staff adequate time to review the materials before the hearing. Advance copies should be submitted to the EPA contact person(s) listed in this proposal.

The official records of the hearing will be kept open until the close of the comment period to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to the Air Docket I.D. No. OAR-2003-0049. See Section I.C. of this proposal for more information on how to submit comments to the docket. The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the docket for review. Anyone who desires to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XVII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant "regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is a "significant regulatory action" because this action raises novel legal or policy issues arising out of legal mandates and the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* (ICR 2103.01). The information collection requirements are not enforceable until OMB approves them.

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR 51.390 and 40 CFR part 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA estimates that this rulemaking will place additional burden on those areas that are designated nonattainment for the first time and have no prior experience with the conformity process. For these completely "new" areas there will be burden associated with rule familiarization, transportation and emissions modeling and interagency consultation. New metropolitan