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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL-7789-6]

RIN 2060-AL73
 RIN 2060-AI56

Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Correction to the Preamble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”). The final rule also

addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the final rule contains two errors. This notice is intended to correct these errors. All other preamble and regulatory text printed in the July 1, 2004 final rule is correct.

The Department of Transportation (DOT) is EPA’s federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of these corrections, and DOT concurs.

DATES: *Effective Date:* August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *patulski.meg@epa.gov*, (734) 214-4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214-4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection

Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214-4858.

SUPPLEMENTARY INFORMATION: EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”). The final rule also addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the July 1, 2004 final rule contains two errors. This notice is intended to correct these errors.

First, the table in Section II. D. What Parts of the Final Rule Apply to Me? (69 FR 40006-7), which lists the issues addressed in the final rule, is incomplete and contains a number of incorrect references to other sections of the rule. The table provides a roadmap for determining whether a specific final rule revision included in the July 1, 2004 rulemaking would apply in your area. The table illustrates which parts of the final rule are relevant for various pollutants and standards.

The following is the corrected table:

| Type of area | Issue addressed in final rule | Preamble section | Regulatory section |
|--------------------|---|------------------|---------------------------------------|
| 8-hour ozone | Conformity grace period | III.A | § 93.102(d) |
| | Revocation of 1-hour ozone standard | III.B | Not applicable. |
| | General implementation of new standards | III.C | Not applicable. |
| | Early Action Compacts | III.D | Not applicable. |
| | Baseline year test | IV.B | § 93.119(b) |
| | Build/no-build test (marginal classification and subpart 1 areas ¹). | IV.C | § 93.119(b)(2), § 93.119(g)(2) |
| | Regional conformity tests (moderate and above classifications). | IV.D | § 93.119(b)(1) |
| | Regional conformity tests (areas without 1-hour ozone budgets). | V | § 93.109(d) |
| | Regional conformity tests (areas with 1-hour ozone budgets). | VI | § 93.109(e) |
| | Federal projects during a lapse | XIV | § 93.102(c), § 93.104(d) |
| | Adequacy process of submitted SIPs | XV | § 93.118(e) |
| | | XXIII.G | § 93.118(f) |
| | Non-federal projects during a lapse | XVI | § 93.121(a) |
| | Consequences of SIP disapprovals | XVII | § 93.120(a)(2) |
| | Safety margins | XVIII | Deletes § 93.124(b) of previous rule. |
| | Frequency | XIX | § 93.104(c), § 93.104(e) |
| | Latest planning assumptions | XX | § 93.110(a) |
| | Relying on a previous analysis | XXII | § 93.122(g), § 93.104(b), § 93.104(c) |
| | Definitions | XXIII.A | § 93.101 |
| | Insignificance | XXIII.B | § 93.109(k), § 93.121(c) |
| | Transportation plan and modeling requirements (moderate and above classifications). Non-federal projects (for isolated rural areas only). | XXIII.D | § 93.106(b), § 93.122(c) |
| | Implementation of budget test | XXIII.F | § 93.121(b)(1) |
| | XXIII.H | § 93.118(b) | |
| | XXIII.I | § 93.118(d) | |

¹ “Subpart 1 areas” are areas that are designated nonattainment under subpart 1 of part D of title 1

of the Clean Air Act. EPA also referred to these areas as “basic” nonattainment areas in its April 30,

2004 final designations rule for the 8-hour ozone standard (69 FR 23862).

| Type of area | Issue addressed in final rule | Preamble section | Regulatory section |
|---|--|--------------------------|---|
| PM _{2.5} | Exempt projects | XXIII.J | § 93.126 |
| | Conformity SIPs | XXV | Not applicable. |
| | Applicability | III.A | § 93.102(b)(1) |
| | Conformity grace period | III.A | § 93.102(d) |
| | General implementation of new standards | III.C | Not applicable. |
| | Baseline year test | IV.B | § 93.119(e) |
| | Build/no-build test | IV.C | § 93.119(e), § 93.119(g)(2) |
| | Regional conformity tests | VII | § 93.109(i) |
| | Direct PM _{2.5} in regional analyses from tail-pipe, brake wear, tire wear. | VIII | § 93.102(b)(1) |
| | Precursors in regional analyses | VIII | No regulatory text being finalized at this time. |
| | Re-entrained road dust in regional analyses | IX | § 93.102(b)(3), § 93.119(f) |
| | Construction-related fugitive dust in regional analyses. | X | § 93.122(f) |
| | Compliance with SIP control measures | XI | § 93.117 |
| | Hot-spots | XII | No regulatory text being finalized at this time. |
| | Federal projects during a lapse | XIV | § 93.102(c), § 93.104(d) |
| | Adequacy process of submitted SIPs | XV | § 93.118(e) |
| | | XXIII.G | § 93.118(f) |
| | Non-federal projects during a lapse | XVI | § 93.121(a) |
| | Consequences of SIP disapprovals | XVII | § 93.120(a)(2) |
| | Safety margins | XVIII | Deletes § 93.124(b) of previous rule. |
| | Frequency | XIX | § 93.104(c), § 93.104(e) |
| | Latest planning assumptions | XX | § 93.110(a) |
| | Relying on a previous analysis | XXII | § 93.122(g), § 93.104(b), § 93.104(c) |
| | Definitions | XXIII.A | § 93.101 |
| Insignificance | XXIII.B | § 93.109(k), § 93.121(c) | |
| Non-federal projects (for isolated rural areas only). | XXIII.F | § 93.121(b)(1) | |
| Implementation of budget test | XXIII.H | § 93.118(b) | |
| | XXIII.I | § 93.118(d) | |
| 1-hour ozone | Exempt projects | XXIII.J | § 93.126 |
| | Conformity SIPs | XXV | Not applicable. |
| | Revocation of 1-hour ozone standard | III.B | Not applicable. |
| | Regional conformity tests | III.B | § 93.109(c) |
| | Build/no-build test (marginal and below classifications). | IV.C | § 93.119(b)(2), § 93.119(g)(2) |
| | Regional conformity tests (moderate and above classifications). | IV.D | § 93.119(b)(1) |
| | Federal projects during a lapse | XIV | § 93.102(c), § 93.104(d) |
| | Adequacy process of submitted SIPs | XV | § 93.118(e) |
| | | XXIII.G | § 93.118(f) |
| | Non-federal projects during a lapse | XVI | § 93.121(a) |
| | Consequences of SIP disapprovals | XVII | § 93.120(a)(2) |
| | Safety margins | XVIII | Deletes § 93.124(b) of previous rule. |
| | Frequency | XIX | § 93.104(c), § 93.104(e) |
| | Latest planning assumptions | XX | § 93.110(a) |
| | Relying on a previous analysis | XXII | § 93.122(g), § 93.104(b), § 93.104(c) |
| | Definitions | XXIII.A | § 93.101 |
| | Insignificance | XXIII.B | § 93.109(k), § 93.121(c) |
| | Limited maintenance plans | XXIII.C | § 93.101 |
| | | | § 93.109(j), § 93.121(c) |
| | Transportation plan and modeling requirements (moderate and above classifications). | XXIII.D | § 93.106(b), § 93.122(c) |
| | Non-federal projects (for isolated rural areas only). | XXIII.F | § 93.121(b)(1) |
| | Implementation of budget test | XXIII.H | § 93.118(b) |
| | | XXIII.I | § 93.118(d) |
| | PM ₁₀ | Exempt projects | XXIII.J |
| Conformity SIPs | | XXV | Not applicable. |
| Build/no-build test | | IV.C | § 93.119(d), § 93.119(g)(2) |
| Hot-spots | | XIII | No new or revised regulatory text being finalized at this time. |
| Federal projects during a lapse | | XIV | § 93.102(c), § 93.104(d) |
| Adequacy process of submitted SIPs | | XV | § 93.118(e) |
| | | XXIII.G | § 93.118(f) |
| Non-federal projects during a lapse | | XVI | § 93.121(a) |
| Consequences of SIP disapprovals | | XVII | § 93.120(a)(2) |
| Safety margins | | XVIII | Deletes § 93.124(b) of previous rule. |
| Frequency | | XIX | § 93.104(c), § 93.104(e) |
| Latest planning assumptions | | XX | § 93.110(a) |
| Horizon years in hot-spot analyses | | XXI | § 93.116 |
| Relying on a previous analysis | | XXII | § 93.122(g), § 93.104(b), § 93.104(c) |
| Definitions | | XXIII.A | § 93.101 |

| Type of area | Issue addressed in final rule | Preamble section | Regulatory section |
|---|--|---------------------------------------|---------------------------------------|
| CO | Insignificance | XXIII.B | § 93.109(k), § 93.121(c) |
| | Limited maintenance plans | XXIII.C | § 93.101, § 93.109(j), § 93.121(c) |
| | Clarification to Precursors | XXIII.E | § 93.102(b)(2)(iii), § 93.119(f)(5) |
| | Non-federal projects (for isolated rural areas only). Implementation of budget test | XXIII.F | § 93.121(b)(1) |
| | Exempt projects | XXIII.H | § 93.118(b) |
| | Conformity SIPs | XXIII.I | § 93.118(d) |
| | Build/no-build test (lower CO classifications) Regional conformity tests (higher CO classifications). | XXIII.J | § 93.126 |
| | Federal projects during a lapse | XXV | Not applicable. |
| | Adequacy process of submitted SIPs | IV.C | § 93.119(c), § 93.119(g)(2) |
| | Non-federal projects during a lapse | IV.D | § 93.119(c)(1) |
| | Consequences of SIP disapprovals | XIV | § 93.102(c), § 93.104(d) |
| | Safety margins | XV | § 93.118(e) |
| | Frequency | XXIII.G | § 93.118(f) |
| | Latest planning assumptions | XVI | § 93.121(a) |
| | Horizon years in hot-spot analyses | XVII | § 93.120(a)(2) |
| | Relying on a previous analysis | XVIII | Deletes § 93.124(b) of previous rule. |
| | Definitions | XIX | § 93.104(c), § 93.104(e) |
| | Insignificance | XX | § 93.110(a) |
| Limited maintenance plans | XXI | § 93.116 | |
| Transportation plan and modeling requirements (moderate and serious classifications). Non-federal projects (for isolated rural areas only). Implementation of budget test | XXII | § 93.122(g), § 93.104(b), § 93.104(c) | |
| Exempt projects | XXIII.A | § 93.101 | |
| Conformity SIPs | XXIII.B | § 93.109(k), § 93.121(c) | |
| Build/no-build test | XXIII.C | § 93.101, § 93.109(j), § 93.121(c) | |
| Federal projects during a lapse | XXIII.D | § 93.106(b), § 93.122(c) | |
| Adequacy process of submitted SIPs | XXIII.F | § 93.121(b)(1) | |
| Non-federal projects during a lapse | XXIII.H | § 93.118(b), § 93.118(d) | |
| Consequences of SIP disapprovals | XXIII.I | | |
| Safety margins | XXIII.J | § 93.126 | |
| Frequency | XXV | Not applicable. | |
| Latest planning assumptions | IV.C | § 93.119(d), § 93.119(g)(2) | |
| Relying on a previous analysis | XIV | § 93.102(c), § 93.104(d) | |
| Definitions | XV | § 93.118(e) | |
| Insignificance | XXIII.G | § 93.118(f) | |
| Limited maintenance plans | XVI | § 93.121(a) | |
| Transportation plan and modeling requirements (moderate and serious classifications). Non-federal projects (for isolated rural areas only). Implementation of budget test | XVII | § 93.120(a)(2) | |
| Exempt projects | XVIII | Deletes § 93.124(b) of previous rule. | |
| Conformity SIPs | XIX | § 93.104(c), § 93.104(e) | |
| Build/no-build test | XX | § 93.110(a) | |
| Federal projects during a lapse | XXI | § 93.116 | |
| Adequacy process of submitted SIPs | XXII | § 93.122(g), § 93.104(b), § 93.104(c) | |
| Non-federal projects during a lapse | XXIII.A | § 93.101 | |
| Consequences of SIP disapprovals | XXIII.B | § 93.109(k), § 93.121(c) | |
| Safety margins | XXIII.C | § 93.101, § 93.109(j), § 93.121(c) | |
| Frequency | XXIII.D | § 93.106(b), § 93.122(c) | |
| Latest planning assumptions | XXIII.F | § 93.121(b)(1) | |
| Horizon years in hot-spot analyses | XXIII.H | § 93.118(b) | |
| Relying on a previous analysis | XXIII.I | § 93.118(d) | |
| Definitions | XXIII.J | § 93.126 | |
| Insignificance | XXV | Not applicable. | |
| Limited maintenance plans | | | |
| Transportation plan and modeling requirements (moderate and serious classifications). Non-federal projects (for isolated rural areas only). Implementation of budget test | | | |
| Exempt projects | | | |
| Conformity SIPs | | | |

Second, a paragraph was omitted from the end of Section XXIII.G. Use of Adequate and Approved Budgets in Conformity (69 FR 40066). The missing paragraph was intended to explain that we are not changing all of the PM₁₀ requirements in § 93.109(g). We are reprinting the entire paragraph in the regulatory section of the July 1, 2004 final rule to ensure that the Code of Federal Regulations is updated correctly.

The following paragraph should be inserted at the end of Section XXIII.G.:

The final rule includes some of the existing conformity rule's text for PM₁₀ requirements in § 93.109(g) to ensure

that the Code of Federal Regulations is updated correctly. For example, § 93.109(g)(3)(ii) is not being changed in this final rule, but is affected by the reorganization of paragraph (g) in this section. EPA notes that this and other such parts of paragraph (g) have been addressed through past rulemakings and are not being reopened through this final rule.

No changes are being made to the final rule language or other preamble language published on July 1, 2004. EPA finds good cause to make this correction notice effective less than 30 days after publication in the **Federal Register**. The final rule published July 1 will become

effective August 2, 2004. Today's correction notice does not make any changes to the final rule. This correction notice only clarifies explanatory text in the preamble to the final rule which were intended to aid conformity implementors in implementing the rule. Therefore EPA concludes that it will be in the public interest to have this correction notice also become effective on August 2, 2004.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 13, 2004.

Robert D. Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 04-16449 Filed 7-19-04; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD-2004-18489]

RIN 2133-AB62

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule and request for comments.

SUMMARY: The Maritime Administration (MARAD) is issuing this interim final rule to provide procedures to implement provisions of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a new Maritime Security Program (MSP) that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping. This interim final rule establishes the new MSP and provides, among other things, application procedures and deadlines for enrollment of vessels in the MSP.

DATES: *Effective Date:* This interim final rule is effective on October 1, 2004.

Comment Date: MARAD will consider comments received not later than August 19, 2004.

Application Due Date: Applications for enrollment of vessels in the MSP are due by October 15, 2004, to the address listed in the **ADDRESSES** section below.

ADDRESSES: *Comment Submission:* You may submit comments [identified by DOT DMS Docket Number MARAD-2004-18489] by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the *Privacy Act* heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Application Submission: Submit applications for enrollment of vessels in the MSP to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Taylor E. Jones II, Director, Office of Sealift Support, Maritime Administration, Telephone 202-366-2323. For legal questions, call Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration, 202-366-5320. For military utility questions, call LTC Todd Robbins, U.S. Transportation Command, 618-229-1451/1529.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1996 the President signed the Maritime Security Act of 1996 establishing the Maritime Security Program (MSP) for FYs 1996 through 2005 to provide financial assistance of up to \$2.1 million per vessel per year to operators of U.S.-flag vessels with approved MSP Operating Agreements. The MSP is funded at \$100 million per year for each year from FY 1996 through FY 2005, which covers a maximum of 47 vessels.

On November 24, 2003, the President signed the National Defense Authorization Act for Fiscal Year 2004, which contained the MSA 2003 creating a new MSP for FY 2006 through FY 2015. This program also provides financial assistance to operators of U.S.-flag vessels that meet certain qualifications. The MSA 2003 requires that the Secretary of Transportation, in consultation with the Secretary of

Defense, establish a fleet of active, commercially viable, militarily useful, privately-owned vessels to meet national defense and other security requirements. Section 53111 of the MSA 2003 authorizes \$156 million annually for FYs 2006, 2007, and 2008; \$174 million annually for FYs 2009, 2010, and 2011; and \$186 million annually for FYs 2012, 2013, 2014, and 2015 to support the operation of up to 60 U.S.-flag vessels in the foreign commerce of the United States. Payments to participating operators are limited to \$2.6 million per ship per year for FYs 2006 through 2008, \$2.9 million per ship per year for FYs 2009 through 2011, and \$3.1 million per ship per year for FYs 2012 through 2015. Payments are subject to annual appropriations. Participating operators are required to make their commercial transportation resources available upon request by the Secretary of Defense during times of war or national emergency.

Subtitle A, section 3517 of the MSA 2003 provides for a pilot program under which the Secretary of Transportation may enter into an agreement(s) to reimburse MSP vessel operators up to 80 percent of the cost of performing maintenance and repairs in U.S. shipyards versus the cost of performing this work in a geographic region in which the MSP vessel generally operates. Funding to perform qualified maintenance and repair work in the United States on MSP vessels is authorized to be appropriated in the amount of \$19.5 million for each of fiscal years 2006 through 2011.

Military Utility

The U.S. Transportation Command, on behalf of the Secretary of Defense, will issue a press release or another form of announcement within 20 days after the issuance of this regulation describing the current operational requirements of the Department of Defense for determining the award of operating agreements within a priority. Current requirements may be stated in terms of capability to perform a particular mission or in terms of vessel characteristics (militarily useful square footage, deck height, deck strength, draft, ammunition certification, etc.) or in other operational terms.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104-121

This rulemaking is considered to be an economically significant regulatory action under section 3(f) of Executive