§ 255.4 Definition of digital phonorecord delivery.

A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

PART 255—ADJUSTMENT OF ROYALTY PAYMENTS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

4. The authority citation for part 255 continues to read as follows:


5. Section 255.4 is revised to read as follows:

§ 255.4 Definition of digital phonorecord delivery.

A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.
(NAAQS). The transportation conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. Background for This Action

EPA promulgated the Federal transportation conformity criteria and procedures (the conformity rule) on November 24, 1993. See 58 FR 62188. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs (“conformity SIPs”). Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim. States were also required to tailor all or portions of the following three sections of the conformity rule to meet their state’s individual circumstances: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a metropolitan planning organization’s (MPO’s) transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments, when they exist, must be fulfilled; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments, when they exist.

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the Clean Air Act’s transportation conformity provisions. One of the changes streamlines the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the conformity rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c), described above. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law.

III. State Submittal and EPA Evaluation

EPA has designated portions of Clark County, Nevada, as nonattainment for the carbon monoxide, 8-hour ozone, and respirable particulate matter (PM₁₀) national ambient air quality standards (NAAQS). See 40 CFR 81.329. Thus, a “conformity SIP” for the portions of Clark County so designated must be prepared, adopted, and submitted to EPA to comply with the CAA, as amended by SAFETEA–LU.

In response to these requirements, on April 1, 2008, the Nevada Division of Environmental Protection (NDEP) submitted the Clark County Transportation Conformity Plan (TCP) to EPA for approval as a revision to the Clark County portion of the Nevada SIP. The Clark County Board of County Commissioners adopted the Clark County TCP on January 15, 2008. Appendix A of the Clark County TCP documents public notice and hearing for this SIP revision in compliance with CAA section 110(l) and 40 CFR 51.102. On July 3, 2008, this submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. There is no previous version of the Clark County TCP in the SIP.

Upon EPA approval, the Federal transportation conformity regulations will apply, except for those sections addressed by the current submittal, i.e., the requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures, and under 40 CFR 93.105 for interagency consultation.

We have reviewed the Clark County TCP to assure consistency with the Clean Air Act as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and have concluded that the plan is approvable. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in our TSD, we identify how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

IV. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, and for the reasons set forth above, EPA is fully approving the Clark County Transportation Conformity Plan, submitted on April 1, 2008, as a revision to the Clark County portion of the Nevada SIP. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this Federal Register, we are simultaneously proposing approval of the same submitted plan. If we receive adverse comments by December 8, 2008, we will publish a timely withdrawal in the Federal Register to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 6, 2009. This will incorporate the Clark County TCP into the federally enforceable SIP.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);  
• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);  
• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and  

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).