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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0898; FRL-8898-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Transportation Conformity Requirement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania. The revisions establish State transportation conformity requirements. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on June 29, 2009 without further notice, unless EPA receives adverse written comment by May 29, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0898 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [febbo.carol@epa.gov](mailto:febbo.carol@epa.gov).

C. *Mail:* EPA-R03-OAR-2008-0898, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2008-0898. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (*i.e.*, CBI or other information), disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control Rachel Carson State Office Building, 400 Market Street, 12th Floor, Harrisburg, PA 17105-8468.

#### FOR FURTHER INFORMATION CONTACT:

Martin Kotsch, (215) 814-3335, or by e-mail at [kotsch.martin@epa.gov](mailto:kotsch.martin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we", "us", or "our" is used, we mean EPA.

#### I. What Is Transportation Conformity?

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally supported

highway, transit projects, and other activities are consistent with (conform to) the purpose of the approved SIP. Transportation Conformity currently applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (maintenance areas), with maintenance plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity with 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 National Ambient Air Quality Standards (NAAQS). The Federal transportation conformity regulations (Federal Rule) are found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

#### II. What Is the Background for This Action?

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 certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA-LU, states were required to address all of the Federal Rule's provisions in their conformity SIPs. After SAFETEA-LU, state's SIPs were required to contain all or portions of only the following three sections of the Federal Rule, modified as appropriate to each state's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). Pursuant to SAFETEA-LU, States are no longer required to submit conformity SIP revisions that address the other sections of the Federal Rule.

#### III. What Did the State Submit and How Did We Evaluate It?

On May 29, 2008, the Pennsylvania Department of Environmental Protection submitted a revision to its State Implementation Plan (SIP) for Transportation Conformity purposes. The SIP revision consists of eighteen executed Memorandums of Agreements (MOAs) which will constitute the Pennsylvania SIP for transportation conformity purposes. The eighteen MOAs were executed among the State of Pennsylvania and the various

Metropolitan Planning Organizations and Rural Planning Organizations within the Commonwealth of Pennsylvania which have responsibility for undertaking transportation conformity in conjunction with transportation planning activities. These MOAs which make up the SIP revision address the three provisions of the Federal Rule required under SAFETEA-LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (certain control measures), and 40 CFR 93.125(c) (mitigation measures).

We reviewed the submittal to assure consistency with the February 14, 2006, "Interim Guidance for Implementing the Transportation Conformity provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)". The guidance document can be found at <http://epa.gov/otaq/stateresources/transconf/policy.htm>. The guidance document states that each state is only required to address and tailor the aforementioned three sections of the Federal Rule in their state conformity SIPs.

EPA's review of Pennsylvania's Transportation Conformity SIP revision indicates that it is consistent with EPA's guidance in that the SIP revision included the three elements specified by SAFETEA-LU and EPA's guidance. Consistent with the Federal Rule at 40 CFR 93.105 (consultation procedures), paragraph (a)(2) of each of the executed MOAs establishes the requirements for the appropriate agencies, procedures and allocation of responsibilities as required under 40 CFR 93.105 for consultation procedures. In addition, the executed MOAs provide for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), paragraphs (a)(3) and (a)(4) of the executed MOAs specify that written commitments for implementation of control measures and mitigation measures for meeting these requirements will be provided as needed.

#### IV. Final Action

EPA is hereby approving the Pennsylvania SIP revision for Transportation Conformity, which was submitted on May 29, 2008. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are

filed. This rule will be effective on June 29, 2009 without further notice unless EPA receives adverse comment by May 29, 2009. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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.

##### B. Submission to Congress and the Comptroller General

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).

##### C. Petitions for Judicial Review

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 June 29, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to approve the Pennsylvania Transportation Conformity SIP may not

be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: April 15, 2009.

**William C. Early**,  
Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart NN—Pennsylvania**

■ In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for Transportation Conformity Requirements at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*  
(e)(1)\* \* \*

**EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MATERIAL**

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Transportation Conformity Requirements.	Entire State .....	5/29/08	4/29/09 [Insert page number where the document begins].	Memoranda of Understanding between EPA, FHWA, FTA, Pennsylvania, Virginia, and eighteen Metropolitan and Rural Planning Organizations.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[EPA-R03-RCRA-2009-0916; FRL-8898-7]

**Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Pennsylvania has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Pennsylvania's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Pennsylvania's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action we will publish a document in the **Federal Register** withdrawing the relevant portions of

this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize revisions to Pennsylvania's program that were the subject of adverse comments. Today's document also corrects errors made in the authorization history that was published in the January 20, 2004 **Federal Register** authorization document for Pennsylvania.  
**DATES:** This final authorization will become effective on June 29, 2009, unless EPA receives adverse written comments by May 29, 2009. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect as scheduled.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-RCRA-2009-0916, by one of the following methods:

1. **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. **E-mail:** [bentley.pete@epamail.epa.gov](mailto:bentley.pete@epamail.epa.gov)
3. **Mail:** Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
4. **Hand Delivery:** At the previously listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.  
You may inspect and copy Pennsylvania's application from 8 a.m.

to 4:00 p.m., Monday through Friday at the following locations: Pennsylvania Department of Environmental Protection, Environmental Education and Information Center, 1st Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17105, Phone number (717) 772-1828; Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222, Phone number: (412) 442-4097; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-5254. Persons with a disability may use the AT&T Relay Service to contact Pennsylvania Department of Environmental Protection by calling (800) 654-5984 (TDD users), or (800) 654-5988 (voice users).

**Instructions:** Direct your comments to Docket ID No. EPA-R03-RCRA-2009-0916. EPA's policy is that all comments received will be included in the public file without change and may be made available on line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail