

Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on the designated routes through the park identified in the following paragraphs (g)(16)(i) through (iv). Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. The following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from the east park boundary to a point approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

(iv) The Superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may only use those routes designated in paragraph (g)(16) of this section to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* The Superintendent may establish reasonable and direct snowmobile access routes to the inholding or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to private properties within or adjacent to the park:

(i) From the Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Townsend Property."

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property."

(iv) From the Moose-Wilson Road to the property commonly referred to as the "Halpin Property."

(v) From Highway 26/89/191 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "Macmahon Property."

(vi) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch."

(vii) The Superintendent may designate additional routes if necessary to provide reasonable access to inholdings or adjacent private property.

(viii) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* The routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* (i) Violating any of the terms, conditions or requirements of paragraphs (g)(3) through (g)(19) of this section is prohibited.

(ii) Anyone who violates any of the terms, conditions or requirements of this regulation will be considered to have committed one separate offense for each term, condition or requirement that they violate.

Dated: November 16, 2009.

Thomas L Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0674; FRL-8983-1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Virginia. This revision establishes Virginia's transportation conformity requirements.

After they have been approved, the Commonwealth's regulations will govern transportation conformity determinations in the Commonwealth of Virginia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on January 19, 2010 without further notice, unless EPA receives adverse written comment by December 21, 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-2009-0674 by one of the following methods:

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

B. *E-mail:*

fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0674, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-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-2009-0674. 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 whose disclosure 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814-3335 or by e-mail at kotsch.martin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. What Is Transportation Conformity?
- II. What Is the Background for This Action?
- III. What Did the State Submit and How Did We Evaluate It?
- IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia
- V. What Action Is EPA Taking Today?
- VI. Statutory and Executive Order Reviews

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 SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂).

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 national ambient air quality standards (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. 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 conformity rule’s provisions in their conformity SIPs. After SAFETEA-LU, state 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). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule.

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

On July 9, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP for Transportation Conformity purposes. The SIP revision consists of the State Regulation for Transportation Conformity (9 VAC 5 Chapter 151). This SIP revision addresses the three provisions of the EPA Conformity Rule required under SAFETEA-LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (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 afore-

mentioned three sections of the Federal Conformity Rule to be included in their state conformity SIPs.

EPA’s review of Virginia’s proposed SIP indicates that it is consistent with EPA’s guidance in that it includes the three elements specified by SAFETEA-LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), Regulation 9 VAC 5 Chapter 151-70 identifies the appropriate agencies, procedures and allocation of responsibilities as required under 40 CFR 93.105 for consultation procedures. In addition, Regulation 9 VAC 5 Chapter 151-50 and Regulation 9 VAC 5 Chapter 151-60 provide for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), Regulation 9 VAC 5 Chapter 151-50 also specifies that written commitments for control measures and mitigation measures for meeting these requirements will be provided as needed.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Section 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or

environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Section 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Section 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. What Action Is EPA Taking Today?

EPA is approving the Virginia SIP revision for Transportation Conformity, which was submitted on July 9, 2007. 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 January 19, 2010 without further notice unless EPA receives adverse comment by December 21, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *January 19, 2010*. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to approve the Virginia Transportation Conformity Regulation 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: November 5, 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 VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding an entry for Chapter 151 after the existing Chapter 140 to read as follows:

52.2420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 151 Transportation Conformity				
Part I General Definitions				
5-151-10	Definitions	12/31/08	11/20/09	[Insert page number where the document begins].
Part II General Provisions				
5-151-20	Applicability	12/31/08	11/20/09	[Insert page number where the document begins].
5-151-30	Authority of Board and DEQ.	12/31/08	11/20/09	[Insert page number where the document begins].
Part III Criteria and Procedures for Making Conformity Determinations				
5-151-40	General	12/31/08	11/20/09	[Insert page number where the document begins].
5-151-50	Designated provisions	12/31/08	11/20/09	[Insert page number where the document begins].
5-151-60	Word or phrase substitutions.	12/31/08	11/20/09	[Insert page number where the document begins].
5-151-70	Consultation	12/31/08	11/20/09	[Insert page number where the document begins].
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[FR Doc. E9-27814 Filed 11-19-09; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0771; FRL-8980-4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Indiana Department of

Environmental Management (IDEM) on September 25, 2009, to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) by amending and updating the definition of "References to the Code of Federal Regulations," to refer to the 2008 edition.

DATES: This rule is effective on January 19, 2010, unless EPA receives adverse written comments by December 21, 2009. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-

OAR-2009-0771 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* mooney.john@epa.gov.
- *Fax:* (312) 692-2551.
- *Mail:* John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements