



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

**[EPA-R02-OAR-2014-0238; FRL-9913-73-Region-2]
Approval and Promulgation of Air Quality Implementation Plans;
New York State; Transportation Conformity Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the New York State Implementation Plan (SIP). The revision establishes transportation conformity regulations for the State of New York. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [Insert date 30 days after publication in the Federal Register]. 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-R02-OAR-2014-0238 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions

for submitting comments.

B. E-mail: Ruvo.Richard@epa.gov

C. Mail: EPA-R03-OAR-2014-0238, Richard Ruvo, Air Programs Branch, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007.

D. Hand Delivery: At the previously-listed EPA Region II 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-R02-OAR-2014-0238. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at 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 www.regulations.gov or e-mail. The www.regulations.gov website 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 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 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 www.regulations.gov or in hard copy during normal business hours at the Clean Air and Sustainability Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007. Copies of the State submittal are

available at the New York State Department of the Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Melanie Zeman, (212) 637-4022, or by e-mail at zeman.melanie@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 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 for purposes 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 ("Federal conformity rule") 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 amended CAA section 176(c)(4)(D) and EPA revised 40 CFR 51.390 to be consistent with those amendments, state's SIPs were required to address only the following three sections of the Federal conformity 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 control measures that are not included in the transportation plan and transportation improvement program (TIP)); and 40 CFR 93.125(c) (written

commitments to implement mitigation measures). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal transportation conformity rule.

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

On October 3, 2013, the New York State Department of Environmental Conservation submitted a revision to its State Implementation Plan (SIP), to EPA for transportation conformity amendments filed for adoption on August 14, 2013, and published in the New York State Register (I.D. No. ENV-16-13-0001-A) on September 4, 2013. The SIP revision included the repeal of the old Part 240, which was not included in the SIP, and replacement with a new Part 240, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws" and revisions to Part 200, "General Provisions" into Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR). The Part 240 revisions include cites to portions of the Federal statute and regulations that are incorporated by reference into Part 240. This SIP revision addresses the three provisions of the EPA Conformity Rule required by CAA section 176(c)(4)(D): 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 submittals to assure consistency with the January 2009, "Guidance for Implementing the Transportation Conformity State Implementation Plans (SIPs)." This review can be found in the technical support document that is part of the docket. The guidance document can be found at

<http://www.epa.gov/oms/stateresources/transconf/policy/420b09001.pdf>.

The guidance document states that each state is only required to address and tailor the three aforementioned sections of the Federal Conformity Rule to be included in their state conformity SIPs. EPA's review of New York's SIP Revision indicates that it is consistent with EPA's guidance in that it includes the three aforementioned regulatory elements specified in CAA section 176(c)(4)(D). Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), New York State Part 240-2 identifies the appropriate agencies, procedures, and allocation of responsibilities for consultation. Specifically, New York State Part 240-2.10 provides 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), the proposed SIP specifies at 6 NYCRR 240-3.1

and 240-3.2, respectively, that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and must demonstrate assurance that they will be fulfilled, and that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and the project sponsors must comply with such commitments. EPA is approving 6 NYCRR Part 240 "Conformity to State and Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws," that was published in the New York State Register and became effective on September 13, 2013.

IV. Final Action

EPA is approving the New York SIP revisions for Transportation Conformity, which were submitted on October 3, 2013. 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 [Insert date 60 days from date of publication in the Federal

Register] without further notice unless EPA receives adverse comment by [Insert date 30 days from date of publication in the Federal Register]. 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.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 (Public Law 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 CAA, petitions for judicial review of this action must be filed in the United States Court of

Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 25, 2014.

Judith A. Enck,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

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

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart HH - New York

2. In § 52.1670 the table in paragraph (c) is amended by adding in numeric order an entry for Title 6, Part 240 and adding subtitles, Subparts 240-1, 240-2 and 240-3, to read as follows:

§ 52.1670 Identification of plan.

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(c) * * *

EPA - APPROVED NEW YORK STATE REGULATIONS AND LAWS

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * * * *			
Part 240, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C.			

or the Federal Transit Laws.			
Subpart 240-1, Transportation Conformity General Provisions	9/13/13	[Insert date of Federal Register publication], [Insert Federal Register citation]	
Subpart 240-2, Consultation	9/13/13	[Insert date of Federal Register publication], [Insert Federal Register citation]	
Subpart 240-3 Regional Transportation-Related Emissions and Enforceability	9/13/13	[Insert date of Federal Register publication], [Insert Federal Register citation]	
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