



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2017-0753; FRL-9976-02-Region 8]**

**Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Revisions to the Transportation Conformity Consultation Process**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by Colorado on May 16, 2017. The May 16, 2017 SIP revision addresses minor changes and typographical corrections to the transportation conformity requirements of Colorado's Regulation Number 10 "Criteria for Analysis of Conformity." These actions are being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective [**Insert date 30 days after date of publication in the Federal Register**].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R08-OAR-2017-0753. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through <http://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6479, or russ.tim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In this action, the EPA is approving minor revisions to Colorado’s Regulation Number 10 which is entitled “Criteria for Analysis of Conformity” (hereafter, “Regulation No. 10”). We note the factual background for this action and our evaluation of the State’s May 16, 2017 Regulation No. 10 SIP submittal are discussed in detail in our February 1, 2018 proposed rule (83 FR 4614); therefore, they will not be restated here.

In summary, the purpose of Regulation No. 10 is to address the transportation conformity SIP requirements of section 176(c) of the CAA and 40 CFR 51.390(b). In addition, Regulation No. 10 also addresses the following transportation conformity SIP element requirements: 40 CFR 93.105, which formalizes the 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 (MPOs) transportation plan and transportation improvement program that must be obtained prior to a conformity determination; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination.<sup>1</sup> We note the most recent prior SIP revisions to Regulation No. 10, that we approved, occurred on March 4, 2014 (79 FR 12079).

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<sup>1</sup> A conformity SIP includes a state’s specific criteria and procedures for certain aspects of the transportation conformity process consistent with the federal conformity rule. A conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations, or control measures. See EPA’s *Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)* for further background: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockey=P1002W5B.PDF>.

## **II. What was the State's Process to Submit a SIP Revision to the EPA?**

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to the EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state.

For the May 16, 2017 revisions to Regulation No. 10, the Colorado Air Quality Control Commission (AQCC) held a public hearing for those revisions on February 18, 2016. There were no public comments. The AQCC adopted the revisions to Regulation No. 10 directly after the hearing. This SIP revision became State effective on March 30, 2016, and was submitted by Dr. Larry Wolk, Executive Director of the Colorado Department of Public Health and Environment (CDPHE), and on behalf of the Governor, to the EPA on May 16, 2017.

We evaluated the State's May 16, 2017 submittal for Regulation No. 10 and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the State's May 16, 2017 submittal was deemed complete by the EPA on November 25, 2017.

## **III. Response to Comments**

The EPA received one anonymous public comment on our February 1, 2018 proposed rule (83 FR 4614). After reviewing the comment, the EPA has determined that the comment is outside the scope of our proposed rule and fails to identify any material issue necessitating a response. Accordingly, the EPA will not provide a specific response to the comment. We note that the public comment received on this rulemaking action is available for review by the public

and may be viewed by following the instructions for access to docket materials as outlined in the **ADDRESSES** section of this preamble.

#### **IV. Final Action**

For the reasons described in our February 1, 2018 proposed rule (83 FR 4614), and under CAA section 110(k)(3), the EPA is approving the submitted revisions to Regulation No. 10, Section II, the definition of *Routine Conformity Determination*. In addition, we are also approving the typographic corrections to the Regulation No. 10 title, to Section II and to the Section III subsections III.A.2, III.A.3, III.B.1.a, III.C.1.b.(2), III.C.1.g and III.F.3.

The EPA notes that revisions were also made to Colorado's Regulation No. 10, section VI "Statements of Basis, Specific Statutory Authority, and Purpose"; however, the EPA is not taking any action on the revisions to this section. The revisions to section VI are only informational in nature for the State and do not require federal approval into the SIP.

#### **V. Consideration of Section 110(1) of the Clean Air Act**

Under section 110(1) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and Reasonable Further Progress toward attainment of the National Ambient Air Quality Standards (NAAQS), or any other applicable requirement of the CAA. The EPA has determined that the portions of Regulation No. 10 that we are acting on are consistent with the applicable requirements of the CAA. Furthermore, these portions do not relax any previously approved SIP provision; thus, they do not otherwise interfere with attainment and maintenance of the NAAQS. In addition, section 110(1) of the CAA requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and opportunity for public hearing. On February 18, 2016, the AQCC held a public hearing and the AQCC adopted the revisions to

Regulation No. 10 directly after the hearing. This SIP revision became state effective on March 30, 2016. Therefore, the CAA section 110(l) requirements are satisfied.

## **VI. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revision to Regulation No. 10, Section II, the definition of *Routine Conformity Determination* effective March 30, 2016. In addition, we are also incorporating by reference the typographic corrections to the Regulation No. 10 title, to Section II and to the Section III subsections III.A.2, III.A.3, III.B.1.a, III.C.1.b.(2), III.C.1.g and III.F.3 all effective March 30, 2016. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be included in the next update to the SIP compilation.<sup>2</sup>

## **VII. 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, the 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:

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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. The 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 **[insert date 60 days after date of publication 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 29, 2018.

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Douglas H. Benevento,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart G - Colorado**

2. Section 52.320(c) is amended:

a. By revising the centered heading for “**5 CCR 1001-12**”; and

b. By revising, under the centered heading “**5 CCR 1001-12**,” the table entries for “II. Definitions” and “III. Interagency Consultation.”

The revisions read as follows:

**§52.320 Identification of plan.**

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(c) \* \* \*

Title	State effective date	EPA effective date	Final rule citation/date	Comments
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<b>5 CCR 1001-12, Regulation Number 10, Criteria for Analysis of Transportation Conformity</b>				
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II. Definitions	3/30/2016	[Insert date 30 days after date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	

III. Interagency Consultation	3/30/2016	[Insert date 30 days after date of publication in the <u>Federal Register</u> ]	[Insert <b>Federal Register</b> citation], [Insert <b>Federal Register</b> date of publication]	
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