



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0044 (a); FRL- 9814-5]

**Approval and Promulgation of Implementation Plans; Tennessee; Transportation
Conformity Revisions**

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Bureau of Environment, Air Pollution Control Division (APCD), on July 12, 2012. This revision consists of updates to transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the Tennessee SIP. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse 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 No. EPA-R04-OAR-2013-0044 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: “EPA-R04-OAR-2013-0044,” Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Amanetta Somerville or Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2013-0044.” 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 through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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 at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Amanetta Somerville or Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Somerville's telephone number is 404-562-9025. She can also be reached via electronic mail at somerville.amanetta@epa.gov. Ms. Sheckler's telephone number is 404-562-9222. She can also be reached via electronic mail at sheckler.kelly@epa.gov.
<mailto:>

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Transportation Conformity**
- II. Background for this Action**
 - A. Federal Requirements**
 - B. Tennessee State Rule**
 - C. Chattanooga Conformity SIP**
 - D. Clarksville-Hopkinsville Conformity SIP**
 - E. Knoxville Conformity SIP**
 - F. Memphis Conformity SIP**
- III. State Submittal and EPA Evaluation**
- IV. Final Action**
- V. Statutory and Executive Order Reviews**

I. Transportation Conformity

Transportation conformity (hereafter referred to as “conformity”) is required under section 176(c) of the CAA to ensure that federally supported highway projects, 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 to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (e.g., PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

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) for criteria pollutants. 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

A. Federal Requirements

EPA promulgated the federal transportation conformity criteria and procedures (“Conformity Rule”) on November 24, 1993 (58 FR 62188). Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as “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 (Public Law 109-59). SAFETEA-LU revised section 176(c) of the CAA 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 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.

B. Tennessee State Rule

Previously, Tennessee established a transportation conformity SIP for the entire state. Specifically, on May 16, 2003, EPA approved a SIP revision for the State of Tennessee which incorporated by reference 40 CFR 93 Subpart A, and customized 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) for all of the MPOs in the entire state (68 FR 26492). The conformity SIP revision (the subject of this rulemaking) removes any incorporation by reference and revises

the procedures for consultation, conflict resolution and public participation to be consistent with the SAFETEA-LU revisions to the CAA and subsequent regulations published on January 24, 2008 (73 FR 4420).

C. Chattanooga Conformity SIP

Effective April 5, 2005, EPA designated Hamilton County in Tennessee, Walker and Catoosa Counties in Georgia, and a portion of Jackson County, Alabama in the tri-state Chattanooga, Tennessee-Georgia area (hereafter referred to as the “Chattanooga Area”), as nonattainment for the 1997 annual PM_{2.5} NAAQS. *See* 70 FR 944. The current designation status of the Chattanooga 1997 annual PM_{2.5} area is nonattainment.

The States of Georgia and Alabama have established transportation conformity procedures for the counties that make up the Georgia and Alabama portion of the Chattanooga Area in their individual conformity SIPs. Tennessee’s July 2012 SIP revision includes the transportation conformity consultation, conflict resolution and public participation procedures for Hamilton County as part of the 1997 annual PM_{2.5} Chattanooga Area.

D. Clarksville-Hopkinsville Conformity SIP

Effective June 15, 2004, EPA designated Christian County, Kentucky and Montgomery County, Tennessee in the bi-state Clarksville-Hopkinsville, Tennessee-Kentucky area (hereafter referred to as the “Clarksville-Hopkinsville Area”), as nonattainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23857. The current designation status for the Clarksville-Hopkinsville Area is attainment and this area has an approved maintenance plan.

The Commonwealth of Kentucky has established conformity procedures for Christian County that makes up the Kentucky portion of the Clarksville-Hopkinsville Area in its individual conformity SIP. Tennessee's July 2012 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures for Montgomery County, Tennessee as part of the Clarksville-Hopkinsville Area.

E. Knoxville Conformity SIP

Effective June 15, 2004, EPA designated 6 whole counties and a portion of one county in the Knoxville, Tennessee area (hereafter referred to as the Knoxville Area), as nonattainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23857. The counties include Anderson, Blount, Jefferson, Knox, Loudon and Sevier counties and a portion of Cocke County. The current designation status of the Knoxville 1997 8-hour ozone area is attainment, with an approved maintenance plan. Effective April 5, 2005, EPA designated 4 whole counties and a portion of one county in the Knoxville Area as nonattainment for the 1997 annual PM_{2.5} NAAQS. The counties include Anderson, Blount, Knox, Loudon counties and a portion of Roane County. *See* 70 FR 944. On November 13, 2009, EPA designated 4 whole counties and a portion of one county in the Knoxville Area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. The counties include Anderson, Blount, Knox, Loudon counties and a portion of Roane County. *See* 74 FR 58688. Effective July 20, 2012, EPA designated 1 whole county (i.e., Knox County) and two partial counties (i.e., Blount and Anderson counties) in the Knoxville Area as nonattainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088. The current designation status of the Knoxville Area for 1997 annual PM_{2.5}, 2006 24-hour PM_{2.5}, and the 2008 8-hour ozone NAAQS is nonattainment.

The Lakeway Area Metropolitan Transportation Planning Organization (LAMTPO)¹ and the Knoxville Regional Transportation Planning Organization (KRTPO)² are within the same maintenance area for the 1997 8-hour ozone NAAQS. KRTPO is the MPO for most of the Knoxville 2008 8-hour ozone area and is the MPO for most of the Knoxville 1997 PM_{2.5} area. For the purposes of implementing transportation conformity for the 1997 annual PM_{2.5}, 1997 8-hour ozone and 2008 8-hour ozone NAAQS, KRTPO served as the lead agency for the preparation, consultation, and distribution of the conformity determinations. Tennessee's July 2012, SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures for the applicable Knoxville areas in relation to the 1997 annual PM_{2.5}, 1997 8-hour ozone and 2008 8-hour ozone NAAQS.

F. Memphis Conformity SIP

Effective January 6, 1992, EPA designated Shelby County in the Memphis, Tennessee area as nonattainment for the carbon monoxide NAAQS. *See* 56 FR 56694. The current designation status of the area is attainment with an approved maintenance plan for the carbon monoxide NAAQS. Effective June 15, 2004, EPA designated Shelby County in Tennessee, and Crittenden County in Arkansas as nonattainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23857. This entire area is known as the bi-state Memphis, Tennessee 1997 8-hour ozone area (hereafter referred to as the bi-state Memphis Area). The current designation status for the bi-state Memphis Area for the 1997 8-hour ozone NAAQS is attainment with an approved maintenance plan. Effective July 20, 2012, EPA designated 2 whole counties (i.e., Shelby

¹ LAMTPO is the MPO for Jefferson County.

² KRTPO's planning boundary includes Knox County, and the urbanized areas of Blount, Loudon, and Sevier counties.

County, Tennessee, and Crittenden County, Arkansas) and one partial county (i.e., DeSoto County, Mississippi) in the Memphis Area as nonattainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088.

The Memphis MPO's planning boundary includes Shelby County, Tennessee and a portion of DeSoto County, Mississippi. For the purposes of transportation conformity requirements related to the carbon monoxide, 1997 8-hour ozone and 2008 8-hour ozone NAAQS, the Memphis MPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations for the Tennessee and Mississippi portions of this Area.

The State of Arkansas has established conformity procedures for Crittenden County which makes up the Arkansas portion of the bi-state Memphis Area in its individual conformity SIP. Mississippi is establishing transportation conformity procedures for the portion of Desoto County that is included in the Memphis nonattainment area for the 2008 8-hour ozone NAAQS. Tennessee's July 2012 SIP revision updates the transportation conformity consultation, conflict resolution and public participation procedures for Shelby County, Tennessee as part of the Memphis Area.

III. State Submittal and EPA Evaluation

On July 12, 2012, the State of Tennessee, through TDEC, submitted updates to the State's transportation conformity and consultation rule to EPA as a revision to the SIP. This SIP revision deleted the incorporation by reference to 40 CFR 93 Subpart A, established procedures for interagency consultation, conflict resolution and public participation, and included

provisions for control and mitigation measures. This revised conformity SIP replaces the August 31, 2001, rule amendment that was approved by EPA on May 16, 2003 (68 FR 26492).

The State of Tennessee developed its consultation rule based on the elements contained in 40 CFR 93.105. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State air quality agency, State Department of Transportation (DOT), United States DOT (i.e., the Federal Highway Administration —Tennessee Division, and Federal Transit Administration), the MPOs of the maintenance and nonattainment areas of Tennessee, and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR Part 93.105, and integrated the local procedures and processes into the rule. The consultation process developed in this rule is for the areas of Tennessee described above. In addition, the conformity SIP includes the provision for written commitment for control measures and mitigation measures based on 40 CFR 93.122(a)(4)(ii) and 93.125(c), respectively. On October 20, 2009, APCD held a public hearing for the transportation conformity rulemaking.

EPA has evaluated this SIP and has determined that Tennessee has met the requirements of federal transportation conformity rule as described in 40 CFR Part 51, Subpart T and 40 CFR Part 93, Subpart A. APCD has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the State Rule at the local level. Therefore, EPA is approving the rule as a revision to the Tennessee SIP. EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA

before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT.

EPA has reviewed the submittal to assure consistency with the CAA 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 has concluded that the submittal is approvable. Details of EPA's review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, EPA identifies 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 the requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

IV. Final Action

For the reasons set forth above, EPA is taking action under section 110 of the Act to approve the rule implementing the conformity criteria and consultation procedures revision to the Tennessee SIP pursuant to the CAA, as a revision to the Tennessee SIP. As a result of this action, Tennessee's previously SIP-approved conformity procedures for Tennessee (68 FR 26492, May 16, 2003), will be replaced by the procedures submitted to EPA on July 12, 2012, for approval and adopted by State of Tennessee on January 18, 2012. This action also establishes consultation procedures for all counties in Tennessee.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule. *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 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 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 CAA; 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. 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 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, Particular Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 8, 2013

A. Stanley Meiburg
Acting Regional Administrator,
Region 4

40 CFR part 52 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 (RR) - (Tennessee)

2. In § 52.2220, table 1 in paragraph (c) is amended by revising entry for “1200-3-34.01” to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

Table 1 – EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation\
* * Section 1200-3-34-.01 * *	* Transportation Conformity Interagency Consultation And General Provisions *	* 4/17/2012 *	* * [Insert date of publication in <u>Federal Register</u>] [Insert citation of publication] * *	* *

* * * * *

