



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0662; FRL-9923-45-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Transportation Conformity**

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act, a revision to Ohio's transportation conformity state implementation plan (SIP) that meets EPA and United States Department of Transportation (DOT) requirements. This revision brings Ohio's transportation conformity SIP into compliance with the requirements of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU).

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

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

EPA-R05-OAR-2014-0662, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela@epa.gov.
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies 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 should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2014-0662. 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 docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is The Background For This Action?
- II. What Is EPA's Analysis Of The State's Submittal?
- III. What Action Is EPA Taking?
- IV. Statutory And Executive Order Reviews.

I. What Is The Background For This Action?

A transportation conformity SIP can be adopted as a state

rule, a memorandum of understanding, or a memorandum of agreement. The appropriate form of the state transportation conformity procedures depends upon the requirements of local or state law, as long as the selected form complies with all Clean Air Act requirements for adoption, submission to EPA, and implementation of SIPs. EPA will accept state transportation conformity SIPs in any form provided the state can demonstrate to EPA's satisfaction that, as a matter of state law, the state has adequate authority to compel compliance with the requirements of the conformity SIP.

The Ohio Environmental Protection Agency (Ohio EPA) collaborated with the Akron Metropolitan Area Transportation Study, the Clark County-Springfield Transportation Coordinating Committee, the Eastgate Regional Council of Governments, EPA, the Erie Regional Planning Commission, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Indiana Department of Environmental Management, the Indiana Department of Transportation, the Kentucky-Ohio-West Virginia Interstate Planning Commission, the Ohio-Kentucky-Indiana Regional Council of Governments, the Ohio Department of Transportation, the Licking County Area Transportation Study, the Lima-Allen County Regional Planning Commission, the Miami Valley Regional Planning Commission, the Mid-Ohio Regional

Planning Commission, the Northeast Ohio Areawide Coordinating Agency, the Toledo Metropolitan Area Council of Governments, the West Virginia Department of Environmental Protection, and the West Virginia Department of Transportation (the agencies listed in this paragraph are referenced as "Federal, state, and local agencies" throughout this document) to develop a transportation conformity SIP revision that meets EPA and DOT transportation conformity requirements resulting from passage of SAFETEA-LU.

On August 20, 2014, the Ohio EPA submitted a request to EPA to revise the Ohio transportation conformity SIP to include procedures, roles, and responsibilities for involved Federal, state agencies, and local agencies that must conduct transportation conformity planning and consultation.

II. What Is EPA's Analysis Of The State's Submittal?

A. Background

For EPA approval, the submittal must address and give full legal effect to requirements laid out in three sections of title 40, part 93, subpart A of the Code of Federal Regulations: §93.105, §93.122(a)(4)(ii), and §93.125(c).

40 CFR 93.105: Consultation

Section 93.105 describes SIP requirements for interagency consultation (between Federal, state, and local agencies), conflict resolution, and public consultation. A transportation

conformity SIP must include well defined interagency consultation procedures that define the roles and responsibilities for each participating agency. These consultation procedures must include provisions for circulating materials for comment before formal adoption, processes for convening consultation meetings, and processes for responding to significant comments of involved agencies. In addition, procedures for involved Federal, state, and local agencies must be included that address:

- Evaluation and selection of an emissions model and associated methods and assumptions to be used in hot-spot and regional emissions analyses, including determining which minor arterials and other transportation projects should be considered regionally significant for purposes of regional emissions analyses.
- Evaluation and selection of an emissions model, associated methods and assumptions, and projects to be included in determining conformity in isolated rural nonattainment and maintenance areas.
- Evaluation of events that will trigger new conformity determinations.
- Consultation on emissions analyses for transportation

activities that cross metropolitan planning organization (MPO), nonattainment area, or air basin borders.

- Determination of conformity of projects that might lie outside of a metropolitan planning area, but within a nonattainment area, if such a situation exists.
- Disclosure of any regionally significant projects which are not FHWA or FTA projects to the MPO on a regular basis.
- Interagency consultation on data collection efforts and regional transportation model development by the MPO.
- Provision of final documentation and supporting information to each agency after approval or adoption.
- Resolution of conflicts among state agencies or between state agencies and an MPO.
- Public consultation for affected agencies that make conformity determinations on transportation plans, programs, and projects consistent with the public consultation requirements listed in 23 CFR 450.316(a).

The Regulations At 40 CFR 93.122(a)(4)(ii) and 40 CFR

93.125(c): Written Commitments For Control And Mitigation

Measures

The regulation at 40 CFR 93.122(a)(4)(ii) provides that a transportation conformity SIP must contain provisions to ensure

that any emission reduction credits from control measures that are not included in the SIP and that do not require a regulatory action in order to be implemented will not be included in a project level conformity determination unless the National Environmental Policy Act document includes written commitments from the appropriate entities to implement those control measures. These written commitments must be obtained by the initiating party prior to a conformity determination and the written commitments must be addressed by the initiating party.

The regulation at 40 CFR 93.125(c) provides that a transportation conformity SIP must contain provisions that ensure project-level mitigation measures will be identified with written commitments if those mitigation measures are part of the conditions for making the project level conformity determination. The commitments must be included in the project design and scope used in the regional emissions analysis or project-level hot-spot analysis.

The transportation conformity SIP revision submitted by the Ohio EPA on August 20, 2014, meets the requirements of 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and therefore is approvable into the Ohio SIP.

III. What Action Is EPA Taking?

EPA is approving a revision to Ohio's transportation

conformity SIP submitted by Ohio EPA on August 20, 2014. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should 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. If we do not receive any comments, this action will be effective **[insert date**

60 days after date of publication in the Federal Register].

IV. 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 Clean Air 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, 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.

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 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. 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 12, 2015.

Susan Hedman,
Regional Administrator, Region 5.

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.*

2. Section 52.1880 is amended by adding paragraph (u) to read as follows:

§ 52.1880 Control strategy; Particulate matter

* * * * *

(u) Approval – On August 20, 2014, the State of Ohio submitted a revision to their Particulate Matter State Implementation Plan. The submittal established transportation conformity “Conformity” criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

3. Section 52.1885 is amended by adding paragraph (ll) to read as follows:

§ 52.1885 Control strategy; Ozone

* * * * *

(ll) Approval – On August 20, 2014, the State of Ohio submitted a revision to their Ozone State Implementation Plan. The submittal established transportation conformity “Conformity” criteria and procedures related to interagency consultation, and

enforceability of certain transportation related control and mitigation measures.

[FR Doc. 2015-04146 Filed 02/27/2015 at 8:45 am; Publication Date: 03/02/2015]