



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0174; FRL-9969-24-Region 4]**

**Air Plan Approval: Alabama; Transportation Conformity**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of a revision to the Alabama State Implementation plan (SIP) submitted by the State of Alabama on May 8, 2013, for the purpose of amending the transportation conformity rules to be consistent with Federal requirements.

**DATES:** This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0174. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 8, 2013, the Alabama Department of Environmental Management submitted a SIP revision to EPA to make two changes to its transportation conformity requirements. First, the State changed its regulations at Alabama Administrative Code section 335-3-17-.01, *Transportation Conformity*, to reflect the January 24, 2008 (73 FR 4420) amendments to 40 CFR part 93, subpart A, that address the 2005 SAFETEA-LU. That change in Alabama's regulation streamlines the State's transportation conformity SIP to include only §§ 93.105, 93.122(a)(4)(ii) and 93.125(c), consistent with Federal requirements, and not the provisions of 40 CFR part 93 in entirety.

On March 14, 2012 (77 FR 14979), EPA finalized the rule entitled "Transportation Conformity Rule Restructuring Amendments." Through that final action, EPA restructured several sections of the transportation conformity rule so that they apply to any new or revised NAAQS. Specifically, EPA amended §§ 93.101, 93.105, 93.109, 93.116, 93.118, 93.119, and 93.121 of the Transportation Conformity Rule. In its May 8, 2013, SIP revision, Alabama

requests that EPA incorporates by reference subsequent Federal changes EPA promulgated in the Transportation Conformity Rule Restructuring Amendments. Although Alabama's submission mentions that it is incorporating by reference provisions in EPA's Transportation Conformity Rule Restructuring Amendments, the only relevant portion for incorporation by reference is the change that EPA made to § 93.105 because, in this same submission, Alabama changed the State regulations and transportation conformity requirements in its SIP to address only §§ 93.105, 93.122(a)(4)(ii) and 93.125(c), in accordance with EPA's regulations. The changes EPA made to § 93.105 were administrative in nature and involved updates to citations, revision of introductory paragraphs, and redesignating paragraphs.

EPA has reviewed Alabama's submittal to ensure consistency with the current Clean Air Act (CAA or Act), as amended by SAFETEA-LU, and EPA regulations governing state procedures for transportation and general conformity (40 CFR part 93, subparts A and B). The May 8, 2013, SIP revision, upon final approval by EPA, removes specific provisions of Alabama Administrative Code section 335-3-17-.01, "*Transportation Conformity*," from the SIP that are no longer required in light of the SAFETEA-LU amendments. With the removal of these specific provisions of 335-3-17-.01 from the SIP, the federal rules in 40 CFR part 93, subpart A, will directly govern transportation conformity of federal actions in the State of Alabama. This revision complies with the requirements of CAA section 176(c)(4)(e) and 40 CFR 51.390(b). 40 CFR part 93, subpart A, continues to subject certain Federal actions to transportation conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the State rule will not impact continuity of the transportation conformity program in Alabama.

In a direct final rule published on August 17, 2017 (82 FR 39035), EPA took a direct final action to approve the portions of the May 8, 2013, submittal that removes specific

provisions of Alabama Administrative Code section 335-3-17-.01, “*Transportation Conformity*,” from the SIP that are no longer required in light of the SAFETEA–LU amendments. In the direct final rulemaking, EPA established that the rule would become effective 60 days after publication in the Federal Register and without further notice, unless EPA received adverse comment within 30 days of the publication. If EPA received such comments, it would publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect. Comments on the rulemaking were due on or before September 18, 2017.

EPA received one adverse comment on the direct final rulemaking, and as a result, elsewhere in this issue of the Federal Register, the EPA has taken a separate action to withdraw the direct final rule. Nevertheless, the rationale for EPA’s action still remains and the only addition in this final rulemaking is the response to the adverse comment received. The details of Alabama’s SIP revisions and the rationale for EPA’s action are further explained in the direct final rule published August 17, 2017 (82 FR 39035). Below is a summary of the comment received and EPA’s response.

## **II. Response to Comment**

**Comment:** The Commenter mentions that EPA should not allow Alabama to remove transportation conformity rules from the SIP and asserts that EPA has loosened the Federal transportation conformity requirements. The Commenter goes on to say that Alabama should incorporate by reference the entirety of 40 CFR part 93.

**Response:** Alabama’s SIP continues to include transportation conformity requirements. CAA section 176(c) is the statutory authority for transportation conformity (42 U.S.C. 7506(c)). This section of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was

signed into law on August 10, 2005 (Public Law 109-59). Among the changes Congress made to this section of the CAA was to streamline the requirements for state conformity SIPs.

Subsequently, EPA published a final rule on January 24, 2008 (73 FR 4420), to update the requirements for conformity SIPs as well as the other CAA provisions amended by Congress.

These streamlined conformity SIP requirements did not loosen EPA's conformity requirements.

The CAA amendment was merely intended to reduce the burden on states associated with duplicating federal transportation conformity rules within state conformity rules.

CAA section 176(c)(4)(E) and 40 CFR 51.390(b) of the conformity rule now require states to submit conformity SIPs that address only the following provisions of the federal conformity rule:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization's transportation plan and transportation improvement programs, and that such commitments be fulfilled; and
- 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

These provisions must be tailored to a state's individual circumstances, rather than including the federal conformity rule section verbatim. Alabama's SIP contains the tailored provisions.

### **III. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In

accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ADEM Regulation, chapter 335-3-17.01 entitled “Transportation Conformity,” effective May 28, 2013, which incorporates by reference the Federal Transportation Conformity Rule. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 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 EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

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

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP regarding the State’s transportation conformity requirements. The approval of Alabama’s conformity SIP revisions will align the Alabama SIP with the current federal conformity requirements, as amended by SAFETEA–LU, and the most recent EPA regulations governing state procedures for transportation conformity.

#### **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. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 [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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2017.

Onis “Trey” Glenn, III  
Regional Administrator,  
Region 4.

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 B – Alabama**

2. Section 52.50(c) is amended under the heading “Chapter No. 335-3-17 Conformity of Federal Actions to State Implementation Plans” by revising the entry for “Section 335-3-17-.01” to read as follows:

**§ 52.50 Identification of plan.**

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(c) \* \* \*

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
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Chapter No. 335-3-17 Conformity of Federal Actions to State Implementation Plans				
Section 335-3-17-.01	Transportation Conformity	5/28/2013	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
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[FR Doc. 2017-21930 Filed: 10/11/2017 8:45 am; Publication Date: 10/12/2017]