

**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 November  
13, 2017.**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 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 December 11, 2017. 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

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

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:

#### EPA APPROVED ALABAMA REGULATIONS

**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.

\* \* \* \* \*  
(c) \* \* \*

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter No. 335–3–17 Conformity of Federal Actions to State Implementation Plans</b>				
Section 335–3–17–.01 .....	Transportation Conformity .....	5/28/2013	10/12/2017 [Insert citation of publication] .....	
*	*	*	*	*

\* \* \* \* \*  
[FR Doc. 2017–21930 Filed 10–11–17; 8:45 am]  
**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2013–0389; FRL–9969–23–Region 4]

#### Approval and Promulgation of Air Quality Implementation Plans; State of South Carolina; Regional Haze State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a South Carolina State Implementation Plan (SIP) revision, submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control (SC DHEC) on December 28, 2012. South Carolina’s December 28, 2012, SIP revision (“Progress Report”) addresses requirements of the Clean Air Act (CAA or “Act”) and EPA’s rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the State’s existing SIP addressing regional haze (“regional haze plan”). EPA is finalizing approval of

South Carolina’s Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

**DATES:** This rule will be effective November 13, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0389. 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 may not be 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 (formerly Regulatory Development 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 for further information. 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:** Michele Notarianni, 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. Ms. Notarianni can be reached at (404) 562–9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

States are required to submit progress reports that evaluate progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state’s existing regional haze plan. *See* 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze plan and must be in the form of a SIP revision. On December 17, 2007, SC DHEC submitted the State’s first regional haze plan in accordance with 40 CFR 51.308(b).<sup>1</sup>

<sup>1</sup> On June 28, 2012, EPA finalized a limited approval of South Carolina’s regional haze plan to address the first implementation period for regional