

provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 October 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 31, 2003.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations 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 AA—Missouri**

■ 2. In § 52.1320(c) the table is amended under chapter 6 by revising the entry for 10–6.060 and adding a new entry for 10–6.410 to read as follows:

**§ 52.1320 Identification of plan.**

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

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * *	* * *	* * *	* * *	* * *
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
* * *	* * *	* * *	* * *	* * *
10–6.060 .....	Construction Permits Required.	4/30/03	August 11, 2003 and [FR page citation].	Section 9, pertaining to hazardous air pollutants, is not SIP approved.
* * *	* * *	* * *	* * *	* * *
10–6.410 .....	Emissions Banking and Trading.	4/30/03	August 11, 2003 and [FR page citation].	
* * *	* * *	* * *	* * *	* * *

\* \* \* \* \*  
[FR Doc. 03–20300 Filed 8–8–03; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 52**  
[FL–078–200335(a); FRL–7541–9]  
**Approval and Promulgation of Implementation Plans Revisions to Florida State Implementation Plan: Transportation Conformity Rule**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on August 14, 1998, with the exception of one state regulation pertaining to triggers. The revision contains the transportation conformity rule pursuant to the Clean Air Act as amended in 1990 (Act), including detailed consultation procedures for implementing the transportation conformity rule. The transportation conformity rule assures that projected emissions from transportation plans, improvement

programs and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirement at the state level. This action streamlines the conformity process to allow direct consultation among agencies at the local level. This final approval action is limited to requirements for transportation conformity.

**DATES:** This direct final rule is effective October 10, 2003 without further notice, unless EPA receives adverse comment by September 10, 2003. If adverse comment is received, EPA 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:** Comments may be submitted by mail to: Matt Laurita, 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. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in [Part (I)(B)(1)(i) though (iii)] of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Matt Laurita, 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. The telephone number is (404) 562-9044. Mr. Laurita can also be reached via electronic mail at [laurita.matthew@epa.gov](mailto:laurita.matthew@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. How Can I Get Copies Of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL-078-200335. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not

include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development 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 contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, Florida Department of Environmental Protection, Division of Air Resources Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

###### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking FL-078." in the

subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [laurita.matthew@epa.gov](mailto:laurita.matthew@epa.gov), please including the text "Public comment on proposed rulemaking FL-078." in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of [Regulation.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below.

These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Matt Laurita, 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. Please include the text "Public comment on proposed rulemaking FL-078-200335." in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, 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, 9 to 3:30 excluding Federal holidays.

### *C. How Should I Submit Confidential Business Information (CBI) to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

### *A. What Is A SIP?*

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### *B. What Is the Federal Approval Process For a SIP?*

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

### *C. What Is Transportation Conformity?*

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95-95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states "that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area." The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved

under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53).

#### *D. Why Must the State Submit A Transportation Conformity SIP?*

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Florida submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998.

States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation

conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

#### *E. How Does Transportation Conformity Work?*

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local Air Quality Agencies, U.S. Environmental Protection Agency and U.S. Department of Transportation (USDOT) are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved motor vehicle emissions budget in order for USDOT to make a positive conformity determination with respect to the SIP.

### **III. Analysis of State's Submittal**

#### *A. What Did the State Submit?*

The State of Florida chose to address the transportation conformity SIP requirements using State rules that incorporate by reference portions of the Federal conformity rule and a Memorandum of Agreement (MOA) that provides the procedures for interagency consultation. The Transportation conformity rule, part 93, section 105, requires the state to develop specific procedures for consultation, resolution of conflict and public consultation. On August 14, 1998, the State of Florida, through the Department of Environmental Protection (DEP), submitted the rules for transportation conformity. DEP gave notice of rule-making proceedings to the public on July 3, 1998, held a public hearing on August 5, 1998 and the rules were approved by the Department of Environmental Protection on August 6, 1998. These amendments to the Florida Administrative Code Rule Chapter 62–204.500, filed on August 12, 1998, became effective August 31, 1998.

#### *B. What Is EPA Approving Today and Why?*

EPA is approving the Florida transportation conformity rule submitted to the EPA Region 4 office on August 14, 1998, by the Secretary of the Florida Department of Environmental Protection with one exception. EPA amended 40 CFR part 93, section 104(e) in August 2002, changing the starting point for 18-month clock trigger for conformity from the date of the SIP submittal to the date of the motor vehicle emissions budget adequacy determination. This change was made after the State's public adoption process, and therefore the State has not adopted the most current version of 93.104(e). Therefore, EPA is not taking action on the portion of the Florida rule incorporating 93.104(e) by reference, and the Federal rule applies in its place. Refer to the August 6, 2002, final rule (67 FR 50808) for more details.

Furthermore, Florida's incorporation by reference of the conformity rule did not include portions of the regulations affected by the Federal court decision in *Environmental Defense Fund v. Environmental Protection Agency*, 167 F.3d 641 (DC Cir. 1999) and *Sierra Club v. EPA, et. al.*, 129 F. 3d 137 (DC Cir. 1997). These include the following sections: 93.102(c)(1), 93.102(d), 93.118(e)(1), 93.120(a)(2), 93.121(a)(1) and 93.124(b). For all those portions not incorporated by reference, the Federal transportation conformity rule will take precedence.

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the Florida SIP.

#### *C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?*

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, FHWA, FTA, local transit operators, 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, FHWA and FTA.

The State of Florida developed its statewide consultation rule based on a Memorandum of Agreement (MOA) signed by Broward County, the Broward County MPO, FHWA-FL, FTA, Florida Department of Transportation, Florida Department of Environmental Protection, Hillsborough Area Regional Transit Authority, the Environmental Protection Commission of Hillsborough County, the Hillsborough County MPO, the MPO for the Jacksonville Urbanized Area, the City of Jacksonville, Miami-Dade County, the MPO of Palm Beach County, Palm Beach County, Pinellas County, the Pinellas County MPO, Pinellas Suncoast Transit Authority, the Tri-County Commuter Rail Authority, and the U.S. Environmental Protection Agency Region 4. The consultation process developed by the Florida Department of Environmental Protection is unique to the State of Florida and is enforceable, effective August 31, 1998.

#### IV. Final Action

EPA is approving the aforementioned changes to the Florida SIP, with the exception of the incorporation of reference to 40 CFR part 93.104(e) in 62-204.500 which requires the State to comply with outdated conformity rule trigger provisions, because the State adopted this regulation prior to EPA's rulemaking amendment on August 6, 2002.

The 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 October 10, 2003 without further notice unless the Agency receives adverse comments by September 10, 2003.

If the 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. The 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 October 10, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of

this rule and if that provision may be severed from the remainder of the rule, we 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 Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit a report containing this rule 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. section 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 October 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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).)

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 October 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: July 31, 2003.

**A. Stanley Meiburg,**  
*Acting Regional Administrator, Region 4.*

■ Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

**PART 52—[AMENDED]**

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

**EPA APPROVED FLORIDA REGULATIONS**

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

**Subpart K—Florida**

■ 2. In § 52.520(c) the table is amended by adding in numerical order an entry for “62–204.500” to read as follows:

**§ 52.520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
Section 62–204.500	Conformity	08/31/98	08/11/03 [Insert citation of publication].	Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule.
* * * * *				

\* \* \* \* \*  
[FR Doc. 03–20302 Filed 8–8–03; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[WV041/046–6015a; FRL–7525–2]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers such as boilers. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on October 10, 2003 without further notice, unless EPA receives adverse written comment by September 10, 2003. 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:** Written comments should be mailed to Makeba Morris, Chief, Air

Quality Planning Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 29, 1996 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR2) to prevent and control particulate matter air pollution from combustion of fuel in indirect heat exchangers as formal revisions to its

State Implementation Plan (SIP). The first SIP revision went to public hearing on November 29, 1994 and became effective on May 1, 1995. The second SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. These SIP revisions update definitions, clarify and streamline the opacity standards for visible emissions for soot blowing operations, streamline monitoring, reporting and recordkeeping requirements and provide for alternative limitations for visible emissions. Since the most recent of the two SIP revisions incorporates all of the changes from the earlier SIP revision, EPA will incorporate by reference the version of 45CSR2 submitted to EPA on September 21, 2000 into the SIP.

**II. Summary of SIP Revision**

The following summary discusses the substantive revisions to West Virginia’s regulation 45CSR2 since the SIP was revised on August 14, 1983. A detailed summary and discussion of all of the revisions are contained in a Technical Support Document (TSD) prepared for this rulemaking action and will not be restated here. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

(A) The following definitions were revised: (1) Definitions of “Commission”, “Ringelmann Smoke Chart”, and “Kanawha Valley Air Basin”, were deleted, (2) “Director” was modified to include persons delegated authority by the Director; (3) “Person” was modified to include the State of