

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES**

NOTICE OF PUBLIC COMMENT PERIOD

IN RE: Proposed Air Pollution Control Regulation No. 49

The Director of the Rhode Island Department of Environmental Management (DEM) proposes to promulgate Air Pollution Control Regulation No. 49, "Transportation Conformity" and gives notice of intent to receive public comment on the proposed regulation and to afford interested parties an opportunity to submit data, views, or arguments in writing on the proposed regulation. A public hearing on the proposed regulation will be held if DEM receives a request for a hearing. If a public hearing is held, a notice will be published announcing the date, time and place of such hearing.

DEM, Office of Air Resources, is proposing to adopt Air Pollution Control (APC) Regulation No. 49 "Transportation Conformity". This regulation, if adopted, will be submitted to EPA to be incorporated into the State Implementation Plan (SIP).

DEM, RIDOT, RIPTA, and Statewide Planning, in their capacity as the state's Metropolitan Planning Organization (MPO), together with their federal counterpart agencies: the Environmental Protection Agency (EPA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA), must fulfill responsibilities under the federal Clean Air Act (CAA), to ensure that federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by Rhode Island's State Implementation Plan (SIP). Conformity, to the purpose of the SIP, means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The federal transportation conformity rule (40 CFR part 93) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities. This proposed regulation is intended to formally incorporate procedures followed to complete this process.

The purpose of this regulation is to fulfill the requirement in 40 CFR 51.390(b) to establish a SIP revision that includes the following three sections of the federal transportation 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 MPO's transportation plan and transportation improvement program (TIP); and that such a commitment 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.

Once this state regulation is approved by EPA into the Rhode Island SIP, it has full legal effect. Conformity determinations will be governed by these criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by the state rule.

Copies of the proposed regulations can be obtained at the DEM website, <http://www.dem.ri.gov>. (Click on the Regulations link on the left hand side of the page and go to the Proposed Regulations section). Copies are also available at DEM's Office of Air Resources 235 Promenade St., Providence, RI. Any additional requests can be made by contacting the Office of Air Resources at 222-2808, weekdays, 8:30 AM- 4:00 PM.

DEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3 by considering alternative approaches to the proposed regulations and has determined that there is no alternative approach that would be as effective and less burdensome. DEM has also determined that the proposed regulation does not overlap or duplicate any other state regulation. DEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3.3, 42-35.1-3 and 42-35.1-4 by preparing an Economic Impact Statement and a Regulatory Flexibility Analysis and providing these to the Governor's Office, the Department of Administration and the Economic Development Corporation.

DEM encourages the submission of written comments. Written comments, to be considered part of the administrative record must be submitted during the public comment period. Written comments may be mailed or e-mailed to the Office of Air Resources and received no later than 4:00 PM, 22 August 2011, at which time the public comment period will close. The mailing address for comments is:

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The e-mail address for comments is: frank.stevenson@dem.ri.gov

Signed this 15th day of July, 2011



Douglas L. McVay, Acting Chief
Office of Air Resources