

# Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)

## Appendix A

Transportation and Regional Programs Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency

The Checklist for Developing a Conformity SIP (Appendix A) and Conformity Model Rule (Appendix B) are available for downloading at <http://www.epa.gov/otaq/stateresources/transconf/policy.htm#sips>

Appendix A: Checklist for Developing a Conformity SIP

This checklist is intended to guide state and local agencies as they develop their conformity SIPs; this checklist does not replace existing statutory or regulatory requirements. Within each section of the checklist, the requirements are shown in the left-hand column. The right-hand column can be used to record the locations in the consultation and conformity SIP that address the required elements.

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| <b>INTERAGENCY CONSULTATION</b>  |  |
| <b>GENERAL:</b> [93.105(a)]. A conformity SIP shall include procedures for interagency consultation, conflict resolution, and public consultation. EPA encourages development of “extensive, effective consultation procedures that will resolve problems as early in the process as possible.” 58 FR 62188 at 62201, November 24, 1993. The procedures must be written in a manner that gives them full legal effect. 40 CFR 51.390.  |  |
| Consultation is required on the development of the regional transportation plan (RTP), the transportation improvement program (TIP), on conformity determinations, and on the development of state implementation plan (SIP) revisions that affect transportation. [93.105(a)(1)].   |  |
| MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on specific processes for interagency consultation. [93.105(a)(2)]  |  |
| <b>INTERAGENCY CONSULTATION PROCEDURES: GENERAL FACTORS</b> [93.105(b)]. States shall provide well defined consultation procedures in the implementation plan. Organizations with responsibilities for developing, submitting or implementing provisions of an implementation plan (including MPOs, State and local air quality planning agencies, and State and local transportation agencies) must consult with each other with and local or regional offices of EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). |  |
| The interagency consultation procedures must include, at a minimum, the following general factors:   |  |
| procedures that require that agencies consult on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations [93.105(b)(1)];  |  |
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| the roles and responsibilities of each agency at each stage in the SIP development process and the transportation planning process, including technical meetings [93.105(b)(2)(i)];  |  |
| the organizational level of regular consultation <sup>5</sup> [93.105(b)(2)(ii)];  |  |
| a process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication [93.105(b)(2)(iii)];   |  |
| the frequency of, or process for convening, consultation meetings and responsibility for establishing meeting agendas [93.105(b)(2)(iv)];  |  |
| a process for responding to significant comments of involved agencies [93.105(b)(2)(v)]; and   |  |
| a process for the development of a list of the transportation control measures (TCMs) that are in the applicable implementation plan [93.105(b)(2)(vi)].   |  |
| <b>SPECIFIC PROCESSES</b> Interagency consultation procedures shall include the specific processes listed below [93.105(c)]:   |  |
| A process involving at least the MPO(s), State and local air quality planning and transportation agencies, EPA, and the Department of Transportation (DOT) for the following [93.105(c)(1)]:   |  |
| Evaluating and choosing models and associated methods and assumptions for hot-spot and regional emissions analyses [93.105(c)(1)(i)];  |  |
| Determining which minor arterials and other projects are “regionally significant” <sup>6</sup> for the regional emissions analysis (in addition to those functionally classified as principal arterials or higher or fixed guide way systems or extensions that offer an alternative to regional highway travel) [93.105(c)(1)(ii)]; |  |
| Determining which projects should be considered to have a significant change in design concept and scope from the RTP or TIP [93.105(c)(1)(ii)];   |  |
| Evaluating whether otherwise exempt projects (see 93.126 and 93.127) should be treated as non-exempt where adverse impacts are possible for any reason [93.105(c)(1)(iii)];  |  |
| Determining whether past obstacles to implementation of transportation control measures (TCMs) in approved SIPs have been identified and are being overcome (for TCMs behind SIP schedules) [93.105(c)(1)(iv); 93.113(c)(1)];  |  |
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<sup>5</sup> Generally, interagency consultation procedures should include information such as the organizational level and procedures for the people who schedule, lead, and attend meetings.

<sup>6</sup> This is in addition to the projects required to be included by application of the definition of “regionally significant project” in 40 CFR 93.101.

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|   | Determining whether State and local agencies are giving maximum priority to approval and funding for TCMs in approved SIPs [93.105(c)(1)(iv)];  |  |
|   | Determining whether delays in the implementation of approved SIP TCMs necessitate revisions to the SIP to remove or substitute such TCMs or other emission reduction measures [93.105(c)(1)(iv)]; |  |
|   | Notification of transportation plan and TIP amendments which only add or delete exempt projects listed in 93.126 and 93.127 [93.105(c)(1)(v)]; and  |  |
|   | Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 93.109(l)(2)(iii) [93.105(c)(1)(vi)].  |  |
| A process involving at least the MPO and State and local air and transportation agencies for [93.105(c)(2)]:  |   |  |
|   | Evaluating events that will trigger new conformity determinations in addition to those required by 93.104 [93.105(c)(2)(i)]; and  |  |
|   | Consulting on emissions analysis for transportation activities which cross borders of MPOs, nonattainment areas or air basins [93.105(c)(2)(ii)].   |  |
| Where the metropolitan planning area does not include the entire nonattainment or maintenance area, procedures must specify a process involving the MPO and the State DOT for cooperative planning and analysis for determining conformity of projects outside the metropolitan area and within the nonattainment or maintenance area [93.105(c)(3)]. |   |  |
| Specifies a process to ensure disclosure of plans for regionally significant non-FHWA/FTA projects (including projects for which alternatives are still being considered) to the MPO on a regular basis, and immediate disclosure of any changes to those plans [93.105(c)(4)].   |   |  |
| Provides a process involving the MPO and other federal funds recipients for assuming project location and design concept/scope where these features not adequately defined for regional emissions analysis [93.105(c)(5)].  |   |  |
| Specifies a process for consulting on design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO [93.105(c)(6)].  |   |  |
| Specifies a process for providing final documents and supporting information to each agency (including federal agencies) after approval or adoption [93.105(c)(7)].   |   |  |
| <b>RESOLVING CONFLICTS [93.105(d)].</b>   |   |  |
| The process for resolving conflicts must specify that:  |   |  |
|   | Unresolvable conflicts among state agencies or between state  |  |

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|   | agencies and an MPO shall be escalated to the Governor or Governor's designee (designee can not be the State or local air agency, State department of transportation, State transportation commission or board, or an MPO) [93.105(d)];  |  |
|   | The State air agency has 14 calendar days (the implementation plan should define the procedures for starting the 14-day clock) to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments [93.105(d)]; and                   |  |
|   | If the State air agency appeals to the Governor, the final conformity determination must have Governor's concurrence. If there is no appeal, the MPO or state DOT may proceed with the final conformity determination [93.105(d)].   |  |
| <p><b>PUBLIC CONSULTATION PROCEDURES.</b> Affected agencies<sup>7</sup> making conformity determinations on transportation plans, TIPs, and projects shall establish a proactive public involvement process [93.105(e)]. This general requirement can be satisfied by referencing the MPO's procedures,<sup>8</sup> in addition to specifying or referencing the additional items listed below.</p> |  |  |
| <p>Consultation procedures must set out a public process that, at a minimum:</p>  |  |  |
|   | Provides for reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a transportation plan or TIP conformity determination, consistent with 93.105 and 23 CFR 450.316(a) [93.105(e)]; |  |
|   | Ensures that any charges imposed for public inspection or copying are reasonable [49 CFR 7.43, 93.105(e)];   |  |
|   | Provides that agencies must specifically address in writing all public comments that plans for regionally significant non-FHWA/FTA projects are not properly reflected in the emissions analysis [93.105(e)]; and  |  |
|   | Provides opportunity for public involvement in project conformity determinations as otherwise required by law [93.105(e)].   |  |

<sup>7</sup> Interagency consultation portions of transportation conformity SIPs should define the "affected agencies" that are responsible for fulfilling 40 CFR 93.105(e) requirements.

<sup>8</sup> The specific requirements and criteria for MPO public involvement are set forth at 23 CFR 450.316(a). Under these requirements, MPOs are directed to periodically review their public involvement process to assure that full and open access is provided to MPO decision-making processes (see 23 CFR 450.316(a)(1)(x)). Public involvement provisions are reviewed in the context of certification or planning reviews, which are conducted by FHWA and FTA under 23 CFR 450.334(b) no less often than once every four years for certain MPOs.

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| <p><b>OTHER CONFORMITY PROCEDURES:</b> Under Clean Air Act, as amended by SAFETEA-LU, conformity SIPs must also include conformity procedures that address 40 CFR 93.122(a)(4)(ii) and 93.125(c). All other federal conformity regulations apply automatically and states are not required to address them in conformity SIPs.</p>  |  |
| <p><b>ENFORCEABLE WRITTEN COMMITMENTS REQUIRED FOR EMISSIONS REDUCTION CREDIT:</b> Emissions reduction credit from any control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities [93.122(a)(4)(ii)].</p>  |  |
| <p>Language addressing 93.122(a)(4)(ii) should include, at a minimum, the following:</p>  |  |
| <p>In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the Transportation Plan or TIP, <i>[insert MPO name]</i> will not include emissions reduction credits from any control measures that are not included in the Transportation Plan or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless <i>[insert MPO name]</i> or FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities [93.122(a)(4)(ii)].</p>  |  |
| <p><b>ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:</b> Before a conformity determination is made, written commitments must be obtained for any project-level mitigation or control measures. [93.125(c)]</p>   |  |
| <p>Language addressing 93.125(c) should include, at a minimum, the following:</p>   |  |
| <p>In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the Transportation Plan or TIP, <i>[insert MPO name]</i> will ensure any project-level mitigation or control measures are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis. Prior to making a project-level conformity determination, written commitments will be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis.</p> |  |