TRANSPORTATION CONFORMITY SIP CHECKLISTS FOR INTERAGENCY CONSULTATION AND CONFORMITY PROCEDURES

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EPA CRITERIA

Under SAFETEA-LU, states are required to address and tailor three sections of the conformity rule in their conformity state implementation plans (SIPs):

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122 (a)(4)(ii), which addresses the requirement to obtain written commitments to implement any control measures that are relied upon and that are not included in a metropolitan transportation organization's (MPO's) regional transportation plan (RTP) and transportation improvement program (TIP) prior to using emissions reductions associated with the control measures in conformity determinations and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses the requirement to obtain written commitments to any mitigation measures that are relied upon prior to a project-level conformity determination and the requirement that project sponsors must fulfill such commitments.

PURPOSE OF CHECKLISTS

These checklists are intended to guide MPOs as they develop their conformity SIPs and to assist EPA reviewers as they evaluate the approvability of conformity SIPs; they do not replace existing statutory or regulatory requirements or official EPA guidance. Within each checklist, the requirements are shown in the left-hand column. The right-hand column should be used to record the locations in the consultation and conformity SIP that address the required elements. A "Reviewer Notes" section is included after the second checklist for any additional information or explanation that is needed.

INTERAGENCY CONSULTATION

Interagency consultation is addressed in the [NAME OF AGENCY, TITLE OF PROCEDURES], adopted [ADOPTION DATE]. The sections of the procedures that address each of the required elements are listed below in the column to the right of the description of the required element.

GENERAL: [93.015(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 ...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)]	

INTERAGENCY CONSULTATION PROCEDURES: GENERAL FACTORS [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)];	
	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[1] [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)].	

SPECIFIC PROCESSES.[2] 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

[1] Generally, interagency consultation procedures should include information such as the organizational level of the people who attend meetings (i.e., staff, supervisor, manager), who runs the meetings, and procedures for determining whether a meeting can be conducted via conference call or should be face-to-face, and for determining which issues can be handled via email.

[2] For each item listed under "Specific Processes" there should be well-defined procedures of what will be done, which agencies will do it, when it will be done, and how it will be done. To ensure the process is clear and enforceable, the procedures should provide that, for each action to be taken, the responsible party is specified and is a legal entity against whom enforcement action can be taken. Timing can be specified in a number of ways (examples would include: every July 1 or when development of an RTP (SIP, TIP) first begins or every quarter beginning in a certain month, etc.). It's also very helpful to indicate what materials and information will be provided and how and when. The California Statewide Conformity group suggested 30 days for most reviews.

[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"[3] for the regional emissions analysis (in addition to those functionally classified as principal arterials or higher or fixed guideway 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 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)];	
	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 RTP 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	

[3] 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.

	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)].		
RESOLVING CONFLICTS [93.105(d)].		

The process for resolving conflicts must specify that:		
	Unresolvable conflicts among state agencies or between state 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)].	
PUBLIC CONSULTATION PROCEDURES. Affected agencies[4] 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,[5] in addition to specifying or referencing the additional items listed below.		
Consultation procedures must set out a public process that, at a minimum:		
	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	

[4] Interagency consultation portions of transportation conformity SIPs should define the "affected agencies" that are responsible for fulfilling 40 CFR 93.105(e) requirements.

[5] 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.

	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)].	

CONFORMITY PROCEDURES

Under SAFETEA-LU, conformity SIPs must also include conformity procedures that address 40 CFR 93.122(a)(4)(ii) and 93.125(c). The remaining conformity procedures apply automatically and states are not required to address them in conformity SIPs.

Conformity procedures are addressed in the [NAME OF AGENCY, TITLE OF PROCEDURES], adopted [ADOPTION DATE].

ENFORCEABLE WRITTEN COMMITMENTS REQUIRED FOR EMISSIONS REDUCTION CREDIT: 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)].

Language addressing 93.122(a)(4)(ii) should include, at a minimum, the following:

In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the RTP or TIP, [MPO] will not include emissions reduction credits from any control measures that are not included in the RTP or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless [MPO] 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)].	

ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES: Before a conformity determination is made, written commitments must be obtained for any project-level mitigation or control measures. [93.125 (c)]

Language addressing 93.125(c) should include, at a minimum, the following:

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 RTP or TIP, [MPO] 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. [93.125(c)].	

REVIEWER NOTES