

South Carolina Transportation Conformity Fact Sheet

- The Clean Air Act (CAA) requires that air quality in every state meet health-based National Ambient Air Quality Standards (NAAQS). States that do not meet these standards are required to revise their State Implementation Plans (SIPs) with necessary control measures to ensure that the standards are attained and maintained.
- The SIPs must also contain criteria and procedures for the affected parties to assess the conformity of transportation plans, programs, and projects to ensure that they do not produce new violations of air quality standards, worsen existing violations, or delay timely attainment of air quality standards. The Federal government cannot fund or approve transportation plans, programs, or projects that do not conform to a state's SIP.
- The CAA requires interagency consultation between the Environmental Protection Agency (EPA), U.S. Department of Transportation (US DOT), South Carolina (SC) Department of Transportation (SC DOT), SC Department of Health and Environmental Control (DHEC), Metropolitan Planning Organizations (MPOs), and any applicable transportation planning agencies.
- States were allowed to develop Memorandums of Agreement (MOAs) in place of regulations to ensure the interagency consultation procedures (see Exhibit 2 of the SC Transportation Conformity MOA) of transportation conformity are followed. EPA published South Carolina's SIP revision, which incorporated the South Carolina Transportation Conformity MOA, in the *Federal Register* (69 CFR 4245) on January 29, 2004. The signatory parties to this MOA are: representatives of each of the MPOs, DHEC, SC DOT, FHWA, FTA, and EPA Region 4. The parties to this MOA agreed to conduct transportation conformity determinations in accordance with the provisions of 40 CFR Part 93, Subpart A (included as Exhibit 3 of the South Carolina Transportation Conformity MOA). The MOA is applicable to all of the NAAQS affecting any nonattainment area in South Carolina.
- Minimum responsibilities of the interagency consultation partners include:
 - MPOs - have authority for planning, programming, and coordination of highway and transit investments;
 - DHEC - is the State air quality planning agency;
 - SC DOT - is the State transportation planning agency;
 - US DOT (FHWA and FTA) - make joint conformity determinations; ensure conformity and transportation planning requirements are met;
 - EPA - comment on conformity determinations; find adequate/approve motor vehicle emissions budgets; and
 - Local Publicly-Owned Transit Agencies (not otherwise represented by an MPO) - support transportation planning activities.
- The MPO formally makes a conformity determination on transportation plans and Transportation Improvement Programs (TIPs) prior to submitting them to the FHWA/FTA for review and conformity determination. For projects in rural areas, the SC DOT prepares the conformity analysis with FHWA/FTA issuing a conformity determination prior to approval and/or funding.
- Areas designated as nonattainment or maintenance must have approved interagency consultation procedures in place to determine conformity of transportation plans, programs, and projects in order to avoid a lapse and possible sanctions on Federal highway funding.
- Currently, the only nonattainment area subject to transportation conformity in South Carolina is the Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization (RFATS MPO) in York County. This is due to their inclusion in the Charlotte Metropolitan Statistical Area. Two other areas in South Carolina are designated nonattainment; however, as a result of their participation in the 8-hour Ozone

Early Action Compact process, the effective date of their designation was deferred until December 2007, at which time, provided all EAC milestones have been met, the areas will be designated attainment.

- EPA has promulgated and proposed a number of revisions to the Transportation Conformity Rule since the time that South Carolina's SIP revision incorporating the South Carolina Transportation Conformity MOA was published in the *Federal Register* (69 CFR 4245) on January 29, 2004. As the State air quality planning agency, DHEC must revise the South Carolina Transportation Conformity SIP to incorporate these revisions.
- On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) was signed into law. A summary of the key revisions to SAFETEA-LU, amending the CAA includes:
 - The required frequency of conformity determinations for transportation plans and transportation improvement programs from at least every three (3) years to every four (4) years.
 - Conformity re-determination is required within two (2) years, increased from eighteen (18) months, once a new air quality budget is established.
 - There is a one (1) year grace period before consequences of a conformity lapse apply when an area misses conformity deadlines
 - Areas are given the flexibility to shorten timeframes covered by a conformity determination if the local transportation planning agency elects to do so. The rule specifies criteria and procedures that would apply. At a minimum, the MPO must consult with the air quality partners and public comment.
 - The rule streamlines the requirements for conformity SIPs.
 - Areas are allowed to substitute or add transportation control measures without a SIP revision.
- SAFETEA-LU amended the CAA's conformity SIP requirements so that states need only include the three (3) provisions listed below (instead of the entire conformity rule) in transportation conformity SIPs. This change means that states' transportation conformity SIPs will not have to be revised for every update to the Federal rule, saving time and resources.
 1. §93.105 – This section requires the adoption of specific consultation procedures.
 2. §93.122(a)(4)(ii) – This section requires a written commitment to implement control measures be obtained prior to conformity determinations for control measures not included in the Transportation Plan and Transportation Improvement Program (TP/TIP).
 3. §93.125(c) – This section requires a written commitment for mitigation measures be obtained prior to project-level conformity determination to ensure they occur.
- On May 2, 2007, EPA published in the *Federal Register* a proposal to amend the transportation conformity rule to make it consistent with the CAA, as amended by SAFETEA-LU.
- DHEC has initiated the process for revising South Carolina's Transportation Conformity SIP to incorporate amendments to the CAA as a result of SAFETEA-LU. Interagency partners will be involved in drafting the necessary revisions. The process will encompass stakeholder meetings, to include involvement of MPOs, government entities, and the general public.

For additional information, please contact Maeve Mason via telephone at (803) 898-2230 or via e-mail at masonmr@dhec.sc.gov.

