

ARB Draft

Transportation Conformity SIPs

March 2014

EPA Agreement / Request

EPA has entered into a tri-party agreement between NACAA, ECOS, and EPA on resolving the SIP backlog. The agreement includes an official EPA posting of the backlog and a commitment to clear the SIP backlog (as of October 1, 2013) by no later than the end of 2017. A backlog occurs when SIPs are submitted by states and are found to be complete (or deemed to be complete by operation of law) for more than 12 months, but not yet acted upon by EPA. Each EPA Region will establish a four-year management plan to set the priority and rate of progress. EPA transmitted a letter dated January 28, 2014, describing a cooperative effort between U.S. EPA, ARB and California's air districts to prioritize and address outstanding submittals to the California State Implementation Plan (SIP). As a result, EPA and CARB have begun staff discussion about how to prioritize and address specific outstanding elements.

Transportation Conformity SIP Requirements

A conformity SIP is required to contain only the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional conformity provisions (40 CFR 93.122(a)(4)(ii) and 93.125(c)). Unlike a control strategy SIP (e.g., reasonable further progress SIP, an attainment demonstration, or maintenance plan), a conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations or control measures. A conformity SIP can be developed as a state rule, a memorandum of understanding (MOU), or a memorandum of agreement (MOA). In the absence of a federally approved transportation conformity SIP, the Federal Transportation Conformity Rule applies.

A formal interagency consultation process is used to prepare a conformity SIP. The consultation process includes representatives from state and local transportation and air quality agencies, EPA, FHWA, and FTA. Typically, the state or local air agency is the lead on conformity SIP development; however, MPOs or state DOTs may serve in this role.

Regulatory history

Section 176(c) of the clean Air Act (CAA, 1990) requires that Federal agencies and Metropolitan Planning Organizations (MPOs) not approve any transportation project, program, or plan which does not conform with the approved State Implementation Plan (SIP). The 1990 amendments to the Clean Air Act expanded Section 176(c) to more

explicitly define conformity to an implementation plan. In addition, the expanded Section 176(c) also provided conditions for approval of transportation plans, programs, and projects, and requirements that EPA promulgate conformity determination criteria and procedures no later than November 15, 1991.

The initial November 15, 1991 deadline for conformity criteria and procedures was partially completed through the issuance of supplemental interim conformity guidance issued on June 7, 1991 for carbon monoxide, ozone, and particulate matter ten microns or less in diameter (PM-10). EPA subsequently promulgated the Conformity Final Rule in the November 24, 1993 *Federal Register* (EPA, 1993, which became effective on December 27, 1993). The Federal Transportation Conformity Final Rule has been amended over ten times from 1993 to present. These amendments have addressed a number of items related to conformity lapses, grace periods, and other related issues to streamline the conformity process.

State of practice

Over 15 Air Districts developed Transportation Conformity SIPs via the rulemaking process in 1994/1995 per the guidance at that time, which was generally to adopt the federal rule verbatim. However, this approach became problematic due to EPA's continued amendments to the federal rule. As a result, it was recommended that areas update their Transportation Conformity SIPs to include the Federal Rule by reference. Approximately half of the Air Districts did this in the later 1990s timeframe. This approach also became problematic due to continued amendments to the federal rule.

Additional updates per the SAFETEA-LU provisions have been discussed periodically at the California Statewide Conformity Working Group over the past few years, but a statewide update to existing rules has not yet occurred. It should be noted that the Bay Area has a federally approved transportation conformity SIP (in accordance SAFETEA-LU) as of October 12, 2007.

California Transportation Conformity SIP Status

ARB staff has conducted a preliminary review of the ARB Rules log database and SIP library files and has consulted with EPA staff to develop a statewide status summary of Transportation Conformity SIPs. EPA is still finalizing their summary of the status of transportation conformity SIP submittals for the state and plans to share in the near future. Continuing with an Air District rule approach, the following status summary has been drafted by ARB:

- 12 are not required to have transportation conformity SIPs as they are not federally nonattainment or maintenance.

- 2 of these 12 have adopted transportation conformity SIP rules (likely due to previously being a 1-hour ozone nonattainment area), which could be withdrawn at this time.
- 14 would need to update their transportation conformity SIP rules to meet the current requirements
- 8 need initial transportation conformity SIPs
 - San Diego officially withdrew their 1995 rule
 - San Luis Obispo is a new 8-hour (2008 standard) ozone nonattainment area
 - The remaining 6 of these 8 are isolated rural areas with no MPO. A different version of the transportation conformity SIP would need to be developed for these areas.
- 1 transportation conformity SIP has been federally approved per the latest requirements.

Please note this initial ARB summary is subject to change as coordination with EPA continues.

List of References

EPA, 2009. Guidance for Developing Transportation State Implementation Plans (SIPs) <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>

EPA, 2008. Federal Register Vol. 73, No. 16, p. 4420. Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity act: A Legacy for Users (SAFETEA-LU) <http://www.epa.gov/otaq/stateresources/transconf/regs/safetealu-fr0108.pdf>

Clean Air Act, 1990 Amendments. Section 176. Limitations on Certain Federal Assistance.