



Excerpts related to conformity SIP requirements

**Interim Guidance for  
Implementing the  
Transportation Conformity  
Provisions in the Safe,  
Accountable, Flexible,  
Efficient Transportation  
Equity Act: A Legacy for  
Users (SAFETEA-LU)**

## **Section 7: Inclusion of Criteria and Procedures in SIP**

*SAFETEA-LU section 6011(f)(4) reads as follows:*

(f) Conforming Amendments.--Section 176(c)(4) of the Clean Air Act (42 U.S.C. 7506(c)(4)) (as amended by subsection (b)) is amended--  
(4) by striking subparagraph (E) (as redesignated by paragraph (1)) and inserting the following:

“(E) Inclusion of criteria and procedures in sip.--Not later than 2 years after the date of enactment of the SAFETEA-LU the procedures under subparagraph (A) shall include a requirement that each state include in the state implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.”.

### **7.1 What does this provision do?**

This provision streamlines the requirements for state conformity SIPs.<sup>8</sup> Prior to SAFETEA-LU being signed into law, states were required to address all of the federal conformity rule’s provisions in their conformity SIPs. Most of the sections of the federal rule were required to be copied verbatim from the federal rule into a state’s SIP, as previously required under 40 CFR 51.390(d). States were also required to tailor all or portions of the following three sections of the federal rule to meet their state’s individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO’s plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

Now, under SAFETEA-LU, states are required to address and tailor only these three sections of the conformity rule in their conformity SIPs. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule, except for limited cases that are described below.

### **7.2 When does this provision apply?**

This provision took effect on August 10, 2005, when SAFETEA-LU was signed into law.

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<sup>8</sup> Conformity SIPs are different from control strategy SIPs or maintenance plans, as they only include state conformity procedures and not motor vehicle emissions budgets or air quality demonstrations.

### **7.3 Are any new conformity SIP deadlines created by SAFETEA-LU?**

No. SAFETEA-LU does not create any new deadlines for conformity SIPs. Any nonattainment or maintenance area that has missed earlier deadlines to submit conformity SIP revisions (e.g., after previous conformity rulemakings, or new nonattainment designations) continues to be subject to these previous deadlines, but only in regard to the three provisions now required under SAFETEA-LU.

In addition, states are required to submit a conformity SIP revision due to any future rulemaking that substantively changes the three specified sections in the current conformity rule. For example, SAFETEA-LU requires EPA to complete a rulemaking reflecting all SAFETEA-LU conformity provisions by August 10, 2007. If EPA substantively changes any of the three specified provisions in that rulemaking, a conformity SIP revision would be required one year from the publication date of the SAFETEA-LU final conformity rule (40 CFR 51.390(a)).

### **7.4 How does SAFETEA-LU impact areas that have not previously submitted or approved conformity SIPs?**

States that do not currently have submitted or approved conformity SIPs are only required to address the three provisions listed in SAFETEA-LU in their conformity SIPs according to any existing conformity SIP deadline, as described in the previous question.

Once a state has an approved conformity SIP that addresses only the three sections that SAFETEA-LU requires, the state would only revise its conformity SIP if either EPA revises the conformity rule and it affects one of these sections, or the state elects to revise how it addresses one of these three provisions. Any future changes to the federal conformity rules beyond these three provisions would take effect immediately in all states that have only these three provisions in their approved conformity SIP.

### **7.5 How does SAFETEA-LU impact areas that have previously submitted or approved conformity SIPs?**

States that have previously approved conformity SIPs that decide to eliminate the provisions that are no longer mandatory will need to go through a formal SIP revision process to eliminate those provisions from their SIPs. EPA will have to conduct rulemaking to approve the changes to the states' conformity SIPs. EPA will act expeditiously to approve these revisions. EPA will consider using either parallel processing or direct final approval to expedite the approval of such SIP revisions. Such SIP revisions should not be controversial since the provisions are no longer required by the Clean Air Act as amended by SAFETEA-LU.

A state with a previously approved conformity SIP may decide to retain all or some of the federal rule in its SIP. In such a case, the state should be aware that the conformity determinations in the state continue to be governed by the state's conformity SIP. Such a

state would need to revise its conformity SIP when EPA makes changes to the federal rule in order to have those changes apply in the state. For more information please refer to EPA's November 2004 Conformity SIP Guidance which is found at:

<http://www.epa.gov/otaq/transp/conform/policy.htm>.

In addition, some states have submitted conformity SIPs to EPA for approval, but EPA may not have acted on these revisions yet. These states may write their EPA regional office and request that EPA approve only the three provisions that are required to be included in their SIPs and that EPA take no action on the remainder of the submission. States could also leave the full conformity SIP pending before EPA for rulemaking action, however as noted above if EPA approves the full SIP states would need subsequent SIP revisions to coordinate their SIPs with any future changes to the federal conformity rules.

**7.6 How does this provision affect the 12-month conformity SIP submission clocks that were started by the July 1, 2004, and May 6, 2005, final conformity rules?**

EPA and DOT believe that those clocks have been eliminated because those rulemakings did not contain any substantive revisions to any of the three sections of the rule that states are now required to address in their SIPs.

It should be noted that both final rules made very minor changes to section 93.105. The July 2004 final rule changed a reference to a later section of the conformity rule and the May 2005 rule contained a technical correction to a reference to a section of DOT's regulations. EPA and DOT do not believe that either of those changes is significant enough by itself to warrant states being required to update their conformity SIPs within 12 months of the publication of those final rules.

**7.7 How does this provision affect EPA's November 2004 conformity SIP guidance?**

EPA intends to revise this guidance in the near future in order to make it consistent with the revised conformity SIP requirements contained in SAFETEA-LU.

**7.8 Can states continue to include provisions in their SIPs that are more stringent than the federal rule?**

Yes, states can continue to include provisions in their conformity SIPs that are more stringent than the federal rule as long as they apply equally to federal and non-federal entities, pursuant to 40 CFR 51.390(a). This aspect of the current conformity regulation is not affected by SAFETEA-LU.