Environmental Protection Agency

§ 93.105 Consultation.

(a) General. The implementation plan revision required under §51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local), resolution of conflicts, and public consultation as described in paragraphs (a) through (e) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before EPA approves the conformity implementation plan revision required by §51.390 of this chapter, 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 the issues described in paragraph (c)(1) of this section, before making conformity determinations.

(b) Interagency consultation procedures: General factors. (1) States shall provide well-defined consultation procedures in the implementation plan whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the...
§ 93.105 40 CFR Ch. I (7–1–12 Edition)

development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the following general factors and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) Interagency consultation procedures: Specific processes. Interagency consultation procedures shall also include the following specific processes:

(i) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(ii) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in §93.104; and

(iii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or non-attainment or maintenance areas, as required by §93.109(g)(2)(iii).

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by §93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Notification of transportation plan or TIP amendments which merely add or delete exempt projects listed in §93.126 or §93.127; and

(vi) Choosing conformity tests and methodologies for isolated rural non-attainment and maintenance areas, as required by §93.109(g)(2)(iii).

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in §93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or non-attainment or maintenance areas, as required by §93.109(g)(2)(iii).

(3) Where the metropolitan planning area does not include the entire non-attainment or maintenance area, a process involving the MPO and the State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by §93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Notification of transportation plan or TIP amendments which merely add or delete exempt projects listed in §93.126 or §93.127; and

(vi) Choosing conformity tests and methodologies for isolated rural non-attainment and maintenance areas, as required by §93.109(g)(2)(iii).

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in §93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or non-attainment or maintenance areas, as required by §93.109(g)(2)(iii).

(3) Where the metropolitan planning area does not include the entire non-attainment or maintenance area, a process involving the MPO and the State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by §93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Notification of transportation plan or TIP amendments which merely add or delete exempt projects listed in §93.126 or §93.127; and

(vi) Choosing conformity tests and methodologies for isolated rural non-attainment and maintenance areas, as required by §93.109(g)(2)(iii).
still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of §93.122.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household travel transportation surveys).

(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.

(d) Resolving conflicts. Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days 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. The implementation plan revision required by §51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head of staff of the State or local air agency. State department of transportation, State transportation commission or board, or an MPO.

(e) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing 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 conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(a). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§93.106 Content of transportation plans and timeframe of conformity determinations.

(a) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions: