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# **Revision to Maryland's Transportation Conformity State Implementation Plan**

***SIP Revision 06-07***

**November 9, 2006**

**Prepared for:**

**U.S. Environmental Protection Agency**

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## **Executive Summary**

This SIP revision formally revises the Maryland Transportation Conformity State Implementation Plan (SIP 03-02) to reflect changes in the conformity process that have resulted from the enactment of SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and the designation of Washington County by the EPA as a nonattainment area for fine particulate matter (PM<sub>2.5</sub>). Transportation conformity is a requirement of the Clean Air Act (CAA) that helps control growth in mobile source emissions for areas that do not meet federal air quality standards.

### ***SAFETEA-LU Conformity Process Changes***

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted on August 10, 2005. Under this act, amendments were made to the transportation conformity rules (Section 6011 of the Act), which require states that have nonattainment areas to revise their existing transportation conformity SIPs. The major transportation conformity amendments brought about by the enactment of SAFETEA-LU consist of:

- The frequency of required conformity determinations is now every four years (instead of every three years) unless the Metropolitan Planning Organization (MPO) elects to update its transportation plan more frequently
- The act allows areas two years instead of the previous 18 months to determine conformity after EPA approves or finds an nonattainment area's mobile budgets adequate
- Areas now have the option to shorten the horizon of transportation plan conformity determinations
- The latest year of a transportation plan can now be the latest of the following: the 10th year of plan, the latest year in a SIP that contains a motor vehicle emission budget, or the year after the completion date of a regionally significant project
- The act gives nonattainment areas an additional 6 months to re-determine conformity after new motor vehicle emission budget (MVEB) is found adequate, approved or promulgated
- The act grants a streamlined ability for states to substitute Transportation Control Measures (TCM's) without having TCM substitution language in their SIPs
- The act adds a one-year grace period to conformity lapses
- The act streamlines requirements for conformity SIPs
- The act requires nonattainment areas to perform a qualitative analysis of PM<sub>2.5</sub> hotspots for projects that EPA designates of "air quality concern" such as highway and transit projects that involve significant levels of diesel vehicle traffic

### ***Maryland Nonattainment Areas and SAFETEA-LU***

On December 17, 2004, EPA designated Washington County as being in nonattainment of the federal PM<sub>2.5</sub> standard, thus making a transportation conformity determination required for proposed transportation projects in this county. Under the rules of transportation conformity it is required that a public interagency consultation process be maintained. The Maryland Department of the Environment (MDE) has revised (as seen in Appendix A of this SIP revision) the transportation conformity regulations for Maryland that address the interagency consultation process to include Washington County.

The local Metropolitan Planning Organization (MPO) which is called the Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO) is now charged with establishing a proactive public involvement process which provides a reasonable opportunity for review and comment before taking action on a conformity determination for all transportation plans consistent with the requirements of 23 CFR section 450.316(b). The MDE will be an active participant in this process. The addition of the HEPMPO interagency process will be codified in the revised Maryland conformity regulations under COMAR 26.11.26 (Appendix A).

Under this SIP revision Maryland also commits meeting EPA requirements to complete carbon monoxide (CO) and fine particulate (PM 2.5) hotspot analyses for applicable transportation projects. Maryland also commits through the nonattainment areas MPOs to identify mitigation measures not specifically addressed in a Transportation Improvement Program (TIP) or Plan in accordance with 40 CFR Part 93.122, 842.

### ***References and Guidance***

This document references Maryland SIP #03-02, and uses guidance issued by EPA, FHWA, FTA, and USDOT on hotspot analyses and SAFETEA-LU conformity provisions. Additional guidance was found in Section 7 of EPA's February 2006 document, *Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*, and Section 6011 of the SAFETEA-LU Act itself, which deals with transportation conformity.

## **Introduction and Background**

The purpose of this document is to revise the Maryland conformity SIP in accordance with the new requirements of SAFETEA-LU, an updated federal law.

### **What is a SIP?**

The State Implementation Plan (SIP) is a plan for each State which identifies how that State will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) set forth in section 109 of the Clean Air Act ("the Act") and 40 Code of Federal Regulations 50.4 through 50.12 and which includes federally-enforceable requirements. Each State is required to have a SIP which contains control measures and strategies which demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The Clean Air Act requires EPA to review each plan and any plan revisions and to approve the plan or plan revisions if consistent with the Clean Air Act.

SIP requirements applicable to all areas are provided in section 110 of the Act. Part D of Title I of the Act specifies additional requirements applicable to nonattainment areas. Section 110 and part D describe the elements of a SIP and include, among other things, emission inventories, a monitoring network, an air quality analysis, modeling, attainment demonstrations, enforcement mechanisms, and regulations which have been adopted by the State to attain or maintain NAAQS. EPA has adopted regulatory requirements which spell out the procedures for preparing, adopting and submitting SIPs and SIP revisions that are codified in 40 CFR part 51. EPA's action on each State's SIP is promulgated in 40 CFR part 52.

The contents of a typical SIP fall into several categories: (1) State-adopted control measures which consists of either rules/regulations or source-specific requirements (e.g., orders and consent decrees); (2) State-submitted comprehensive air quality plans, such as attainment plans, maintenance plans rate of progress plans, and transportation control plans demonstrating how these state regulatory and source-specific controls, in conjunction with federal programs, will bring and/or keep air quality in compliance with federal air quality standards; (3) State- submitted "non-regulatory" requirements, such as emission inventories, small business compliance assistance programs; statutes demonstrating legal authority, monitoring networks, etc.); and (4) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

### **What is SAFETEA-LU?**

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The act guarantees funding for highways, highway safety, and public transportation. SAFETEA-LU builds on two prior transportation bills - the Intermodal Surface Transportation

Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). The act also revises several rules regarding transportation conformity.

**What is Transportation Conformity?**

Transportation conformity ("conformity") is a provision of the Clean Air Act that ensures that Federal funding and approval goes to those transportation activities that are consistent with air quality goals. Conformity applies to transportation plans and projects funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or nitrogen dioxide.

## **Maryland Interagency Consultation**

The transportation conformity rule, 40 CFR Section 93.105, requires that the State Implementation Plan (SIP) address how the principle agencies involved in the development of state implementation plans and the principle agencies involved in the continuing transportation planning process will consult with each other to reach consensus on important issues.

COMAR 26.11.26, which has been included as Appendix A in this SIP document, has been revised to incorporate the changes in the federal conformity rule which were published in the SAFETEA-LU act on August 10, 2005. The primary purpose of the federal amendment is to streamline the administrative procedures and provide greater flexibility in the existing transportation conformity regulation.

COMAR 26.11.26 has also been amended to provide a legal platform for the various consultation procedures that have been developed between the Maryland Department of the Environment (MDE), Maryland Department of Transportation (MDOT), and Metropolitan Planning Organizations (MPOs). The recent revisions to the federal rule to reduce the administrative complexity of the rule allow many decisions to be made through the interagency consultation process. The revisions to COMAR 26.11.26 give state and local governments increased flexibility to set performance measures used to determine conformity, develop the SIP, and handle unique planning situations in a manner beneficial to the environment and economic development. The general regulatory platform of COMAR 26.11.26.03 allows consultation to occur through a variety of processes. These processes are tailored to fit the resources and planning style of the area.

In 2004 EPA designated Washington County as nonattainment for PM<sub>2.5</sub>, thus making a transportation conformity determination required for this pollutant in that nonattainment area. The local Metropolitan Planning Organization (MPO) which is called the Hagerstown/ Eastern Panhandle Metropolitan Planning Organization (HEPMPO) will establish a proactive public involvement process which provides a reasonable opportunity for review and comment before taking action on a conformity determination for all transportation plans and TIPs consistent with the requirements of 23 CFR section 450.316(b). MDE will be very involved in this process and MDE commits to working with the HEPMPO on all PM<sub>2.5</sub> conformity issues. MDE has formally added the HEPMPO interagency consultation process to Maryland's Conformity regulation (see appendix A).

## **Maryland Commitments: New SAFETEA-LU Requirements**

Upon the passage of SAFETEA-LU, changes were made to the transportation conformity process. The major changes reflected in this SIP revision are commitments to identify and support emission control measures that are not specifically identified in a TIP or plan and a requirement to make an analysis of potential PM<sub>2.5</sub> hotspots at transportation projects.

### **Substitution of Transportation Control Measures**

The SAFETEA-LU Act provides for substitution of transportation control measures (TCMs) as an amendment to Section 176(c) of the Clean Air Act (42 U.S.C. 7506 (c)). 40 CFR, Section 93.122(a)(4)(ii) which requires commitments for control measures not included in a TIP or Plan.

An example of a commitment not included in a TIP or Plan would be a school bus retrofit project not being funded by FHWA or FTA, but is still being used for emission reduction credit in a conformity determination. Evidence needs to be identified that such a measure has adequate funding, personnel and authority for implementation, monitoring and enforcement.

Maryland, in accordance with the requirements of 40 CFR Part 93.122, 842 commits to meeting this specific requirement of SAFETEA-LU.

### **PM<sub>2.5</sub> and CO Hotspots**

This provision applies to fine particulate (PM 2.5) hot spots and Carbon Monoxide (CO) and to project level conformity determinations only (in accordance with 40 CFR Part 93.125(a)), not to regional conformity determinations. EPA's *Transportation Conformity Guidance for Qualitative Hot-spot Analysis in PM 2.5 and PM 10 Nonattainment and Maintenance Areas* describes how to conduct PM 2.5 hot-spot analyses for "projects of air quality concern", as defined in 40 CFR 93.123(b)(1).

The final rule establishing transportation conformity criteria and procedures for determining which transportation projects must be analyzed for local air quality impacts in Particulate Matter (PM) 2.5 nonattainment and maintenance areas was published by EPA on March 10, 2006 (40 CFR 93.123(b)(1)). The EPA recommends under this final rule that an analysis be performed on potential PM<sub>2.5</sub> hotspots for "projects of air quality concern" defined as projects which have a value of 8% or more projected annual average daily traffic comprised of diesel trucks.

Maryland commits to meeting the requirements of the EPA hotspot rule(s) for PM<sub>2.5</sub> and CO.

# **Appendix A**