

# Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)

# Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)

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Office of Transportation and Air Quality  
U.S. Environmental Protection Agency



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## **Section 1: Introduction**

### 1.1 What is the purpose of this guidance document?

This document provides guidance on the statutory and regulatory requirements for states to develop conformity state implementation plans (conformity SIPs). A conformity SIP includes a state's specific criteria and procedures for certain aspects of the transportation conformity process. Where EPA has approved a state's conformity SIP, the approved conformity SIP governs conformity determinations instead of the federal transportation conformity regulations (or conformity rule), for those aspects of the rule that it addresses and that are applicable.

Clean Air Act section 176(c) is the statutory authority for transportation conformity (42 U.S.C. 7506(c)). This section of the Clean Air Act was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Public Law 109-59). Among the changes Congress made to this section of the Clean Air Act was to streamline the requirements for state conformity SIPs. Subsequently, EPA published a final rule on January 24, 2008 to update the requirements for conformity SIPs as well as the other Clean Air Act provisions amended by Congress (73 FR 4420).

This guidance document describes the new requirements for conformity SIPs, so that state and local agencies can prepare an approvable conformity SIP. This guidance document also covers what requirements apply for conformity determinations that occur before and after conformity SIPs are approved.

This guidance supersedes EPA's November 2004 conformity SIP guidance<sup>1</sup> and the portion of the February 2006 interim SAFETEA-LU guidance<sup>2</sup> related to conformity SIPs.

### 1.2 What is transportation conformity?

Transportation conformity ensures that federally supported transportation activities are consistent with ("conform to") the purpose of the SIP. Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards").

Transportation conformity applies under EPA's conformity regulations<sup>3</sup> in nonattainment and maintenance areas for the following transportation-related criteria pollutants: ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>).

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<sup>1</sup> Conformity SIP Guidance, EPA420-B-04-017, November 2004.

<sup>2</sup> Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), EPA420-B-06-901, February 2006.

<sup>3</sup> 40 CFR Part 51, Subpart T and Part 93, Subpart A

EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

### 1.3 In what part of the regulations is the requirement for conformity SIPs found?

The regulations that explain the requirements for a conformity SIP are found at 40 CFR 51.390. This portion of the conformity regulation was updated in a final rule published on January 24, 2008 (73 FR 4420).

### 1.4 What is a conformity SIP and how does it differ from other types of SIPs?

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 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). Additional information is provided in Section 4 for developing or revising a MOU/MOA or a state rule. In general, once approved, the conformity SIP governs the conformity process instead of the federal conformity rule for any provisions included in the conformity SIP.

### 1.5 What agencies are typically involved in the development of a conformity SIP?

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 air agency is the lead on conformity SIP development; although in limited cases MPOs or local air agencies play this role.

### 1.6 How is this guidance document organized?

The remaining parts of this guidance cover:

- Section 2: General Requirements for Developing a Conformity SIP: This section provides general information regarding what is required to be included in a conformity SIP and when conformity SIPs are due.
- Section 3: Applicability of Federal Regulations and Conformity SIPs in Conformity Determinations: This section outlines what requirements apply for conformity determinations that occur before and after a conformity SIP is approved.
- Section 4: Specific Requirements For Developing a Conformity SIP Submission: This section provides specific details for developing and submitting a new or revised conformity SIP.
- Appendices: This section provides a checklist to assist in preparing and reviewing a conformity SIP and model conformity SIP language. The Checklist (Appendix A) and Model Rule (Appendix B) are available for downloading at <http://www.epa.gov/otaq/stateresources/transconf/policy.htm#sips>

### 1.7 Who can I contact and where can I find more information about conformity SIPs?

For specific questions concerning a particular conformity SIP, please contact the SIP or transportation conformity staff person responsible for your state at the appropriate EPA Regional Office. A listing of EPA Regional Offices, the states they cover, and contact information for EPA regional conformity staff can be found on EPA's website at the following address: [www.epa.gov/otaq/stateresources/transconf/contacts.htm](http://www.epa.gov/otaq/stateresources/transconf/contacts.htm).

General questions about this guidance can be directed to:

Astrid Larsen at EPA's Office of Transportation and Air Quality,  
[larsen.astrid@epa.gov](mailto:larsen.astrid@epa.gov) or 734-214-4812.

Additional information regarding the transportation conformity rule and associated guidance can be found on EPA's website at: [www.epa.gov/otaq/stateresources/transconf/index.htm](http://www.epa.gov/otaq/stateresources/transconf/index.htm).

### 1.8 Does this guidance create new requirements?

No, this guidance is based on Clean Air Act transportation conformity requirements, as amended by SAFETEA-LU, and existing associated regulations and does not create any new requirements. This guidance merely explains how to implement the new Clean Air Act conformity SIP-related provisions.

The statutory provisions and the resulting EPA regulations described in this document contain legally binding requirements. This document is not a substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, DOT, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance, but still comply with the statute and conformity regulations. Any decisions regarding a particular conformity SIP will be made based on the statute and regulations, after appropriate public input and rulemaking procedures, where applicable. This guidance may be revised periodically without public notice.

## **Section 2: General Requirements for Developing a Conformity SIP**

### 2.1 What must a conformity SIP contain?

Clean Air Act section 176(c)(4)(E), as amended by SAFETEA-LU (August 2005), significantly streamlined the requirements for state conformity SIPs. Prior to SAFETEA-LU's amendments to the Clean Air Act, states were required to address all of the federal transportation conformity regulations provisions in their conformity SIPs. Most of the sections of the federal rule were previously required to be copied verbatim from the federal rule into a state's conformity SIP.

Clean Air Act section 176(c)(4)(E) and section 51.390(b) of the conformity rule now require states to submit conformity SIPs that address only the following provisions of the federal conformity rule:

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

These provisions must be tailored to a state's individual circumstances, rather than including the federal conformity rule section verbatim. Section 4 and Appendix B contain additional information and examples of language that can be used to develop a state's conformity SIP.

### 2.2 Can states include other conformity provisions in their conformity SIP on a voluntary basis?

Yes, the current Clean Air Act and the conformity rule allow states to include additional provisions beyond the three mentioned in Question 2.1. Section 51.390(b) provides that, "A state may elect to include any other provisions of part 93, subpart A." However, as discussed in the January 24, 2008 final rule, EPA strongly encourages states to only include the three required provisions in a conformity SIP to take advantage of the streamlining flexibilities provided by the Clean Air Act, as amended by SAFETEA-LU. The new requirements will reduce the administrative burden for state and local agencies significantly, because the new requirements will minimize the possibility of having to revise the conformity SIP each time the federal rule is revised (73 FR 4430-4432).

Any interested state and local agencies should consult with their EPA Regional Office to discuss the process and potential impacts of developing a conformity SIP that includes more than the required provisions. Additional details for developing such a SIP are included in Section 4 of this guidance document.

### 2.3 When are conformity SIPs due?

Section 51.390(c) of the conformity rule explains when states are required to submit a new or revised conformity SIP. A conformity SIP must be submitted:

- by November 25, 1994 or within 12 months of an area's nonattainment designation if the state has not previously submitted one;
- within 12 months of the publication date of any final amendments to 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c);
- within 12 months of the publication date of any other final conformity amendments if a state's conformity SIP includes the provisions of such final amendments.

EPA discussed conformity SIP deadlines in the preamble to its January 2008 final rule (73 FR 4432).

Once a state has an approved conformity SIP that addresses only the three required sections, the state would need to revise its conformity SIP only if EPA substantively changes one of these three sections of the conformity rule, or the state chooses to revise one of these three provisions. Any future changes to the federal conformity rules that do not affect these three provisions would apply immediately in any state that has only the three provisions in its approved conformity SIP, and such changes would not need to be adopted into the state's SIP to be applicable.

### 2.4 Does the Clean Air Act, as amended by SAFETEA-LU, create any new conformity SIP deadlines to submit a conformity SIP?

No, these amendments to the Clean Air Act did not create any new deadlines for conformity SIPs. See Question 2.3 for further information regarding when conformity SIPs must be submitted to EPA.

### 2.5 How should states proceed if a conformity SIP was never submitted to EPA in the past?

States that have never submitted a conformity SIP are required to address only the three provisions noted above in Question 2.1.

### 2.6 How should states proceed if a conformity SIP was submitted in the past that was never approved?

In some cases, states have submitted conformity SIPs to EPA for approval, but EPA has not yet acted on them. Such a situation can occur when a state submits a conformity SIP that becomes outdated prior to EPA approval. For example, a state's conformity SIP can become outdated when a new rulemaking is promulgated or a court decision is issued and the conformity SIP does not reflect the latest revised requirements. EPA can only approve a conformity SIP provision that addresses the requirements of the Clean Air Act and EPA's transportation conformity regulations that are in place at the time of EPA's approval.

In cases where a state has submitted a conformity SIP to EPA that EPA has not approved, states can send a letter to 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 submitted conformity SIP. Alternatively, the state could send a letter to its EPA Regional Office requesting to withdraw the entire submission (73 FR 4431, January 24, 2008). The state would then submit a new conformity SIP consistent with the current Clean Air Act and transportation conformity regulations.

States should work closely with their EPA Regional Office when requesting action on or withdrawing a previous conformity SIP submission.

### 2.7 How should states update previously approved conformity SIPs?

States with EPA-approved conformity SIPs that decide to eliminate the provisions that are no longer mandatory would need to revise the SIP to eliminate those provisions (73 FR 4431, January 24, 2008). EPA will consider using either parallel processing (when requested by the state) or direct final approval to expedite the approval of such conformity SIP revisions. Such a conformity SIP revision should not be controversial because the provisions are no longer required by the current Clean Air Act. In addition, their elimination from a state's conformity SIP should not change conformity's implementation in practice, because the federal conformity rule applies for any provision not addressed in a state's conformity SIP.

States may also need to revise an approved conformity SIP that includes provisions that are now outdated (e.g., if EPA promulgated a final rule that substantively revised the federal conformity rule provisions on which a conformity SIP is based).

States are encouraged to work with their EPA Regional Office as early in the process as possible to ensure the conformity SIP submission meets all requirements and is fully approvable.

### 2.8 What are the format options for adopting a conformity SIP and what are the requirements of each?

A conformity SIP can be adopted as a state rule, as a memorandum of understanding (MOU), or memorandum of agreement (MOA). See Section 4 for additional information for developing or revising conformity SIPs, either as an MOA/MOU or state rule. The appropriate form of the state conformity procedures depends upon the requirements of local or state law, as long as the selected form complies with all Clean Air Act requirements for adoption, submission to EPA, and implementation of SIPs. EPA will accept state conformity SIPs in any form provided the state can demonstrate to EPA's satisfaction that, as a matter of state law, the state has adequate authority to compel compliance with the requirements of the conformity SIP (58 FR 62209-62209, November 24, 1993).

A state can use an MOU or MOA for its conformity SIP if such a memorandum meets the following requirements:

1. it is fully enforceable under state law against all parties involved in interagency consultation and in approving, adopting and implementing transportation plans, TIPs, or transportation projects;
2. the state submits it to EPA for inclusion into the SIP; and,
3. it has been signed by all agencies that are covered by the conformity rule, including federal agencies and the recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws (see the definition in 40 CFR 93.101). For example, MOU/MOA signers would include MPOs, local and state air agencies, state DOTs, transit agencies, FHWA, FTA, and EPA, and all current recipients of title 23 U.S.C. or the Federal Transit Laws funds (as defined under 40 CFR 93.101).

If the conformity SIP is in the form of a state rule, then any new agencies not previously covered by the conformity rule are automatically covered by the rule. This could happen if an area that has never been subject to conformity before were to become a newly designated nonattainment area. In such a case, there would be agencies in that area that are new to the interagency consultation process.

For a conformity SIP in the form of an MOU/MOA, the MOU must provide that the signatories will require new federal funding recipients to sign the MOU/MOA.

### **Section 3: Applicability of Federal Regulations and Conformity SIPs in Conformity Determinations**

This section outlines the general applicability of conformity criteria and procedures in areas with and without approved conformity SIPs. Questions 3.1 and 3.2 cover the general requirements, while Question 3.3 covers the exception to these general requirements.

#### 3.1 What criteria and procedures apply for conformity determinations in the absence of an approved state conformity SIP?

States without an approved conformity SIP must meet Clean Air Act section 176(c) requirements when performing transportation plan, TIP and project-level conformity determinations. Transportation conformity determinations must meet the conformity rule provisions found in 40 CFR 51.390(a), which states:

The federal conformity rules under part 93, subpart A, of this chapter, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of the Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart...The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA.

For example, areas without any approved conformity SIP provisions are required to follow all of the relevant provisions of the conformity rule. Similarly, in states with approved conformity SIPs that address only the three provisions now required, (i.e., §§93.105, 93.122(a)(4)(ii), and 93.125(c)), conformity must be determined according to all of the relevant provisions of the conformity rule, and the requirements for consultation and written commitments governed by the state's conformity SIP.

Please see Question 3.2 for more information regarding areas with approved conformity SIPs. There can also be exceptions to this general case where neither the federal conformity rule nor an approved conformity SIP provisions apply; see Question 3.3 below for further information.

#### 3.2 What criteria and procedures apply for conformity determinations when a state has an approved conformity SIP?

Conformity determinations must meet any provisions in an EPA-approved conformity SIP that are consistent with section 176(c) of the Clean Air Act, even if the conformity SIP provisions are different than those in the conformity rule. Section 40 CFR 51.390(a) states that, "any previously applicable implementation plan conformity requirements remain enforceable until the state submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA." Therefore, states whose conformity SIPs address provisions that are still consistent with the statute but that have subsequently been updated in the conformity

rule cannot take advantage of EPA's updated regulations unless and until the state revises its conformity SIP and EPA approves it.

For example, some areas may have approved conformity SIPs that include outdated versions of the PM<sub>10</sub> hot-spot requirements. If an approved conformity SIP includes the PM<sub>10</sub> hot-spot provisions prior to those promulgated in the March 10, 2006 final rule, then all project-level conformity determinations must include a PM<sub>10</sub> hot-spot analysis (71 FR 12468). In contrast, the federal conformity rule now requires only some project-level conformity determinations in PM<sub>10</sub> areas to include hot-spot analyses (40 CFR 93.123(b)).

This example illustrates the advantages to updating any previously approved conformity SIPs, to ensure that conformity rule changes apply upon EPA's promulgation. The interagency consultation process should be used to determine what requirements apply for conformity determinations in states with approved conformity SIPs.

Please note there are cases where neither the conformity rule nor approved conformity SIP provisions apply. See Question 3.3 for further information.

### 3.3 What criteria and procedures apply for conformity determinations when there are changes in statutes and court decisions?

Conformity determinations must be consistent with section 176(c) of the Clean Air Act. There have been cases where certain provisions of the federal conformity rule and approved conformity SIP provisions have become outdated, either because Congress amended the Clean Air Act or a federal court issued a decision that vacated a federal conformity rule provision. In such cases, the affected federal conformity rule provision(s) or the affected approved state conformity SIP provision(s) no longer apply. When these cases occur, conformity determinations must meet any new or revised requirements, which are usually described by interim federal guidance issued prior to a conformity rule revision. Once EPA updates the conformity rule to reflect such changes, the revised conformity rule applies immediately upon its effective date.

For example, when the Clean Air Act was amended by SAFETEA-LU in August 2005, the required frequency for transportation plan and TIP conformity determinations was changed from every three years to every four years. Therefore, the provisions in the conformity rule and in any approved conformity SIPs that required conformity of transportation plans and TIPs every three years no longer applied. EPA and DOT issued interim guidance<sup>4</sup> to ensure that conformity determinations would be consistent with the statutory changes prior to EPA's January 2008 final rule (73 FR 4420). The revised four-year frequency of conformity determinations for transportation plans and TIPs applied in all nonattainment and maintenance areas upon SAFETEA-LU's enactment in August 2005, even in areas with approved conformity SIPs that included outdated provisions. In this case, a conformity SIP revision is not required prior to the application of the new frequency requirement.

### 3.4 How can I find out what conformity criteria and procedures apply in my area?

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<sup>4</sup> Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), EPA420-B-06-901, February 2006.

To find out if an approved conformity SIP already applies in your area, please contact the transportation conformity staff person at the appropriate EPA Regional Office. A list of these regional transportation conformity staff and their contact information can be found at the following website: [Regional Contacts](#) | [State & Local Transportation Resources](#) | [US EPA](#).

## Section 4: Specific Requirements for Developing a Conformity SIP

As described in Question 2.1, section 51.390(b) of the conformity rule requires states to submit conformity SIPs that address the following provisions of the conformity rule:

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

This section covers how to address these specific requirements within a conformity SIP submission. Appendix A includes a checklist for developing a conformity SIP and Appendix B contains a model conformity rule.

### 4.1 How should a state include the three required provisions in a conformity SIP?

To assist states with developing a conformity SIP, EPA has provided suggested language, in the form of a Model Rule, to meet the requirements of 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) in Appendix B. While the Appendix is presented in the order of the conformity rule, states are not bound by this order and are free to rearrange the requirements to best suit their needs.

Consultation procedures that fulfill 40 CFR 93.105 will make up the majority of a state's conformity SIP. Once approved by EPA, the conformity SIP will guide a nonattainment or maintenance area's future consultation for conformity determinations. Because of the importance of the consultation process and the number of conformity rule provisions required by 40 CFR 93.105, the state should carefully prepare this portion of the conformity SIP to ensure that all the requirements are covered and organized in a logical fashion.

### 4.2 Can a conformity SIP be prepared by repeating section 93.105 of the federal rule verbatim or by incorporating this section of the conformity rule by reference?

No, a conformity SIP that repeats 40 CFR 93.105 verbatim or incorporates this provision by reference would not meet statutory and regulatory requirements. Section 93.105 only describes what must be included in the conformity SIP and does not contain specific criteria and procedures that states would need to adopt to meet the consultation requirements, as required by the Clean Air Act. In addition, such a conformity SIP would not be practical, since creating a specific interagency consultation process is one of the primary purposes of developing a conformity SIP.

4.3 How should a state include more provisions in their conformity SIP from 40 CFR part 93 if desired?

States may include additional transportation conformity provisions in their conformity SIP on a voluntary basis, as described in Question 2.2. If they do so, the provisions must be adopted verbatim. This requirement is found in the conformity rule at 40 CFR 51.390(b), “A state may elect to include any other provisions of part 93, subpart A....such provisions must be included in verbatim form, except insofar as needed to clarify or give effect to a stated intent...”

4.4 If a state has prepared its conformity SIP by incorporating the conformity rule into the conformity SIP by reference rather than repeating the rule verbatim, do the changes made to the federal rule automatically apply in that state, or does the state still have to update the conformity SIP to take advantage of changes to the federal rule?

The answer depends on what the conformity SIP indicates:

- If a state incorporates the conformity rule into its conformity SIP by reference, it may have incorporated the conformity rule that existed as of the date of the incorporation. If so, subsequent updates to the conformity rule do not automatically apply and a revision to the conformity SIP must be submitted within 12 months of the effective date of a change to the conformity rule.
- However, a conformity SIP that incorporates the conformity rule by reference could also indicate that it also incorporates by reference any future changes made to the conformity, although this is rare. In this case, the conformity SIP does not need to be revised when the conformity rule is updated.

If your state has an approved conformity SIP that incorporates the conformity rule by reference, and you are unsure about whether the conformity SIP includes the latest conformity rule provisions, please consult with your EPA Regional Office (see Question 1.7 for contact information).

4.5 Can a conformity SIP include provisions that are more stringent than the federal conformity rule?

Yes, states can include criteria and procedures in their conformity SIPs that are more stringent than the conformity rule as long as they apply equally to federal and non-federal entities, pursuant to 40 CFR 51.390(b) (see also 58 FR 62209).

4.6 How should conformity SIPs address any agency, such as an MPO, that covers portions of more than one state?

Special consultation provisions need to be included in a conformity SIP when it covers an MPO whose jurisdiction covers parts of more than one state. In these cases, it is important that MPOs can follow similar conformity procedures in the different states, since each conformity SIP applies only within each own state. For example, in multi-state nonattainment and maintenance

areas where the states work together to make conformity determinations, it is necessary for consultation procedures to be substantially similar in each state's portion of the area. In these cases, EPA recommends that the interagency consultation process be used to develop similar consultation procedures that each state would then include in its own conformity SIP. Such states may also want to consider additional provisions for dealing with interstate conflicts (40 CFR 93.105(d)), to ensure that an appropriate process is in place if necessary.

4.7 If a state has a conformity SIP that refers to general types of agencies (e.g., MPOs) rather than specific agencies (e.g., an MPO for a specific area), do the provisions of the conformity SIP apply for new or expanded nonattainment areas?

The answer depends on the wording of the conformity SIP itself. If the SIP's wording could be interpreted to include expanded or new nonattainment areas in the state, the provisions of the conformity SIP would apply to these areas. However, if the conformity SIP includes wording that limits its applicability to particular areas, then it may not apply to new or expanded areas. If your state has an approved conformity SIP and you are unsure whether it applies to your particular area, please consult with your EPA Regional Office (see Question 1.7 for contact information).

4.8 When in the process does EPA, FHWA, or FTA sign an MOU or MOA?

The EPA Regional Administrator, FHWA, and FTA would sign an MOU/MOA before it is endorsed by the governor and submitted to EPA as part of the SIP. EPA, FHWA, and FTA cannot sign the MOU after it is submitted to EPA because these agencies cannot amend a submitted SIP.

4.9 If a state wants to revise its MOU/MOA, must it be done through the SIP process, or can the state and other agencies revise the MOU/MOA through the interagency consultation process?

An MOU/MOA revision would have to be approved through the SIP process because the MOU/MOA is part of the SIP.

4.10 How does a state develop a new conformity SIP or revise an existing conformity SIP, whether done via an MOU/MOA or state rule?

To develop a new conformity SIP or revise an existing conformity SIP, either as a state rule or MOU/MOA, the process is generally the same for either format (state rule or MOU/MOA):

Step 1: The conformity SIP is developed or revised through consultation of the interagency workgroup at the state and/or local level.

Step 2: The state holds a public comment period on the document.

Step 3: The document is submitted to EPA as a SIP revision.

Step 4: Once at the EPA, the submission would then continue through the usual SIP process for approval/disapproval.

The difference between a state rule versus an MOU/MOA is that after the revision is prepared, a conformity SIP developed as a state rule has to go through a state's regulatory process and be adopted. In contrast, a conformity SIP revision prepared as an MOU/MOA requires signatures from all the relevant parties before it is submitted to EPA.

Before a state decides to use the MOU/MOA format, the state must determine if the state has the legal authority to use this method, as described in Question 2.8.

**APPENDICES**

The Checklist for Developing a Conformity SIP (Appendix A) and Conformity Model Rule (Appendix B) are available for downloading at

<http://www.epa.gov/otaq/stateresources/transconf/policy.htm#sips>

**Appendix A: Checklist for Developing a Conformity SIP**

This checklist is intended to guide state and local agencies as they develop their conformity SIPs; this checklist does not replace existing statutory or regulatory requirements. Within each section of the checklist, the requirements are shown in the left-hand column. The right-hand column can be used to record the locations in the consultation and conformity SIP that address the required elements.

<b>INTERAGENCY CONSULTATION</b>	
<b>GENERAL:</b> [93.105(a)]. A conformity SIP shall include procedures for interagency consultation, conflict resolution, and public consultation. EPA encourages development of “extensive, effective consultation procedures that will resolve problems as early in the process as possible.” 58 FR 62188 at 62201, November 24, 1993. The procedures must be written in a manner that gives them full legal effect. 40 CFR 51.390.	
Consultation is required on the development of the regional transportation plan (RTP), the transportation improvement program (TIP), on conformity determinations, and on the development of state implementation plan (SIP) revisions that affect transportation. [93.105(a)(1)].	
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 specific processes for interagency consultation. [93.105(a)(2)]	
<b>INTERAGENCY CONSULTATION PROCEDURES: GENERAL FACTORS</b> [93.105(b)]. States shall provide well defined consultation procedures in the implementation plan. Organizations with responsibilities for developing, submitting or implementing provisions of an implementation plan (including MPOs, State and local air quality planning agencies, and State and local transportation agencies) must consult with each other with and local or regional offices of EPA, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).	
The interagency consultation procedures must include, at a minimum, the following general factors:	
procedures that require that agencies consult on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations [93.105(b)(1)];	

the roles and responsibilities of each agency at each stage in the SIP development process and the transportation planning process, including technical meetings [93.105(b)(2)(i)];	
the organizational level of regular consultation <sup>5</sup> [93.105(b)(2)(ii)];	
a process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication [93.105(b)(2)(iii)];	
the frequency of, or process for convening, consultation meetings and responsibility for establishing meeting agendas [93.105(b)(2)(iv)];	
a process for responding to significant comments of involved agencies [93.105(b)(2)(v)]; and	
a process for the development of a list of the transportation control measures (TCMs) that are in the applicable implementation plan [93.105(b)(2)(vi)].	
<b>SPECIFIC PROCESSES</b> Interagency consultation procedures shall include the specific processes listed below [93.105(c)]:	
A process involving at least the MPO(s), State and local air quality planning and transportation agencies, EPA, and the Department of Transportation (DOT) for the following [93.105(c)(1)]:	
Evaluating and choosing models and associated methods and assumptions for hot-spot and regional emissions analyses [93.105(c)(1)(i)];	
Determining which minor arterials and other projects are “regionally significant” <sup>6</sup> for the regional emissions analysis (in addition to those functionally classified as principal arterials or higher or fixed guide way systems or extensions that offer an alternative to regional highway travel) [93.105(c)(1)(ii)];	
Determining which projects should be considered to have a significant change in design concept and scope from the RTP or TIP [93.105(c)(1)(ii)];	
Evaluating whether otherwise exempt projects (see 93.126 and 93.127) should be treated as non-exempt where adverse impacts are possible for any reason [93.105(c)(1)(iii)];	
Determining whether past obstacles to implementation of transportation control measures (TCMs) in approved SIPs have been identified and are being overcome (for TCMs behind SIP schedules) [93.105(c)(1)(iv); 93.113(c)(1)];	

<sup>5</sup> Generally, interagency consultation procedures should include information such as the organizational level and procedures for the people who schedule, lead, and attend meetings.

<sup>6</sup> This is in addition to the projects required to be included by application of the definition of “regionally significant project” in 40 CFR 93.101.

	Determining whether State and local agencies are giving maximum priority to approval and funding for TCMs in approved SIPs [93.105(c)(1)(iv)];	
	Determining whether delays in the implementation of approved SIP TCMs necessitate revisions to the SIP to remove or substitute such TCMs or other emission reduction measures [93.105(c)(1)(iv)];	
	Notification of transportation plan and TIP amendments which only add or delete exempt projects listed in 93.126 and 93.127 [93.105(c)(1)(v)]; and	
	Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 93.109(l)(2)(iii) [93.105(c)(1)(vi)].	
A process involving at least the MPO and State and local air and transportation agencies for [93.105(c)(2)]:		
	Evaluating events that will trigger new conformity determinations in addition to those required by 93.104 [93.105(c)(2)(i)]; and	
	Consulting on emissions analysis for transportation activities which cross borders of MPOs, nonattainment areas or air basins [93.105(c)(2)(ii)].	
Where the metropolitan planning area does not include the entire nonattainment or maintenance area, procedures must specify a process involving the MPO and the State DOT for cooperative planning and analysis for determining conformity of projects outside the metropolitan area and within the nonattainment or maintenance area [93.105(c)(3)].		
Specifies a process to ensure disclosure of plans for regionally significant non-FHWA/FTA projects (including projects for which alternatives are still being considered) to the MPO on a regular basis, and immediate disclosure of any changes to those plans [93.105(c)(4)].		
Provides a process involving the MPO and other federal funds recipients for assuming project location and design concept/scope where these features not adequately defined for regional emissions analysis [93.105(c)(5)].		
Specifies a process for consulting on design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO [93.105(c)(6)].		
Specifies a process for providing final documents and supporting information to each agency (including federal agencies) after approval or adoption [93.105(c)(7)].		
<b>RESOLVING CONFLICTS [93.105(d)].</b>		
The process for resolving conflicts must specify that:		
	Unresolvable conflicts among state agencies or between state	

	agencies and an MPO shall be escalated to the Governor or Governor's designee (designee can not be the State or local air agency, State department of transportation, State transportation commission or board, or an MPO) [93.105(d)];	
	The State air agency has 14 calendar days (the implementation plan should define the procedures for starting the 14-day clock) 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 [93.105(d)]; and	
	If the State air agency appeals to the Governor, the final conformity determination must have Governor's concurrence. If there is no appeal, the MPO or state DOT may proceed with the final conformity determination [93.105(d)].	
<p><b>PUBLIC CONSULTATION PROCEDURES.</b> Affected agencies<sup>7</sup> making conformity determinations on transportation plans, TIPs, and projects shall establish a proactive public involvement process [93.105(e)]. This general requirement can be satisfied by referencing the MPO's procedures,<sup>8</sup> in addition to specifying or referencing the additional items listed below.</p>		
<p>Consultation procedures must set out a public process that, at a minimum:</p>		
	Provides for 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 transportation plan or TIP conformity determination, consistent with 93.105 and 23 CFR 450.316(a) [93.105(e)];	
	Ensures that any charges imposed for public inspection or copying are reasonable [49 CFR 7.43, 93.105(e)];	
	Provides that agencies must specifically address in writing all public comments that plans for regionally significant non-FHWA/FTA projects are not properly reflected in the emissions analysis [93.105(e)]; and	
	Provides opportunity for public involvement in project conformity determinations as otherwise required by law [93.105(e)].	

<sup>7</sup> Interagency consultation portions of transportation conformity SIPs should define the "affected agencies" that are responsible for fulfilling 40 CFR 93.105(e) requirements.

<sup>8</sup> The specific requirements and criteria for MPO public involvement are set forth at 23 CFR 450.316(a). Under these requirements, MPOs are directed to periodically review their public involvement process to assure that full and open access is provided to MPO decision-making processes (see 23 CFR 450.316(a)(1)(x)). Public involvement provisions are reviewed in the context of certification or planning reviews, which are conducted by FHWA and FTA under 23 CFR 450.334(b) no less often than once every four years for certain MPOs.

<p><b>OTHER CONFORMITY PROCEDURES:</b> Under Clean Air Act, as amended by SAFETEA-LU, conformity SIPs must also include conformity procedures that address 40 CFR 93.122(a)(4)(ii) and 93.125(c). All other federal conformity regulations apply automatically and states are not required to address them in conformity SIPs.</p>	
<p><b>ENFORCEABLE WRITTEN COMMITMENTS REQUIRED FOR EMISSIONS REDUCTION CREDIT:</b> Emissions reduction credit from any control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities [93.122(a)(4)(ii)].</p>	
<p>Language addressing 93.122(a)(4)(ii) should include, at a minimum, the following:</p>	
<p>In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the Transportation Plan or TIP, <i>[insert MPO name]</i> will not include emissions reduction credits from any control measures that are not included in the Transportation Plan or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless <i>[insert MPO name]</i> or FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities [93.122(a)(4)(ii)].</p>	
<p><b>ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:</b> Before a conformity determination is made, written commitments must be obtained for any project-level mitigation or control measures. [93.125(c)]</p>	
<p>Language addressing 93.125(c) should include, at a minimum, the following:</p>	
<p>In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the Transportation Plan or TIP, <i>[insert MPO name]</i> will ensure any project-level mitigation or control measures are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis. Prior to making a project-level conformity determination, written commitments will be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis.</p>	

## Appendix B: Conformity Model Rule<sup>9</sup>

### CONFORMITY TO STATE IMPLEMENTATION PLANS (SIPs) OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS

#### I. Introduction

The purpose of this state rule is to fulfill the requirement in 40 CFR 51.390(b) to establish a SIP revision that includes the following three sections of the federal transportation conformity rule:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization's (MPO's) transportation plan and transportation improvement program (TIP); and that such a commitment be fulfilled; and
- 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

Once this state rule is approved by EPA into the [*name of state*] implementation plan, it has full legal effect. Conformity determinations will be governed by these criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by the state rule.

#### II. Consultation

##### (a) General.

This rule provides procedures for federal, state, and local interagency consultation, public consultation and resolution of conflicts. Such consultation procedures shall be undertaken by MPOs, the State department of transportation, other local transportation agencies, 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, the State department of transportation, and DOT in developing applicable implementation plans.

##### (b) Interagency consultation procedures: General factors.

(1)(A) Representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and [*specify any other organizations within the State with responsibilities for developing, submitting, or implementing provisions of an implementation*

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<sup>9</sup>This model rule was adapted from *Transportation and General Conformity Under the Clean Air, Model Rules for State and Local Agencies*, STAPPA-ALAPCO, June 1994. EPA was consulted in the development of this document.

*plan required by the CAA*] shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the SIP, the transportation plan, and the TIP, and associated conformity determinations.

(B) The State air quality agency [*specify name, unless another entity has responsibility for submitting SIPs*] shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of SIPs and the list of TCMs in the approved SIP. The MPO [*specify name or names, where possible*] shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the transportation plan, the TIP, any amendments or revisions thereto, and any conformity determinations. In the case of non-metropolitan areas, the State department of transportation [*specify name*] shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of any conformity determinations in these areas.

(C) In addition to the lead agencies identified in subparagraph (B), other agencies entitled to participate in any interagency consultation process under this rule include the State department of transportation [*specify name*], each affected MPO [*specify name or names for each affected area*], the Federal Highway Administration field office [*specify name*], the Federal Transit Administration regional office [*specify name*], any county congestion management agencies [*specify name*], the State air quality agency [*specify name*], any air quality management district, air pollution control district or other local air quality agency [*specify name or names for each affected area*], any other organization within the State responsible under State law for developing, submitting or implementing transportation-related provisions of an implementation plan [*specify name, if any*], and any local transportation agency or local government as appropriate [*specify name or names for each affected area*].

(D) It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraph (B), to confer with all other agencies identified under subparagraph (C) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of 40 CFR 93.105, where required, assure policy-level contact with those agencies and prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (C), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

*[To address the requirements of 93.105(b)(2)(i) and (ii)]*

(E) Specific roles, responsibilities, and organizational level of various participants in the interagency consultation process shall be as follows ***[Note: This is a partial, illustrative list only. Current responsibilities and needed assignments should be taken into account.]***

(i) The State air quality agency *[or local air quality agency, if appropriate under State law; specify name; these functions may have to be allocated between State and local agencies to reflect State law]* shall be responsible for developing (I) emissions inventories, (II) emissions budgets, (III) air quality modeling, (IV) SIP demonstrations, including emissions budgets as necessary, (V) any SIP TCMs, and (VI) ...;

(ii) The MPO *[specify name]* shall be responsible for (I) developing transportation plans and TIPs, (II) evaluating TCM transportation impacts, (III) developing transportation and socioeconomic data and planning assumptions for use in emissions analysis to determine conformity of transportation plans, TIPs, and projects, (IV) monitoring regionally significant projects, (V) developing system- or facility-based or other programmatic TCMs, (VI) providing technical and policy input on emissions budgets, (VII) performing transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments, and (VIII) ...;

(iii) The State department of transportation *[specify name]* shall be responsible for (I) providing technical input on proposed revisions to motor vehicle emissions factors, (II) distributing draft and final project environmental documents to other agencies, (III) convening air quality technical review meetings on specific projects when requested by other agencies or as needed, and (IV) ...;

(iv) FHWA and FTA shall be responsible for (I) assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section, (II) providing guidance on the transportation planning process to agencies in interagency consultation, and (III) ...; and

(v) EPA shall be responsible for (I) reviewing, finding adequate, and approving updated motor vehicle emissions budgets, (II) providing guidance on conformity criteria and procedures to agencies in interagency consultation, and (III)....

***[NOTE: The model rule in paragraph (2) below expresses general principles of consultation. It is not intended to be adopted in this form, but should be adapted to the circumstances of the State, the usual relationships of parties to the negotiation, and other factors. A State may wish to adopt more than one consultation procedure, with differing complexity, to apply to different documents or decisions, as appropriate for the subject matter. An approvable conformity implementation plan revision will need to incorporate more detail on consultation than provided by this model rule. Among the terms that may require further definition by the State are "early in the process," "timely," "period for review," "policy level," "the record of any decision or action," "all relevant documents," "all appropriate information," "consider" and "respond." Where "final document" is referred to, this shall also include any decisions or actions not requiring a specific document.]***

*[To address the requirements of 40 CFR 93.105(b)(2)(iii), (iv), (v), and (vi)]*

(2)(A) It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants, convene consultation meetings early in the process of decision on the final document, appoint the convenors of technical meetings, and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on major activities such as the development of a SIP, the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs, shall include meetings at regular, scheduled intervals no less frequently than *[insert frequency - monthly/quarterly/ semiannually to determine appropriate interval for the agencies and subject matter involved]* and shall be attended by representatives of each agency. In addition, technical meetings shall be convened as necessary.

(C) Each lead agency in the consultation process required under this section (that is, the agency with the responsibility for preparing the final document subject to the interagency consultation process) shall confer with all other agencies identified under paragraph (1) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) The lead agency for developing the SIP will prepare a list of the TCMs in the approved SIP and provide this list to the interagency consultation process in accordance with paragraph (b).

*[To address the requirements of 93.105(c)]*

(c) Interagency consultation procedures: Specific processes.

(1) An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, FHWA, and FTA shall be undertaken for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses to be initiated by *[identify lead agency]* and conducted in accordance with paragraph (b).

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by *[identify lead agency]* and conducted in accordance with paragraph (b);

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93 (i.e. projects described in 40 CFR 93.126 and 93.127) should be treated as non-exempt in

cases where potential adverse emissions impacts may exist for any reason, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b);

(iv) Making a determination, as required by 40 CFR 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, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b). This consultation 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 revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b);

(vi) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(1)(2)(iii) to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b).

(2) An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, and State and local transportation agencies, shall be undertaken for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b); and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b).

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process involving the MPO and the State department of transportation shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b).

(4)(i) An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, and recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(ii) During preparation of the transportation plan and TIP, the MPO will request that participants of the interagency consultation process identify all non-FHWA/FTA transportation projects and their design concept and scope, including those where detailed design features have not yet been decided, and determine which ones meet the definition of regionally significant for regional emissions modeling. Any recipient of federal funding, as defined in 40 CFR 93.101, is required to disclose to the MPO information regarding all non-FHWA/FTA regionally significant projects and any changes to these plans shall be immediately disclosed.

(5) An interagency consultation process in accordance with paragraph (b) involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects that 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 40 CFR 93.122, to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b).

(6) An interagency consultation process involving the MPO, State and local air quality planning agencies, and State and local transportation agencies, shall be undertaken for 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), to be initiated by [*identify lead agency*] and conducted in accordance with paragraph (b).

(7) A process for providing final documents (including SIPs, transportation plans, TIPs, plan/TIP amendments and conformity determinations) and supporting information to each agency after approval or adoption. This process is applicable to all agencies including MPOs, State department of transportation, State and local air quality agencies, FHWA, FTA and EPA.

(d) Resolving conflicts.

(1) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(2)(A) The State air quality agency has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the State DOT or MPO has notified the State air quality agency of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO or the State DOT has confirmed receipt by the director of the State air agency of the resolution of the comments of the State air quality agency. If the State air quality agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State air quality agency must provide notice of any appeal under this subsection to the MPO and the State DOT. If the State air quality agency does not appeal to the Governor within 14 days, the MPO or State DOT may proceed with the final conformity determination.

(B) In the case of any comments with regard to any proposed determination of conformity, the State DOT has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the MPO has notified the State air quality agency or the State DOT of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when [*insert defining action, e.g., the MPO has confirmed receipt by the director of the State air quality agency or the State DOT of the resolution of the comments of the State DOT*]. If the State DOT appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State DOT must provide notice of any appeal under this subsection to the MPO and the State air quality agency. If the State DOT does not appeal to the Governor within 14 days, the MPO may proceed with the final conformity determination.

(3) The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, any agency that has responsibility for only one of these functions, or an MPO.

(e) Public consultation procedures.

The [*list affected agencies*] making conformity determinations on transportation plans, programs, and projects shall establish and make available a proactive public involvement process which provides opportunity for public review and comment. At a minimum, this process should include 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 those requirements and those of 23 CFR 450.316(a).

Charges imposed for public inspection and copying are consistent with the fee schedule contained in 49 CFR 7.43.

In addition, [*list the agencies*] will 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. [*List the agencies*] will also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

### III. Commitments for Regional Emissions Analysis

In accordance with 40 CFR 93.122(a)(4)(ii), the [*identify MPO*] will not include emissions reduction credits from control measures that are not included in the transportation plan or transportation improvement program and that do not require a regulatory action in the regional emissions analysis used in the conformity determination unless [*identify name of MPO*] or FHWA/FTA obtain written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

#### IV. Commitments for Project-Level Mitigation and Control Measures

In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/or operator a written commitment, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measure in the construction or operation of the project identified as a condition for NEPA process completion. The written commitment to implement such a project-level mitigation or control measure must be fulfilled by the appropriate entity. Prior to making a conformity determination for the transportation plan or TIP, [*identify name of MPO*] will ensure any project-level mitigation or control measures for which a written commitment has been made are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis. Written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis for a project-level determination.