

THE SAN DIEGO TRANSPORTATION CONFORMITY PROCEDURES

JULY 22, 1998

These procedures and criteria involve regional, state, and federal air quality and transportation agencies. They are intended to facilitate consultation and dialogue in the San Diego region as necessary for these agencies to make informed and coordinated decisions, to enhance progress toward clean air and mobility goals, and to comply with 40 CFR Parts 51 and 93, August 15, 1997, Subpart A.

**SUBPART A - CONFORMITY TO STATE OR FEDERAL IMPLEMENTATION PLANS
OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS
DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR
THE FEDERAL TRANSIT LAW***

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* Except as otherwise noted with underlines, these procedures incorporate EPA regulations verbatim.

SAN DIEGO TRANSPORTATION AND AIR QUALITY CONFORMITY PROCEDURES

§93.100 Purpose

The purpose of this agreement is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This agreement sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to §110 and Part D of the CAA.

§93.101 Definitions

Terms used but not defined in this agreement shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project,

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signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this agreement, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

FTA means the Federal Transit Administration of DOT.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to §93.106.

Hot-spot analysis is an estimation of likely future localized CO and PM10 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

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Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance plan means an implementation plan under section 175A of the CAA, as amended.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this agreement, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Project means a highway project or transit project.

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

Standard means a national ambient air quality standard.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation Control Measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this agreement.

Transportation Improvement Program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

Written commitment for the purposes of this agreement means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

§93.102 Applicability

(a) Action applicability

(1) Except as provided for in paragraph (c) of this section or §93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, §93.121 applies to such projects if they are regionally significant.

(b) Geographic applicability

(1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

(ii) NO_x in NO₂ areas; and

(iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

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(4) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

(c) Limitations.

(1) Projects subject to this subpart for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

§93.103 Priority

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§93.104 Frequency of Conformity Determinations

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) Transportation plans.

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in §93.126 or §93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

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(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in §93.126 or §93.127.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in §§. 93.126 and 93.127. Otherwise, the existing conformity determination for the TIP will lapse.

(d) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

(e) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPs must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

§93.105 Consultation

See attached San Diego Transportation Air Quality Conformity Interagency Consultation Procedures.

§93.106 Content of Transportation Plans

(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:

(i) Horizon years may be no more than 10 years apart;

(ii) The first horizon year may be no more than 10 years from the baseyear used to validate the transportation demand planning model;

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by §93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation

plans so that a conformity determination can be made according to the criteria and procedures of §§93.109 - 93.119.

(d) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§93.107 Relationship of the Transportation Plan and TIP Conformity with the NEPA Process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§93.109 - §93.119 for projects not from a TIP before NEPA process completion.

§93.108 Fiscal Constraints for Transportation Plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§93.109 Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.

(a) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this subpart are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(b) Table 1 in this paragraph indicates the criteria and procedures in §93.110 through §93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

Table 1 CONFORMITY CRITERIA	
All Actions at all times	
Action	Criteria
Latest planning assumptions.	§93.110
Latest emissions model.	§93.111
Consultation.	§93.112
Transportation Plan	
Action	Criteria
TCMs	§93.113(b)
Emissions budget or Emission reduction.	§93.118 or §93.119
Transportation Improvement Plan	
Action	Criteria
TCMs.	§93.113(c)
Emission budget or Emission reduction	§93.118 or §93.119
Project (From a Conforming Plan and TIP)	
Action	Criteria
Currently conforming plan and TIP.	§93.114
Project from a conforming plan and TIP	§93.115
CO and PM10 hot spots.	§93.116
PM10 control measures.	§93.117
Project (Not From a Conforming Plan and TIP)	
Action	Criteria
TCMs.	§93.113(d)
Currently conforming plan and TIP.	§93.114
CO and PM10 hot spots.	§93.116
PM10 control measures.	§93.117
Emissions budget or Emission reduction.	§93.118 or §93.119

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(c) Ozone nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by §93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:

(i) The emission reduction tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by §93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act

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reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

(i) The emission reduction tests as required by §93.119;

(ii) The budget test as required by §93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by §93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(d) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by §93.116(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by §93.116(b).

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (d)(4) of this section, in CO nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

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(i) The emission reduction tests required by §93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by §93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).

(e) PM10 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in PM10 nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM10 nonattainment or maintenance areas must satisfy the hot spot test required by §93.116(a).

(2) In PM10 nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM10 nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(iii) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) NO2 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in NO2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In NO2 nonattainment and maintenance areas the budget test must be satisfied as required by §93.118 for conformity determinations made:

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(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by §93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(g) Isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of §93.110, §93.111, §93.112, §93.113(d), §93.116, and §93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of §93.116(b) ("Localized CO and PM₁₀ violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c) through (f) of this section, with the following modifications:

(i) When the requirements of §93.118 and §93.119 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(ii) In isolated rural nonattainment and maintenance areas that are subject to §93.118, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(A) §93.118;

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(B) §93.119 (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding §93.119(d)(2)); or

(C) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in §93.105(c)(1)(vii) through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in the attached Interagency Consultation Procedures, paragraph 5 - Resolving Conflicts, which applies for any State air agency comments on a conformity determination.

§93.110 Criteria and Procedures: Latest Planning Assumptions

(a) The conformity determination, with respect to all other applicable criteria in §93.111 through §93.119, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by §93.105.

§93.111 Criteria and Procedures: Latest Emissions Model

(a) The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

§93.112 Criteria and Procedures: Consultation

Conformity must be determined according to the consultation procedures in this subpart and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450.

§93.113 Criteria and Procedures: Timely Implementation of TCMs

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§93.114 Criteria and Procedures: Currently Conforming Transportation Plan and TIP

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in §93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

§93.115 Criteria and Procedures: Projects from a Plan and TIP

(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of §93.109(b) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

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(1) For projects which are required to be identified in the transportation plan in order to satisfy §93.106 ("Content of transportation plans"), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by §93.125(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(d) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

§93.116 Criteria and Procedures: Localized CO and PM10 Violations (Hot Spots)

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of the attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation, and the methodology requirements of §93.123.

(b) This paragraph applies for CO nonattainment areas as described in §93.109(d)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation, and the methodology requirements of §93.123.

§93.117 Criteria and Procedures: Compliance with PM10 Control Measures

The FHWA/FTA project must comply with PM10 control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination

contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

§93.118 Criteria and Procedures: Motor Vehicle Emissions Budget

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in §93.109(c) through (g). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by §93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

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(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in §93.102(b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of §93.122 and the attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation.

(2) The regional emissions analysis may be performed for any years in the time frame of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(e) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by §93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid.

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Projects included in that transportation plan or TIP could still satisfy §93.114 and §93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see §93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

§93.119 Criteria and Procedures: Emission Reductions in Areas Without Motor Vehicle Emissions Budgets

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in §93.109 (c) through (g). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA §182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of §93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any non zero amount.

(c) This criterion may be met in PM10 and NO2 nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA §182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of §93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision defines the baseline emissions for a PM10 area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(d) Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NOx in ozone areas, unless the EPA Administrator determines that additional reductions of NOx would not contribute to attainment;

(3) CO in CO areas;

(4) PM10 in PM10 areas;

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(5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and

(6) NO_x in NO₂ areas.

(e) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(f) "Baseline" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in §93.126 and projects exempt from regional emissions analysis as listed in §93.127 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(g) "Action" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in §93.126 and projects exempt from regional emissions analysis as listed in §93.127 need not be explicitly considered):

(1) All facilities, services, and activities in the "Baseline" scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

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(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(h) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c) of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "Baseline" scenario must include the project with its original design concept and scope, and the "Action" scenario must include the project with its new design concept and scope.

§93.120 Consequences of Control Strategy Implementation Plan Failures

(a) Disapprovals.

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to §93.109.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(b) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

§93.121 Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §93.118 and/or §93.119 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to §93.109(g), no recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of §93.118 and/or §93.119 for projects not from a conforming transportation plan and TIP).

(c) Adopt or approve a regionally significant highway or transit project shall mean any of the following actions:

(1) Policy board action or resolution that is necessary for a regionally significant project to proceed.

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(2) Administrative permits issued under the authority of the agency, policy board, or commission for a regionally significant project.

(3) The execution of a contract to construct, or any final action by an elected or appointed commission or administrator directing or authorizing the commencement of construction of a regionally significant project.

(4) Providing grants, loans or similar financial support, for the construction of a regionally significant project.

(5) Participation or membership in an entity, including an authority or special district, that takes any action listed in paragraphs (1) through (4) of this definition.

§93.122 Procedures for Determining Regional Transportation-Related Emissions

(a) General requirements.

(1) The regional emissions analysis required by §93.118 and §93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by §93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(i) The regulatory action is already adopted by the enforcing jurisdiction;

(ii) The project, program, or activity is included in the applicable implementation plan;

(iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of §93.118 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need

for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from 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.

(i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(ii) Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §93.119 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to the attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation, to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation. Network-based travel models must at a minimum satisfy the following requirements:

(i) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a baseyear that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for

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reasonableness and compared to historical trends and other factors, and the results must be documented;

(ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(iii) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(iv) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(v) Zone-to-zone travel impedance used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and

(vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the baseyear of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of the attached Interagency Consultation Procedures, paragraph 4 (A) - Specific Areas for Interagency Consultation.

(c) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) PM10 from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(e) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of §93.118 (" Motor vehicle emissions budget") or §93.119 (" Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of §93.118 or §93.119 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(i) Not regionally significant; or

(ii) Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

§93.123 Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-Spot Analysis)

(a) CO hot-spot analysis

(1) The demonstrations required by §93.116 ("Localized CO and PM₁₀ violations") must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air

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Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in §93.105 and approved by the EPA Regional Administrator are used:

(i) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(ii) For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

(iii) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

(iv) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan.

(2) In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by §93.116 may be based on either:

(i) Quantitative methods that represent reasonable and common professional practice; or

(ii) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of §93.116 are met.

(b) PM₁₀ hot-spot analysis.

(1) The hot-spot demonstration required by §93.116 must be based on quantitative analysis methods for the following types of projects:

(i) Projects which are located at sites at which violations have been verified by monitoring;

(ii) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(iii) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(2) Where quantitative analysis methods are not required, the demonstration required by §93.116 may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (b)(1)(i) and (ii) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in §93.105. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(4) The requirements for quantitative analysis contained in this paragraph (b) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(c) General requirements.

(1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(3) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(4) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by §93.125(a).

(5) CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§93.124 Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission)

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§93.125 Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM10 or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by §93.118 ("Motor vehicle emissions budget") and §93.119 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by §93.116.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of §93.116, emission budget requirements of §93.118, and emission reduction requirements of §93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under §93.105. The MPO

and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of §93.118 and/or §93.119 and that the project still satisfies the requirements of §93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in the attached Interagency Consultation Procedures, paragraph 6 - Public Consultation, for conformity determinations for projects.

§93.126 Exempt Projects

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see attached Interagency Consultation Procedures, paragraph 4 (C) - Specific Areas for Interagency Consultation), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

Table 2.--Exempt Projects	
Safety	
Railroad/highway crossing.	
Hazard elimination program.	
Safer non-Federal-aid system roads.	
Shoulder improvements.	
Increasing sight distance.	
Safety improvement program.	
Traffic control devices and operating assistance other than signalization projects.	
Railroad/highway crossing warning devices.	
Guardrails, median barriers, crash cushions.	
Pavement resurfacing and/or rehabilitation.	
Pavement marking demonstration.	
Emergency relief (23 U.S.C. 125).	
Fencing.	
Skid treatments.	
Safety roadside rest areas.	
Adding medians.	
Truck climbing lanes outside the urbanized area.	
Lighting improvements.	
Widening narrow pavements or reconstructing bridges (no additional travel lanes).	
Emergency truck pullovers.	

Table 2.--Exempt Projects - (continued)	
Mass Transit	
Operating assistance to transit agencies.	
Purchase of support vehicles.	
Rehabilitation of transit vehicles ¹ .	
Purchase of office, shop, and operating equipment for existing facilities.	
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).	
Construction or renovation of power, signal, and communications systems.	
Construction of small passenger shelters and information kiosks.	
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).	
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.	
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet ¹ .	
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.	
Air Quality	
Continuation of ride-sharing and van-pooling promotion activities at current levels.	
Bicycle and pedestrian facilities.	
Other	
Specific activities which do not involve or lead directly to construction, such as:	
Planning and technical studies.	
Grants for training and research programs.	
Planning activities conducted pursuant to Titles 23 and 49 U.S.C.	
Federal-aid systems revisions.	
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.	
Noise attenuation.	
Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).	
Acquisition of scenic easements.	
Plantings, landscaping, etc.	
Sign removal.	
Directional and informational signs.	
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).	
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.	

¹ In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§93.127 Projects Exempt from Regional Emissions Analyses

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see attached Interagency Consultation Procedures, paragraph 4 (C) - Specific Areas for Interagency Consultation), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

Table 3.--Projects Exempt From Regional Emissions Analyses
Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§93.128 Traffic Signal Synchronization Projects

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this subpart. However, all subsequent regional emissions analyses required by §93.118 and §93.119 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.



ATTACHMENT

**THE SAN DIEGO TRANSPORTATION AIR QUALITY CONFORMITY
INTERAGENCY CONSULTATION PROCEDURES**

(Satisfies §93.105)



THE SAN DIEGO TRANSPORTATION AIR QUALITY CONFORMITY INTERAGENCY CONSULTATION PROCEDURES

1. AFFECTED AGENCIES AND DOCUMENTS

Interagency consultation procedures shall be undertaken by the San Diego Association of Governments (SANDAG) (representing as appropriate its member agencies, and acting in its capacity as the Metropolitan Planning Organization (MPO) for San Diego County), San Diego Air Pollution Control District (SDAPCD), California Department of Transportation (Caltrans), California Air Resources Board (ARB), United States Department of Transportation (USDOT), and United States Environmental Protection Agency (EPA), before making conformity determinations, and in developing regional transportation plans (RTP), regional transportation improvement programs (RTIP), and transportation-related State Implementation Plans (SIP).

2. AFFECTED AREA

These procedures apply to the area defined by the boundaries of San Diego County/region. The geographic limits of the region define the MPO planning area, as well as the nonattainment area/air basin.

The requirements of the final conformity rule are based on an area's nonattainment status in regard to each pollutant for which there are National Ambient Air Quality Standards (NAAQS) and apply to nonattainment and maintenance areas.

3. THE CONSULTATION PROCESS

Interagency consultation involves the affected agencies in a three tier process that (1) formulates and reviews drafts through a conformity working group, (2) provides local agencies and the public with opportunities for input through existing regional advisory committees and workshops, and (3) seeks comments from affected federal and state agencies through participation in the development of draft documents and circulation of supporting materials prior to formal adoption.

A. CONFORMITY WORKING GROUP (CWG)

(i) General

A Conformity Working Group (CWG), made up of the agencies identified in Section (1) shall be established to carry out the interagency consultation process in the San Diego region. The CWG will be comprised of policy and technical staff from the member agencies. The CWG is a working group which makes recommendations on air quality conformity transportation matters. Policy-level decisions are made by the appropriate policy body.

CWG meetings will scope issues and formulate products, as appropriate, to take to relevant advisory committees and other interested parties. CWG members shall be provided the opportunity for participation through distribution of meeting agendas, minutes, supporting materials, and, where possible, conference telephone.

The CWG shall meet when the identified events are triggered (See Subsection 3(A)(ii)), or to address other relevant transportation or air quality issues, and at least annually in the

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form of a general meeting (See Subsection 3(A)(vi)). A lead agency is designated for each trigger.

(ii) CWG/Consultation Process Triggers

The interagency consultation process is initiated with a CWG meeting arranged by the designated lead agency and activated by the following actions:

- (1) Development/review of draft RTP's;
- (2) Development/review of draft RTIP's;
- (3) Development/review of draft RTP Conformity analyses;
- (4) Development/review of draft RTIP Conformity analyses;
- (5) Development of new conformity analyses prompted by revisions or amendments to RTP's and RTIP's;
- (6) Development of revisions to the SIP which affect transportation or the emissions budget;
- (7) Notification of SIP findings that may lead to nonconformity and/or sanctions;
- (8) Annual Conformity Working Group meetings;
- (9) Revisions to Transportation Control Measures (TCM) Plan prepared by SANDAG for the SDAPCD to include in the SIP;
- (10) Proposed changes to, or elimination of mitigation measures for conforming, regionally-significant projects, if allowed under 40 CFR 93.125; and
- (11) Proposed changes to, or elimination of, mitigation measures which are initiated by SANDAG as conditions for RTP or RTIP conformity determinations.

(iii) Lead Agencies

- (1) SANDAG. SANDAG is the lead agency for the following events: 1, 2, 3, 4, 5, 8, 9, 11.
- (2) SDAPCD. SDAPCD is the lead agency for the following events: 6,7.
- (3) Project Proponents. Project proponents are identified as the lead agency for initiating the interagency consultation process for event number 10. Project proponents are defined as follows: Lead public agency having discretionary project and mitigation requirement approval authority.
- (4) Other Parties. The consultation process may be initiated by any CWG member or another party at any time based on the triggering events previously

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identified, to propose revisions or further development of the conformity procedures, or for any other reason.

(iv) Meeting and Document Review Guidelines

For the triggering events previously identified, including the CWG annual meeting, the following stages shall be followed in the process unless two or more members of the CWG agree that the topic does not fit within this framework, in which case a reasonably equivalent framework shall be adopted:

(1) **Initial Meeting of CWG.** An Initial Meeting of the CWG shall be convened by the lead agency at least 60 days before the draft document is either issued or accepted for distribution by policy board action, whichever occurs first. The lead agency will provide in verbal or written form, relevant requirements and criteria, the analytical approach to be taken, and proposed alternatives, hereafter referred to as pre-draft information. The lead agency may provide this pre-draft information at the Initial Meeting or at a follow-up meeting, thereby relying on the initial meeting to determine specifically which pre-draft materials the CWG members want to review.

For the TIP, RTP, Conformity Determinations, pre-draft information may consist of the following materials as determined appropriate by the members of the CWG: emissions data analyses, model documentation and assumptions used to perform a conformity determination, and project categories to be included in the analysis, including Transportation Control Measures (TCM).

For transportation-related or emissions budget-related SIP revisions, pre-draft information may consist of the following materials as determined appropriate by the members of the CWG: emissions data analyses, model documentation and assumptions used to prepare emissions budgets/control strategies/maintenance demonstrations, the analytical process for determining which control strategies (including TCMs) to include in the SIP, and the process for determining the emissions reductions associated with each strategy.

At the request of CWG members, the lead agency shall provide whatever other available public information is deemed important for the purpose of providing a common basis of understanding among CWG participants. Sufficient pre-draft information shall be provided at either the Initial Meeting or a follow-up meeting to enable member agencies to review and comment knowledgeably.

(2) **CWG Review and Comment Periods.** The lead agency shall provide 30 days for review and comment on pre-draft information which is provided either at the Initial Meeting or a follow-up meeting, and shall consider comments received prior to issuance of draft documents. Draft documents should also be provided to the CWG members for a 30 day review period. The lead agency shall provide written responses to particular or all comments if requested by a CWG member.

(3) **Objections to Information Provided By Lead Agency.** The pre-draft information provided for review and comment shall be considered complete unless, in the opinion of two or more member agencies, particular additional information should be provided to the CWG. In this event, the lead agency shall make a good faith effort

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to provide the requested information. If any member then believes the information received is still insufficient, that agency shall send a letter to the lead agency stating the objection. The letter shall be sent to all member agencies by the objecting agency, and shall be entered into the permanent record, and included in the final document.

(v) Lead Agency Responsibilities

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 (lead agency) to:

(1) Provide opportunity for early review and comment regarding issues pertinent to the completion of a draft document, and convene CWG meetings early in the process of decision on the final document.

(2) Assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(3) Provide CWG members with at least 30 days for review and comment on draft documents prior to taking a final action, and prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive manner prior to any final decision, and, upon request by any member of the CWG, provide responses in writing.

(4) Record minutes of the meetings, and distribute meeting agendas and minutes to the other members of the CWG and any interested parties in a timely manner.

(5) Maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities, and make the record available for public inspection upon request.

(6) Facilitate review of draft materials by the agency's advisory committees as appropriate.

(7) Notify the public of the availability of draft and final documents and supporting materials.

(8) Distribute final documents (transportation-related SIP submittals, RTIPs/RTPs/conformity determinations, etc.) to CWG members at the same time a submittal is made to federal agencies.

(vi) Annual Conformity Working Group Meeting

A CWG meeting will be held once a year on a regular basis for the purpose of addressing any regulatory, policy or technical developments which may affect the conformity criteria or procedures. The annual meeting should address the need for revisions, additions and deletions, to the adopted Conformity Criteria and Procedures for the San Diego Region.

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Other annual CWG agenda topics which may be covered include agency status reports on topics relevant to conformity (i.e., the status of sanction clocks, the status of transportation-related SIPs, the date of the latest conformity findings, etc.).

B. LOCAL AGENCY, CITIZEN, AND COMMITTEE INVOLVEMENT

CWG meeting topics will be discussed with SANDAG and APCD advisory committees and the public as appropriate. Committees, the cities, the County, and other interested parties will be provided with reasonable opportunity for review and comment on RTP and RTIP conformity determinations prior to formal adoption.

SANDAG shall maintain a comprehensive committee structure that provides a forum for local agencies and the public to participate in the regional transportation planning process and associated air quality conformity determinations. The APCD's advisory committees shall also provide for broad-based community involvement on state and federal air quality compliance activities.

In addition to committee involvement, local agency and public participation shall be encouraged through participation in Board meetings, public hearings, and public information programs.

C. FEDERAL AND STATE REVIEW

State and federal agencies are identified as members of the CWG and their input will be sought during the interagency consultation process through the circulation of draft RTPs, RTIPs, conformity determinations, and transportation-related SIP submittals at least 30 days prior to formal adoption. As CWG members, the state and federal agencies will also be sent meeting agendas, meeting minutes, other supporting documentation, and final documents following Board approvals. Following Board adoption of final documents, formal submittals will be made to appropriate State and federal officials for final approval.

D. DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

In addition to participation on the CWG, the roles and responsibilities of each agency with regard to RTPs, RTIPs, conformity determinations and SIP documents are identified in Table 1.

4. SPECIFIC AREAS FOR INTERAGENCY CONSULTATION

As required by 40 CFR 93.105(c), the interagency consultation process defined previously in this document shall be undertaken and initiated by the applicable lead agency for the following:

A. As required by 40 CFR 93.105(c)(1)(i), and applicable criteria: §§ 93.106, 93.110, 93.111, 93.118, 93.122, evaluating and choosing which data, models, assumptions, and methods will be used in hot-spot analyses and regional transportation emissions analyses, including forecasting of vehicle miles traveled (VMT), and in the preparation of motor vehicle emissions budgets in SIP's.

B. As required by 40 CFR 93.105(c)(1)(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

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which projects should be considered to have a significant change in design concept and scope from the RTP or RTIP. In the course of this process, the definition of regionally significant project, as defined by the transportation conformity regulation, 40 CFR 93.101, shall apply.

C. As required by 40 CFR 93.105(c)(1)(iii), evaluating whether projects otherwise exempted from meeting the requirements of the transportation conformity regulations (see §§ 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason.

D. As required by 40 CFR 93.105(c)(1)(iv), regarding TCM's, making a determination as required by 93.113(C)(1), whether past obstacles to implementation of TCM's which are behind the schedule established in the SIP have been identified and are being overcome, whether State and local agencies with influence over approvals or funding for TCM's are giving maximum priority to approval or funding for TCM's, and whether delays in TCM implementation necessitate revisions to the applicable SIP to remove TCM's or substitute TCM's or other transportation-related emission reduction measures. The following shall apply:

(i) Monitoring of TCM's

(1) SANDAG shall maintain the record of, and shall monitor the effectiveness of, the specific TCM's contained in the applicable SIP. For these processes, SANDAG shall facilitate the participation of its relevant advisory committees.

(2) When a conformity analysis and finding is required to enable the adoption/ amendment of the RTP or RTIP by SANDAG, or when the District revises or amends transportation-related measures in the SIP, SANDAG shall prepare an update on the progress and status of the implementation of TCM's contained in the applicable SIP for review and consultation by the CWG, and for consideration by the lead agency.

(ii) Regarding consideration of TCM's in the development of RTIP's, RTP's, and SIP's, the CWG, based on the TCM implementation update provided by SANDAG, shall make recommendations to the lead agency regarding the following:

(1) Whether past obstacles to implementation of TCM's which are behind the schedule established in the applicable SIP have been identified and are being overcome;

(2) Whether state and local agencies with influence over approvals or funding for TCM's are giving maximum priority to approval or funding for TCM's; and

(3) Whether delays in TCM implementation necessitate revision of the applicable SIP to remove and/or substitute TCM's or other transportation-related emissions reduction measures. If, in the opinion of the CWG, a revision or substitution of TCM's is needed, SANDAG may develop and recommend the TCM action to the District in accordance with California Health and Safety Code §40717, and in accordance with any existing applicable agreements between the District and SANDAG.

(4) Which, if any, TCM's are to be included in a SIP revision.

(iii) In the event that a transportation control measure (TCM) is not included in the regional transportation plan (RTP) or transportation improvement program (TIP) in the time frame contained for that measure in the applicable State Implementation Plan (SIP), the

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parties in the interagency consultation process established pursuant to Section 93.105 shall assess whether such measure continues to be appropriate. Where the metropolitan planning organization (MPO) and the air district concur that a transportation control measure identified in the SIP is no longer appropriate, the agencies may initiate the process described below to identify and adopt a substitute control measure.

A substitute control measure must provide for equivalent or greater emissions reductions than the measure contained in the SIP. In addition, a replacement measure must be implemented in the time frame established for the measure contained in the SIP. Where such implementation date has already passed, measures selected pursuant to this procedure that require transportation funding must be included in the first year of the next TIP and the adopted RTP. The substitute measures must be fully implemented within two years of the implementation date of the original measure in order to be a basis for a finding of timely implementation under Section 93.113. In order for the air district to adopt substitute measures under this procedure, there must be evidence of adequate personnel, funding, and authority under State or local law to implement and enforce the measures. Commitments to implement the substitute measures must be made by the agency with legal authority for implementation.

The MPO will convene a committee (or working group) to identify and evaluate possible substitute measures. The committee shall include members from all affected jurisdictions, state and/or local air quality agencies and local transportation agencies. In addition, the working group shall consult with the Environmental Protection Agency (EPA). Consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 9.

The MPO, air district and EPA Region 9 must concur with the appropriateness and equivalency of the substitute TCM. All substitute measures must be adopted by the air district following a public comment period and an EPA 14-day concurrence period as described below. The measure to be replaced shall stay in effect until the substitute measure has been adopted.

The TCM to be replaced must be rescinded for the new measure substituted pursuant to this procedure to be effective. By adopting a substitution under this procedure, the air district formally rescinds the previously applicable TCM and adopts the substitute measures.

Prior to adopting a substitute measure under this procedure, the substitute transportation control measure(s) must have been subject to a public hearing and comment process. This means there must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will include, at least 30 days prior to the hearing:

- notice given to the public by prominent advertising in the area affected announcing the date time and place of the hearing;
- availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply;
- notification to interested parties in accordance with the Administrative Procedures Act;

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- notification to the regional offices of the EPA, Federal Highway Administration and Federal Transit Administration;
- notification to the California Air Resources Board and the California Department of Transportation;
- notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, and economic development agencies.

A description of the measure(s) and analysis supporting the proposal, including assumptions and methodology, must be made available to the public and the parties in the interagency consultation process described in Section 93.105 within a reasonable time before the public hearing, and at least 30 days prior to the close of the comment period. The air district shall submit to EPA Region 9 a summary of comments received during the public comment period along with the district's responses following the close of the public comment period. EPA shall notify the air district within 14 days if the agency's concurrence with the substitution has changed as a result of the public comments. Where EPA fails to notify the district within 14 days, EPA is deemed to concur.

The analysis of substitute measures under this procedure must be consistent with the methodology used for evaluating measures in the SIP. Where emissions models and/or transportation models have changed since those used for purposes of evaluating measures in the maintenance plan, the TCM to be replaced and the substitute measure(s) shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions reductions will be achieved through implementation of the substitute measure(s).

Key methodologies and assumptions that must be consistent, and reconciled in the event of a discrepancy, are, for example:

- EPA approved regional and hot-spot (for CO and PM₁₀) emissions models;
- the area's transportation model; and
- population and employment growth projections.

The air district will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitution process including the committee or working group members, the public hearing and comment process, EPA's concurrence, and air district adoption. The documentation will be submitted to EPA following adoption of the substitute measure by the air district board, and made available to the public as an attachment to the air quality plan.

E. As required by 40 CFR 93.121(a), making a determination whether a project is included in the regional emissions analysis supporting the currently conforming RTIP's conformity determination, even if the project is not strictly "included" in the RTIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

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- F.** As required by 40 CFR 93.105(c)(v), identifying projects located at sites in PM10 nonattainment areas as required by 40 CFR 93.123(b) which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM10 hot-spot analysis.
- G.** As required by 40 CFR 93.105(c)(1)(vi), early notification by local agencies to SANDAG of RTP or RTIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126 or 93.127, in addition to the requirement that such notice be provided prior to final action.
- H.** As required by 40 CFR 93.105(c)(1)(vii) chose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(g)(2)(iii).
- I.** As required by 40 CFR 93.105(c)(2)(i), evaluating events which will trigger new conformity determinations in addition to those triggering events established in paragraph (4) of this agreement and 40 CFR 93.104.
- J.** As required by 40 CFR 93.105(c)(2)(ii), consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.
- K.** As required by 40 CFR 93.105(c)(4), ensuring that plans for construction of regionally significant projects, as defined in Section 93.101, 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 Law, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed.
- L.** As required by 40 CFR 93.105(c)(5), assuming the location and design concept and scope of projects which are disclosed to the MPO as required by subparagraph (4)(J) of this agreement, 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.
- M.** As required by 40 CFR 93.105(c)(6), considering the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO.

5. RESOLVING CONFLICTS

As required by 40 CFR 93.105(d), 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. 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.

Also as required by 40 CFR 93.105(d), the State air quality agency has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under the transportation conformity regulation) to the Governor after the State Department of Transportation or MPO has notified the State air quality agency head 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 Department of Transportation 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

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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 Department of Transportation. If the State air quality agency does not appeal to the Governor within 14 days, the MPO or State Department of Transportation may proceed with the final conformity determination.

Also as required by 40 CFR 93.105(d), 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.

In the event of conflicts involving local or regional agencies, the current SANDAG Conflict Resolution Procedure shall be followed. At the local level, conflicts among agencies over transportation/air quality conformity issues and other matters may be resolved through the current SANDAG Conflict Resolution Procedure.

6. PUBLIC CONSULTATION

As required by 40 CFR 93.105(e), affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all RTP's and RTIP's, consistent with the requirements of 23 CFR part 450, including §§ 450.316(b)(1), 450.322(c), and 450.324(c). In addition, any such agency 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 RTP or RTIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA). The opportunity for public involvement provided under this section shall include access to information, emissions data, analyses, model documentation and assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments.

TABLE 1
DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

AGENCY	ROLES			CONFORMITY FINDINGS
	SIP	RTP	RTIP	
<p>San Diego Association of Governments (SANDAG)</p> <p><i>Lead Agency on RTP, RTIP, and RTP and RTIP Conformity Findings</i></p>	<p>1) Provide technical and policy consultation on emissions budgets.</p> <p>2) Prepare system-based (facilities) and non-regulatory (programmatic) TCMs, based on SDAPCD criteria, for inclusion in the SIP.</p> <p>3) Provide consultation on proposed SIP revisions that relate to transportation and/or emissions budgets.</p> <p>4) Implement TCMs on schedule where responsible and monitor implementation of TCMs generally.</p> <p>5) Recommend when SIP revisions are necessary to replace ineffective TCMs.</p>	<p>1) Develop, implement and revise as necessary in a manner consistent with applicable regulations.</p> <p>2) Incorporate TCMs developed with SDAPCD and Caltrans into the RTP.</p> <p>3) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</p>	<p>1) Develop, implement, and amend as necessary in a manner consistent with applicable regulations.</p> <p>2) Regularly obtain plans for regionally-significant federal and nonfederal projects from Caltrans and local agencies and consult with those agencies on possible alternatives, locations, design concept and scope for regional emissions analysis purposes.</p> <p>3) Regularly obtain changes to plans for regionally-significant federal and nonfederal projects and alternatives and make a new RTIP conformity determination when applicable.</p> <p>4) Solicit candidate projects from Cities, County, MTDBB, NCTD, and Port District for inclusion in draft and final RTP's.</p> <p>5) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</p>	<p>1) Properly document and determine conformity between the SIP and RTPs, RTIPs, and amendments which involve projects not exempt from the federal transportation conformity regulations.</p> <p>2) Conduct transportation modeling and regional emissions analysis in accordance with applicable criteria and requirements.</p> <p>3) Monitor and document implementation of TCMs in SIP in consultation with CWG.</p> <p>4) Obtain written commitments for project-level and regional mitigation/control measures which are identified as conditions for making conformity determinations for RTPs and/or RTIPs. Include project-level mitigation in the assumptions used in the regional conformity analysis.</p> <p>5) Propose changes to, or elimination of, mitigation measures for conforming RTPs or RTIPs to the CWG in accordance with 40 CFR 93.125 if requirements are satisfied without the mitigation or control measures.</p> <p>6) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</p>

TABLE 1 - continued
DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

AGENCY	ROLES			CONFORMITY FINDINGS
	SIP	RTP	RTIP	
San Diego County Air Pollution Control District (APCD) <i>Lead Agency on SIPs</i>	<p>1) Develop, implement, and revise transportation-related SIP revisions and rule-makings, in a manner consistent with applicable law, including the development of attainment/maintenance demonstrations, reasonable further progress reports, regulatory TCMs, and other actions which affect the mobile source emissions budget.</p> <p>2) Consult with CWG on development of transportation-related SIP revisions, including development of new control measures and inclusion of TCMs (i.e., substitution or deletion).</p> <p>3) Adopt emissions budgets in consultation with the CWG and in accordance with other conformity SIP provisions.</p> <p>4) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</p>	<p>1) Provide consultation as appropriate on draft RTPs.</p> <p>2) Submit candidate projects/ programs for inclusion in the Draft RTP.</p>	<p>1) Provide consultation as appropriate on proposed RTPs.</p> <p>2) Submit candidate projects/ programs for inclusion in the Draft RTP.</p>	<p>1) Provide consultation to SANDAG on proper use of motor vehicle emissions budgets and other regional emissions modeling issues.</p> <p>2) Collaborate with SANDAG to develop, implement, and revise TCM's in a manner consistent with this and any other applicable agreements, laws, and regulations.</p> <p>3) Consultation on draft RTP and RTIP conformity findings.</p>

TABLE 1 - continued
DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

AGENCY	ROLES			CONFORMITY FINDINGS
	SIP	RTP	RTIP	
<p>Local Agencies: Cities, County, MTDB, NCTD, Port District</p> <p><i>Lead Agency on Project-Level Conformity Findings</i></p>	<p>1) Implement TCMs on schedule where responsible.</p>	<p>1) Submit candidate projects/programs for inclusion in Draft RTP.</p> <p>2) Provide consultation on Draft RTP, EIR, and amendments.</p>	<p>1) Submit candidate projects/programs for inclusion in the Draft RTIP.</p> <p>2) Provide consultation on Draft RTIP and amendments.</p>	<p>1) Perform hot-spot air quality analysis of candidate projects in accordance with §93.125 of this procedure.</p> <p>2) Provide written commitments to implement (in the construction of the project or the operation of the resulting facility/service) any project-level mitigation identified as conditions for NEPA process completion with respect to localized air quality impacts.</p> <p>3) Provide written commitments to implement (in the construction of the project or the operation of the resulting facility/service) any project-level mitigation identified as a condition for making a conformity determination for the RTP, RTIP or project.</p> <p>4) Propose changes to , or elimination of, mitigation measures for conforming, regionally-significant projects to the CWG in accordance with § 93.125 of this procedure (e.g., if requirements are satisfied without the mitigation or control measures).</p>

TABLE 1 - continued
DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

AGENCY	ROLES				CONFORMITY FINDINGS
	SIP	RTP	RTIP	RTIP	
State Agencies: Caltrans	<ol style="list-style-type: none"> 1) Provide consultation on development of emissions budgets and overall transportation-related SIP revisions. 2) Provide consultation on development of TCMs for inclusion in SIP. 3) Implement TCMs for which Caltrans has responsibility. 4) Provide consultation to ARB on proposed revisions to motor vehicle emissions factors. 	<ol style="list-style-type: none"> 1) Submit candidate projects/ programs for inclusion in Draft RTP. 2) Provide consultation on Draft RTPs and amendments. 3) Review RTP and provide recommendations to the California Transportation Commission for inclusion in the State Transportation Plan. 	<ol style="list-style-type: none"> 1) Submit candidate projects/ programs for inclusion in Draft RTIP and RTP amendments. 2) Review and comment on Draft RTIP and amendments. 3) Incorporate the Regional TIP into the Federal STIP (FSTIP) and submit it to FHWA Division and FTA Region. 	<ol style="list-style-type: none"> 1) Provide consultation to SANDAG on draft conformity determinations. 2) Determine project-level conformity of regionally-significant state transportation projects. 3) Provide consultation to FHWA Division on SANDAG conformity determinations. 	
California Air Resources Board	<ol style="list-style-type: none"> 1) Review draft and final SIP submittals for compliance with applicable requirements. 2) Transmit SIP submittals to EPA. 3) Develop, solicit input on and adopt updated motor vehicle emissions factors for use in control strategy SIP development. 4) Provide consultation on emissions and air shed modeling as appropriate. 	Provide consultation as appropriate.	Provide consultation as appropriate.	<ol style="list-style-type: none"> 1) Provide consultation on draft conformity findings. 2) Provide consultation to federal agencies on final conformity determinations. 3) Develop, solicit input on and adopt updated motor vehicle emissions factors for use in conformity analysis. 	

TABLE 1 - continued
DEFINITION OF AGENCY ROLES IN CONSULTATION PROCESS

AGENCY	ROLES			CONFORMITY FINDINGS
	SIP	RTP	RTIP	
Federal Agencies: US Environmental Protection Agency (EPA)	1) Review and make findings on SIP revisions in a timely fashion. 2) Notify affected agencies of final SIP actions, including findings of non-submittal, completeness, incompleteness, approval, and disapproval. 3) Provide guidance on CAA requirements to other agencies. 4) Provide USDOT with a 30-day comment period before making SIP findings.	Provide consultation on RTP as appropriate.	Provide consultation on RTIP as appropriate.	1) Provide consultation to SANDAG on draft conformity determinations. 2) Provide consultation to USDOT on final RTP and RTIP conformity determinations. 3) Provide the most recent EPA-approved motor vehicle emissions factors for use in emission analysis.
Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)	1) Review and comment on SIP revisions within 30 days of EPA notification. 2) Provide guidance to SANDAG on the conformity implications of SIP submittals as appropriate.	1) Provide consultation on drafts. 2) Determine conformity and notify CWG members and other affected agencies.	1) Provide consultation on drafts. 2) Determine conformity and notify CWG members and other affected agencies.	1) Provide consultation to SANDAG on draft conformity findings. 2) Determine conformity of SANDAG RTP, RTIP, and amendments. 3) Consult with EPA and ARB during the 30 day comment period prior to making conformity determinations. 4) Provide guidance on ISTEPA planning regulations when relative to conformity determinations.