

The Texas Natural Resource Conservation Commission (TNRCC) adopts a new §114.27, concerning criteria and procedures for determining Transportation Conformity with the State Implementation Plan (SIP), with changes to the proposed text as published in the July 19, 1994, issue of the Texas Register (19 TexReg 5599).

The new section is proposed as a revision to the SIP for the control of those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide (CO), nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers, and the precursors of those pollutants. Affected nonattainment areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria.

These revisions are necessary under the Federal Clean Air Act (FCAA) Amendments of 1990 and the subsequent November 24, 1993 transportation conformity rulemaking by the United States Environmental Protection Agency (EPA). The EPA requires that an enforceable rule be established concerning transportation conformity, inclusive of an interagency consultative process between the TNRCC and the transportation planning and development organi-

zations that relate to nonattainment and maintenance areas. The EPA requires that transportation plans, programs, and projects in nonattainment and maintenance areas comply with the SIP's purpose of eliminating or reducing the severity of violations of national ambient air quality standards.

This SIP revision and new rule are necessary to implement procedures for determining the conformity of transportation plans, programs, and projects with the SIP, and are necessary to allow EPA to make a finding that the SIP meets the requirements of the FCAA Amendments of 1990 and the final EPA rule on transportation conformity, 40 Code of Federal Regulations (CFR), Part 51. The new rule incorporates by reference the relevant sections of the final EPA rule on transportation conformity, with the exception of the Consultative Procedures, which were developed by the TNRCC in cooperation with the affected parties to this rule. The rule must be submitted to EPA by November 24, 1994.

Metropolitan Planning Organizations (MPOs) will be required to improve the flow of information and allow the TNRCC to consult directly with them on draft and final transportation plans, programs, and projects. The SIP revision and rule will outline procedures for ensuring that the Metropolitan Transportation Plan

(MTP) and the Transportation Improvement Program (TIP), as well as transportation and transit projects, conform to the SIP.

The rule applies to all of the federal, state, and local agencies involved in the review and interchange of information on transportation projects in nonattainment and maintenance areas. The MPOs in Dallas/Fort Worth, Houston/Galveston, El Paso, Beaumont/Port Arthur, and Victoria are affected by this rule, as well as TNRCC, EPA, the Texas Department of Transportation (TxDOT), the Federal Highway Administration (FHWA), the Federal Transit Authority (FTA), local transit authorities, and local air quality agencies.

The final EPA rule on transportation conformity, in §51.436 and §51.438, requires the regional analysis of MTPs and TIPs in ozone and CO areas to include a "build/no build" test that demonstrates nitrogen oxide (NO<sub>x</sub>) emissions reductions from the 1990 limits. The TNRCC is currently discussing a suspension of the NO<sub>x</sub> demonstration requirement with EPA in accordance with the FCAA Amendments of 1990, §182(f), because the most recent air quality modeling indicates that NO<sub>x</sub> reductions may not contribute toward achievement of the ozone standard or may not be necessary to demonstrate attainment. In the event that the NO<sub>x</sub> demonstration

is suspended or eliminated for a nonattainment area, the "build/no build" test for NO<sub>x</sub> will be waived during the interim and transition periods.

Public hearings to discuss the proposed SIP revision and rule were held as follows: August 15, 1994, in Beaumont; August 16, 1994, in Houston; August 17, 1994, in El Paso; August 18, 1994, in Irving; and August 19, 1994, in Victoria.

Testimony was received from five organizations during the comment period which ended August 26, 1994.

The Houston-Galveston Area Council (H-GAC), El Paso MPO, and the El Paso City-County Health and Environmental District were supportive of the proposed rule and SIP Revision.

Specific comments were made by the Galveston-Houston Association for Smog Prevention (GHASP) and the EPA Region 6 Office as follows.

The GHASP stated that §114.27(c) does not adequately explain the sections being adopted by reference, nor does it provide adequate background information.

The TNRCC staff believes that §114.27(c) and the SIP revision provide the requested information and does not agree that the language should be revised. The proposed §114.27(c) adopts several sections by reference from 40 CFR, Part 51, Subpart T, which is the final EPA rule on Transportation Conformity, effective November 24, 1993. The entirety of 40 CFR, Part 51 is included in the proposed SIP revision as Appendix A. This material was distributed at public hearings and was available to the public throughout the comment period. Also, §114.27(a) and (b) include an explanation of 40 CFR, Part 51 and its requirements.

The GHASP stated that TNRCC has granted certain organizations too much authority in the selection of transportation projects, including MPOs, TxDOT, Houston METRO, and private companies. The GHASP is concerned that TNRCC is promoting urban sprawl and undermining the Employer Trip Reduction Program by not halting road improvements.

The TNRCC staff believes that the purpose of the Transportation Conformity rule is to set out procedures to determine and ensure that MTPs, TIPS, and projects conform to the SIP, not to redefine the transportation project selection process or to stop specific

road projects. The TNRCC staff believes that the rule will increase the communication and consultation between air quality agencies and transportation planning/development agencies regarding individual projects in each nonattainment and maintenance area by including §114.27(d) in the rule. No change in the rule appears necessary.

The GHASP stated that MPOs should be required to add TNRCC to technical committees in §114.27(d)(2)(A)(i).

The TNRCC believes that the rule as proposed allows TNRCC full participation on important committees of the MPO in each nonattainment area, including air quality advisory committees and transportation project selection committees. No revision of the language appears to be necessary.

The GHASP stated that the definition of regionally significant projects in §114.27(d)(2)(A)(iv) should be clarified and should be expanded to address growth in vehicle miles travelled (VMT).

The TNRCC believes that regionally significant projects are thoroughly defined by 40 CFR, Part 51, and that the definition is accurately amplified by the proposed rule in

§114.27(d)(2)(A)(iv). The TNRCC staff believes that the emissions reductions required by the proposed rule adequately account for growth in VMT, pursuant to the FCAA Amendments of 1990, in §182(d). The rule language revision appears unnecessary.

The GHASP recommended adding language that eliminates transportation funding for projects other than emissions-reduction projects. The GHASP stated that TNRCC must rule directly on the list of regionally significant projects rather than allow MPOs to assume concurrence in the absence of a comment.

The TNRCC staff believes that the purpose of the proposed rule is to require a regional emission analysis that accounts for all new emissions, and applies a regional emissions reduction regimen for the total transportation system. The TNRCC believes that the consultation process allows TNRCC adequate opportunity during the development of MTPs, TIPS, and projects to comment on the significance of an individual project, in addition to providing a formal 30-day period to comment on a project's significance. The TNRCC staff believes that the MPO should be able to proceed with project planning if no comments are received.

The GHASP stated that the exempt project list required by §114.27(d)(2)(A)(v) should not include "growth" projects, and that TNRCC should be allowed to veto projects listed by the MPO as exempt.

Section 114.27(c) adopts by reference 40 CFR, Part 51, §51.460 and §51.462, regarding exempt projects. The TNRCC staff believes that the exempt projects allowed by the rule are not "growth" projects. Also, the TNRCC staff believes that the rule allows TNRCC an opportunity to dispute an exempt status for any project through the consultation process, through the 30-day comment period identified in §114.27(d)(2)(A)(v), and ultimately through the conflict resolution process identified in §114.27(d)(4). It appears that it is unnecessary to revise the rule language.

The GHASP requested that the words "significantly different" be clarified when referring to an MPO's adoption of significantly different methods and assumptions used in Hot Spot and Regional Emissions Analysis as required by §114.27(d)(2)(A)(viii).

The rule adopts by reference 40 CFR, Part 51, §51.452 and §51.454, which identify specific, standardized procedures for

preparing Hot-Spot and Regional Emissions Analysis. The TNRCC staff believes that any deviation from these procedures will be identified and rejected in the overall conformity determination when reviewed by the agencies specified in §114.27(d)(1)(B). Also, if any procedural modification is proposed by an MPO, §114.27(d)(2)(A)(viii) ensures that all air quality agencies are directly notified of the proposal. The TNRCC believes that minor changes in modeling assumptions do not require notification, and that no revision of the language is necessary.

The GHASP asked what TNRCC will do if transportation control measures (TCMs) are not fully implemented.

Section 114.27(d)(2)(A)(x) cites the existing §114.23, the TCM Enforcement rule, effective December 8, 1993, and subsequent revisions. The Transportation Conformity SIP revision includes §114.23 as Appendix B, which outlines the actions to be taken by TNRCC and the MPO in the event that a TCM is not fully implemented. The TNRCC staff believes that the inclusion of this citation and appendix provides adequate direction if action is required on a TCM.

The GHASP opposed delegation of the activities of the working

group established by §114.27(d)(3)(C). The GHASP requested evening meetings and public input from environmental groups, bicycle users, consumers groups, transit users, senior citizens, and others interested in transit. Also, the GHASP requested that the working group exclude individuals with a vested interest in transportation projects.

The TNRCC staff believes that it is appropriate to retain the right to delegate this activity if another existing group already performs the same or similar function in order to prevent unnecessary duplication. The TNRCC staff believes that the function of the proposed group is to share information and disseminate updates of computer models for CO hot spot analyses and transportation-related regional emissions models -- in other words, a technical staff activity. Although the groups suggested by the commenter are welcome to attend, the TNRCC staff believes that because the issues considered are of a technical nature, such staff meetings may not be the best forum for involvement of these groups. The TNRCC staff recognizes the importance of public input from the groups identified by GHASP and encourages their continued participation as members of the air quality and transportation committees at the MPOs in each nonattainment area. It appears that changes to the proposed language are unnecessary.

The GHASP stated that the definition of the word "substantial" should be clarified in §114.27(d)(3)(D) regarding project changes that trigger new conformity determinations.

The TNRCC staff feels that the phrase "... substantial functional, locational, and capacity changes ..." in §114.27(d)(3)(D) does not require further definition. The intent of this subparagraph is to identify events (other than those specified in §51.400 of the EPA rule) that merit a new conformity determination, which primarily refers to major changes in a project's use, location, or size. The TNRCC believes that the subparagraph accomplishes that requirement.

The GHASP stated that the 14-day appeal period stipulated in §114.27(d)(4)(C) is insufficient.

The TNRCC staff believes that §114.27(d)(4) allows for a substantial exchange should a dispute arise between the TNRCC and transportation planning organizations, and that the rule allows ample opportunity for TNRCC to raise its concerns. The 14-day appeal period is in addition to a period of meetings

between agencies, and represents the time TNRCC is allotted to inform the Governor of a dispute. A language revision appears unnecessary.

The GHASP requested that the word "egregious" be deleted from §114.27(d)(6).

See the last comment from EPA at the end of this preamble.

The GHASP opposed the proposed rule, claiming that it is too weak, and that TNRCC does not take responsibility for the SIP process regarding transportation as the law requires.

The TNRCC staff believes that the rule and SIP revision satisfy the requirements of the EPA final rule on Transportation Conformity and the FCAA Amendments of 1990, and that the rule and SIP provide for a vigorous and effective consultation process.

Specific comments from EPA Region 6, Air Programs Branch, were received as follows.

Regarding §114.27(b), EPA agreed with TNRCC's adoption of these conformity regulations as a set of Statewide rules, and the first

sentence in this subsection clearly outlines this intent. The EPA brought attention to the fact that listing the specific nonattainment areas in the rules will require a SIP revision every time a nonattainment area is added or removed from the list. Therefore, TNRCC may want to consider removing the specific reference to the five nonattainment areas in the last sentence.

The TNRCC staff proposes to include each nonattainment and maintenance area in the Transportation Conformity rule and SIP revision, and to execute a SIP revision each time an area is added or deleted to the list of nonattainment or maintenance areas. Therefore, §114.27(b) will remain unchanged.

The EPA noted that TNRCC is incorporating the remaining sections of the Federal transportation conformity rules by reference; however, the proposed rule is silent about referencing a specific date. The EPA requested clarification as to whether it is TNRCC's intent to incorporate by reference prospective Federal rules under 40 CFR Part 51, Subpart T.

The TNRCC does not propose to incorporate by reference prospective Federal rules under 40 CFR, Part 51, Subpart T.

Therefore, §114.27(c) has been revised to identify the publication date of November 24, 1993, for 40 CFR, Part 51, Subpart T.

Regarding §114.27(d)(2)(iii), EPA suggested that TNRCC add "...final draft, before adoption and approval of the Board..." in order to clarify the "final draft." The TNRCC must make clear that there is a process for circulating draft documents for comments.

The TNRCC staff agrees. Section 114.27(d)(2)(iii) has been revised to add the language "... before adoption and approval by the affected governing body ..." with regard to draft final versions of MTPs and TIPS.

Regarding §114.27(d)(2)(iii), under §51.402(c)(7), the MPO is required to distribute the final approved copies of the documents to the consulting agencies. The TNRCC rule does not have this requirement and EPA recommends that §114.27(d)(2)(iii) include distribution of the final documents to the agencies in paragraph (1)(B).

The TNRCC staff agrees. Language has been added to §114.27(d)(2)(iii) that requires the MPO to circulate final approved versions of MTPs and TIPs.

Regarding §114.27(d)(3)(A), EPA noted that it is not clear how this subparagraph ties to §114.27(d)(4), concerning Conflict Resolution. This subparagraph requires that all comments and replies be included in the final document, but it does not provide any course of action if comments are not resolved.

The TNRCC staff agrees. Section 114.27(d)(3)(A) has been revised by adding a statement that links this subparagraph to §114.27(d)(6), regarding Conflict Resolution.

The EPA stated that while TxDOT is one of the primary agencies in planning and developing transportation plans and projects, it did not find any definition of the role and responsibility for this agency. For example, in subsection (d)(3)(A), EPA raised several questions: Should TxDOT be identified due to its role in providing technical support to several of the State's MPOs? Is there any situation in which TxDOT may be in a position where they would have the same responsibilities and roles as the MPOs? If this is the case, EPA suggested that this be clarified

throughout the rule. The EPA's past experience with conformity review indicates that TxDOT has been involved with conformity analyses and determinations in some cases.

The TNRCC staff agrees. Other than paragraphs where TxDOT is already listed, the rule has been revised to include references to TxDOT wherever it is possible that TxDOT could be involved, e.g., in §114.27(d)(2)(A), regarding cooperation with the MPOs; in §114.27(d)(3)(D), regarding events that trigger new conformity determinations; and as EPA noted in §114.27(d)(3)(A).

The EPA noted that pursuant to §51.458(c) of their final transportation conformity rule, the required SIP revision shall provide that written commitments to mitigation measures must be obtained from the project sponsor and/or operator prior to a positive conformity determination by the MPO and other recipients of funds designated under Title 23 United States Code (USC) of the Federal Transit Act, the FHWA, or the FTA, and that the project sponsor must comply with such commitments. The EPA stated that the proposed conformity SIP revision does not address this requirement. This is intended to ensure implementation and enforceability of the mitigation measures by TNRCC and EPA.

The rule and SIP revision adopt by reference 40 CFR, Part 51, §51.458. The TNRCC staff assumes that by including this section verbatim that all aspects of the section are addressed by the rule.

Regarding §114.27(d)(2)(A)(ix), EPA commented that this clause does not adequately address the requirements of §51.402(c)(4) and (c)(5). It does not require the non-FHWA/FTA regionally significant projects, including those by recipients of funds designated under Title 23 USC of the Federal Transit Act, be disclosed to the MPO on a regular basis.

The TNRCC staff agrees. Section 114.27(d)(2)(A)(ix) has been revised to more fully address 40 CFR §51.402(c)(4) and (5).

Regarding §114.27(d)(2)(B)(iv), EPA noted that the implementing agencies need to be defined in this clause. The EPA did not find any definition for implementing agencies in the State rule.

The rule and SIP revision include 30 TAC Chapter 114, inclusive of §114.23, the TCM Enforcement Rule, both as an appendix to the SIP Revision and as a citation in §114.27(d)(2)(B)(iv). The TCM rule defines "implementing agency" as follows: "an entity,

transportation provider, organization, agency, or individual responsible for the design, procurement of funds, construction, operation, maintenance, management, monitoring, and, in conjunction with the MPO, compliance with TCMs." The TNRCC staff assumes that the citation in the TCM rule and its inclusion as an appendix in the SIP thereby includes this definition by reference.

Regarding §114.27(d)(6), EPA commented that the enforceability clause of the proposed rule is unacceptable because the enforcement culpability standard has been set too high. The EPA stated that it must be one of strict liability. The culpability language as proposed raises the level beyond one of strict liability, as is required by the Clean Air Act, and beyond one even of negligence to that of a criminal standard. This cannot be approved by EPA as a SIP revision. Furthermore, EPA stated that the rule is limited to violations of the consultation process. Failure to follow and meet the other parts of the transportation conformity rules must be violations of the SIP also.

The TNRCC staff has revised the enforcement clause in §114.27(d)(6) in keeping with the EPA comments.

The new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§114.27. Transportation Conformity.**

(a) Purpose. The purpose of this section is to implement the requirements set forth in 40 Code of Federal Regulations (CFR) Part 51, Subpart T (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Act), which are the regulations developed by the United States Environmental Protection Agency (EPA) pursuant to the Federal Clean Air Act (FCAA) Amendments of 1990, §176(c). It includes policy, criteria, and procedures for demonstrating and assuring conformity of transportation planning activities with the State Implementation Plan (SIP).

(b) Applicability. This section applies to transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers ( $PM_{10}$ ), and the precursors of those pollutants. Affected nonattainment or maintenance areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and

Victoria.

(c) CFR incorporation. The provisions promulgated in the following listed sections of 40 CFR, Part 51, Subpart T, dated November 24, 1993, are hereby incorporated by reference:

§§51.392, 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462, and 51.464.

(d) Consultation. Pursuant to 40 CFR, §51.402 regarding consultation, the following procedures shall be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, relating to consultation, the affected agencies shall include:

(i) EPA;

(ii) Federal Highway Administration (FHWA);

(iii) Federal Transit Administration (FTA);

(iv) Texas Department of Transportation  
(TxDOT);

(v) metropolitan planning organizations  
(MPOs) in nonattainment or maintenance areas;

(vi) local publicly-owned transit services  
in nonattainment or maintenance areas (the designated recipient  
of FTA §9 funds);

(vii) Texas Natural Resource Conservation  
Commission (TNRCC);

(viii) local air quality agencies in  
nonattainment or maintenance areas (recipients of Federal Clean  
Air Act, §105 funds).

(B) All correspondence with the affected agencies  
in subparagraph (A) of this paragraph shall be addressed to the

following designated point of contact:

- (i) MPO: Executive Director or designee;
- (ii) TNRCC: Executive Director or designee;
- (iii) TxDOT: Director of Transportation  
Planning and Programming or designee;
- (iv) TxDOT: Director of Environmental  
Affairs Division or designee;
- (v) FHWA: Administrator of Texas Division  
or designee;
- (vi) FTA: Director of Office of Program  
Development - FTA Region 6, or designee;
- (vii) EPA: Regional Administrator - EPA  
Region 6, or designee;
- (viii) TxDOT District: District Engineer or  
designee;

(ix) local publicly-owned transit services (the designated recipient of FTA §9 funds): General Manager or designee;

(x) local air quality agencies (recipients of Federal Clean Air Act, §105 funds): Director or designee; and

(xi) TNRCC Regions in nonattainment or maintenance areas: Regional Director or designee.

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the TNRCC Mobile Source Division Director, or a designated representative, to participate in

meetings of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPS) for all regularly scheduled meetings on surface transportation or air quality to each of the agencies specified in paragraph (1)(B) of this subsection. Such information shall be provided in accordance with the locally adopted public involvement process as required by 23 CFR, Part 450, §450.316(b)(1);

(iii) after preparation of final draft versions of MTPs and TIPS, and before adoption and approval by the affected governing body, ensure that the agencies specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required by the Metropolitan Planning Rule, 23 CFR, §450.316(b)(1). Upon approval of MTPs and TIPS, MPOs shall distribute final approved copies of the documents to the agencies specified in paragraph (1)(B) of this subsection;

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process which serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles travelled, or network connections. In addition to new facilities, examples may include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international

bridges, park-and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on their rationale. The MPO shall consider the views of each agency that comments, and respond in writing prior to any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination pursuant to 40 CFR, Part 51, §51.460 and §51.462. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP

and TIP documents. If no comments are received as part of the public involvement process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments which add or delete the exempt projects identified in 40 CFR, §51.460;

(vii) as required by 40 CFR, §51.424 and §51.454 of the final EPA transportation conformity rule, make a preliminary identification of those projects located at sites in  $PM_{10}$  nonattainment and maintenance areas that require quantitative  $PM_{10}$  Hot Spot analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;

(viii) before adoption of any new or substantially different methods or assumptions used in the Hot Spot or Regional Emissions Analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) in coordination with TxDOT and the local transit agencies, disclose all known, regionally significant, non-federal projects, even if the sponsor has not made a final decision on its implementation; include all disclosed, or otherwise known, regionally significant non-federal projects in the regional emissions analysis for the nonattainment area; respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and have recipients of federal funds determine annually that their regionally significant non-federal projects are included in a conforming MTP or TIP, or are included in a regional emissions analysis of the MTP and TIP. The MPO shall consult with project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects for which the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope which is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope;

(x) pursuant to §114.23 of this title (relating to Transportation Control Measures), ensure the timely implementation of TCMS and report to the TNRCC annually on the status of adopted TCMS. If alternative TCMS or other reduction measures are deemed necessary, and these are not already included in the SIP, the MPO shall develop new TCMS with equal or greater emissions reductions consistent with the MTP, TIP, SIP, and conformity requirements, pursuant to §114.23(e) of this title. Any changes in TCMS will be coordinated with the affected agencies specified in paragraph (1)(A) of this subsection;

(xi) cooperatively share the responsibility for conducting conformity determinations on transportation activities which cross the borders of MPOs or nonattainment and maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) which will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/

maintenance areas or basins will share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xii) for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(B) the TNRCC, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, TNRCC shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(A) of this subsection during preparation of applicable transportation related SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation-related SIP revisions and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings according to 40 CFR, §51.102;

(iii) provide copies of final documents, including applicable adopted or approved transportation related SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection; and

(iv) after consultation with the MPO regarding TCMs pursuant to §114.23(b) of this title, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the TNRCC shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, TNRCC shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or substitute TCMs or other emission reduction measures.

(3) General procedures.

(A) The MPO, TxDOT, or TNRCC, as applicable, shall respond to comments of affected agencies on MTPs, TIPS, projects, or SIP revisions in accordance with the public involvement procedures that govern the involved action. The MPO, TxDOT, or TNRCC, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board. In the event that comments are not adequately resolved, the procedures outlined in paragraph (4) of this subsection regarding conflict resolution shall apply.

(B) Because the validity of the regional emissions analysis depends on transportation modeling assumptions which need periodic updates, the MPO, with the assistance of TxDOT and local publicly owned transit agencies, will conduct meetings with the agencies specified in paragraph (1)(A) of this subsection to cooperatively establish research and data collection efforts and regional model development (e.g., household/ transportation surveys).

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in Hot-Spot and Regional Emissions Analyses, TNRCC shall establish a working group identified as the Transportation and Air Quality Technical (TAQT) Working Group. The TAQT Working Group shall include the agencies specified in paragraph (1)(A) of this subsection. The frequency of meetings and agendas for them will be determined by TNRCC in cooperation with the agencies specified in paragraph (1)(A) of this subsection. The function of this working group may be delegated to an existing group with similar composition and purpose.

(D) The TNRCC, affected MPOs, and TxDOT shall cooperatively evaluate events which will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR, §51.400 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(4) Conflict resolution.

(A) The TNRCC and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts shall include meetings of the agency executive directors if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the TNRCC concerns, and that no further progress is possible, the MPO or TxDOT shall notify the TNRCC executive director in writing to this effect. This subparagraph shall be cited by the MPO or TxDOT in any notification of a conflict which may require action by the Governor, or his or her delegate pursuant to subparagraph (C) of this paragraph.

(C) The TNRCC has 14 calendar days from date of receipt of notification as required in subparagraph (B) of this paragraph to appeal to the Governor. If TNRCC appeals to the Governor, the final conformity determination must then have the concurrence of the Governor. The Governor may delegate his or her role in this process, but not to the Commission or staff of TNRCC, a local air quality agency, the Texas Transportation

Commission or staff of TxDOT, or a MPO. This subparagraph shall be cited by TNRCC in any notification of a conflict which may require action by the Governor or his or her delegate. If TNRCC does not appeal to the Governor within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations.

Consistent with the requirements of 23 CFR, Part 450 relating to public involvement, the agencies specified in paragraph (1)(A) of this subsection shall establish a public involvement process which provides opportunity for public review and comment prior to taking formal action on conformity determinations for all MTPs and TIPS. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for a MTP or TIP. Also, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) In formulating an enforcement policy regarding a violation of a rule of this subsection (relating to the consultation process) TNRCC may consider any good faith effort made by the consulting agencies to comply.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 19, 1994.