

The commission adopts amendments to Chapter 114, Subchapter G, §114.260, concerning Transportation Conformity, and a revision to the State Implementation Plan (SIP) concerning Transportation Conformity. Section 114.260 is adopted with changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8364).

#### EXPLANATION OF PROPOSED RULE

The Texas transportation conformity rule (§114.260) and its associated SIP were adopted on October 19, 1994, in response to the Federal Clean Air Act (FCAA) requirements. The FCAA required each state to submit a revision to its SIP no later than November 25, 1994 establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Emissions estimates of transportation plans, programs, and projects must be found to conform with their corresponding emissions estimates or budgets, i.e. limitations, contained in the applicable SIP before they are approved or funded by the U. S. Department of Transportation or the Metropolitan Planning Organizations (MPOs) in nonattainment and maintenance areas. Failure to demonstrate transportation conformity will result in a partial loss of federal highway funding. The Texas transportation conformity SIP and rule were approved by the United States Environmental Protection Agency (EPA) on November 8, 1995. Since their initial promulgation, EPA has amended the federal transportation conformity rules three times; on August 7, 1995, November 14, 1995, and August 15, 1997. As a result of the August 15, 1997 amendments, Texas was required to amend the state transportation conformity rule and SIP to incorporate the federal amendments by August 15, 1998.

The adopted amendments will incorporate, by reference, the August 15, 1997, amendments to the federal transportation conformity rule (40 CFR, Part 51 Subpart T and Part 93 Subpart A) with the exception of §93.102(d) and §93.105. Section 93.102(d) established a grace period for new nonattainment areas and has been disallowed as a result of Sierra Club v. EPA, 129 F.3d 137 (D.C. Cir. 1997). Section 93.105 cannot be incorporated by reference because it requires states to develop their own consultation procedures subject to EPA guidelines. These interagency and public consultation procedures are established in §114.260(d).

Most of the amendments to the federal transportation conformity rule are organizational changes or are slightly less stringent in nature than previous versions. The amendment, however, that requires nonattainment areas to demonstrate transportation conformity to a nitrogen oxide (NO<sub>x</sub>) motor vehicle emissions budget regardless of the area's NO<sub>x</sub> waiver status, and is more stringent than the current Texas transportation conformity rule, which includes exemptions from NO<sub>x</sub> budgets. The adopted revisions to §114.260 will incorporate the new federal NO<sub>x</sub> requirements by reference.

This adopted rule also simplifies the transportation control measure (TCM) requirements by deleting references to §114.270(d), which is the TCM Enforcement Rule. Instead of being required to develop new TCMs consistent with the transportation conformity process to make up an emissions reduction shortfall, the nonattainment and maintenance area MPOs would only be required to ensure timely TCM implementation and report the implementation and emissions reductions status of adopted TCMs annually to the commission. Finally, this adopted rule will clarify the transportation conformity determination process by identifying who makes the determinations, who issues the joint conformity

finding, and when the conformity is effective. MPOs and their governing bodies, or the Texas Department of Transportation (TxDOT), if applicable, would make the transportation conformity determinations. Upon completion of the transportation conformity review process, the FHWA and the FTA would issue a joint conformity finding, indicating the transportation conformity status of the documents under review. The transportation conformity would be effective on the date of the joint conformity finding.

#### FINAL REGULATORY IMPACT ANALYSIS

The adopted rulemaking is a “major environmental rule” because it deals with the construction of highway and other transportation projects within the nonattainment and maintenance areas of the state, most of which are major metropolitan areas. Incorporation of the new federal transportation conformity requirements by reference means that all nonattainment and maintenance areas will be required to demonstrate conformance of an emissions budget for NO<sub>x</sub> or be subject to loss of highway or other transportation funding. Under the existing rules, the nonattainment areas have not been required to conform to a NO<sub>x</sub> budget.

This rulemaking does not, however, meet the other criteria for being subject to §2001.0025 because it does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract to implement a state and federal program, is not being adopted solely under the general powers of the commission, and is not being adopted on an emergency basis to reduce risks to human health from environmental exposure.

Therefore, the commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has determined that the rulemaking is not subject to §2001.0025.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, Section 2007.043. The following is a summary of that assessment. The specific purpose of the rule is to meet the federal requirement to incorporate recent EPA changes to the federal transportation conformity rule, which requires all transportation plans, programs, and projects in nonattainment or maintenance areas to conform to the SIP. The rule will substantially advance this specific purpose by incorporating the required sections of the federal transportation conformity rule, as amended on August 15, 1997, by reference. Other adopted amendments simplify and reduce TCM requirements and clarify the transportation conformity determination process. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rule because the proposed rule only serves to ensure that transportation plans, programs, and projects in nonattainment and maintenance areas conform with the SIP.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency

with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area. This rule merely adopts the changes EPA has made to 40 CFR Parts 51 and 93, and therefore, is in agreement with the CMP policy governing air pollutant emissions. In compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies. No persons submitted comments regarding the consistency of the proposed rules with the CMP during the comment period.

#### HEARING AND COMMENTERS

A public hearing on the proposal was held in Austin on May 13, 1998. Six persons attended the hearing, but only one commenter, the Houston-Galveston Area Council (H-GAC), gave oral comments. In addition, two commenters, EPA and H-GAC provided written comments. The comment period closed on May 26, 1998. Based on the comments received, the commission decided to make suggested changes to the proposal and re-propose for another public comment period. A second public hearing on this adoption was held in Austin on September 8, 1998. No persons attended the second hearing. The EPA provided additional written comments and one individual provided written comments during the second comment period which closed on September 14, 1998.

EPA and H-GAC supported the cooperation during the rulemaking process, but suggested several changes in their first set of comments. The changes were incorporated into the second proposal, and EPA fully supported the rules in its second written comment letter. H-GAC did not submit additional comments on the second proposal. One individual expressed opposition to several portions of the proposal but did not make any suggestions for change.

#### EFFECTIVE DATE

The EPA noted in its initial comments that the statement in the proposed SIP Narrative Document (Section VI.H.3.b.) which specifies that “all conformity determinations made after August 24, 1998, will be made according to the applicable portions of the final EPA rules on transportation conformity, as amended on August 15, 1997 ” is contrary to federal rule. EPA cited both 40 CFR 51.390 (b) and the preamble to the August 15, 1997 Transportation Conformity Rule Amendments (62 FR 43798) as specifying that the proposed transportation conformity rule will not be effective in areas that have approved transportation conformity SIPs until that SIP is revised and approved by EPA. EPA further stated that “therefore, conformity determinations must comply with the provisions of the current approved transportation conformity SIP. Since we realize the importance of using the 1997 rule in the conformity determinations, EPA will ensure that priority be given processing and approving the revised conformity SIP in areas such as Texas with approved conformity SIPs.”

**Although Texas rules are generally enforceable 20 days after filing with the *Texas Register*, the commission agrees to incorporate the EPA comment into the Texas transportation conformity SIP and rule. Both the SIP and rule were revised to indicate that the Texas transportation conformity**

**rule will be effective on the date the Texas transportation conformity SIP is approved by EPA.**

**The rule was re-proposed in the *Texas Register* on August 14, 1998 and a second public comment hearing was held on September 8, 1998. EPA stated during the second public comment period that the second rule proposal satisfactorily incorporated its comments. The commission appreciates the EPA commitment to expedite processing and approval of the Texas transportation conformity SIP. Section 114.260(e) is adopted with changes in order to insert the appropriate adoption and filing dates.**

#### ROLES AND RESPONSIBILITIES OF AFFECTED AGENCIES

The EPA stated that §114.260(d)(2)(A)(ix) of the original proposed rule did not include all the requirements of 40 CFR 93.105(c)(4). In particular, the section did not include the requirement for “any non-federal entity, designing or constructing any transportation facility, to report design or construction plans or any changes to the existing plan to the MPO.” The EPA recommended revising the section by adding the following: “In addition, any group, entity, or individual planning to construct a regionally significant transportation project which is not a FHWA-FTA project (including a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including those projects planned by recipients of funds under Title 23 U.S.C. or Federal Transit Act, shall ensure that these plans are disclosed to the MPO on regular basis (or as soon as they are identified), including immediate notification of changes to the existing plans, so that these transportation projects can be incorporated in the regional emissions analysis and modeling of the area.”

**The commission agrees that the original proposal omitted the requirements of 40 CFR 93.105(c)(4), regarding the roles and responsibilities of any non-federal entity, designing or constructing any transportation facility of a regionally significant nature, but which is not an FHWA-FTA project. The commission did not, however, add those roles and responsibilities to §114.260(d)(2)(A) regarding MPO roles and responsibilities; but instead created a new §114.260(d)(2)(C), which addresses the roles and responsibilities of non-federal entities. The rule was re-proposed on August 14, 1998, and a second public comment hearing was held on September 8, 1998. EPA stated during the second public comment period that the second rule proposal satisfactorily incorporated its comments.**

#### TRANSPORTATION CONFORMITY REVIEW PROCESS

The EPA commented that §114.260(d)(3)(E) of the original proposed rule did not clearly define the transportation conformity review process and the final effective date of the conformity determination. EPA requested that the language be clarified to better reflect what must be completed before FHWA and FTA issue a joint conformity finding. EPA also requested that the language state that the effective date of the conformity determination for an area is the date of joint conformity determination made by FHWA-FTA.

**The commission agrees. Language was been added to §114.260(d)(3)(E) to clarify the transportation conformity review process and the final effective date. The rule was re-proposed on August 14, 1998, and a second public comment hearing was held on September 8, 1998. EPA**

**stated during the second public comment period that the second rule proposal satisfactorily incorporated its comments.**

An individual stated opposition to the requirements in §114.260(d)(3)(E) for the MPO and TxDOT to make conformity determinations for Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), and other projects. The commenter stated that the commission should provide oversight and make a final determination for these projects.

**The commission disagrees because the MPOs are required by 40 CFR 93.104 to determine conformity of MTPs, TIPs, and projects within the metropolitan planning area. In addition, 40 CFR 93.105 requires a process to ensure the MPO and state departments of transportation, i.e. TxDOT, use “cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.” Section 114.260(d)(2)(A)(xii) addresses this process by stating that “the MPOs shall, for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into a memorandum of agreement involving the MPO and TxDOT for cooperative planning and analysis of projects.” Given the requirements of the federal rule and the process outlined in §114.260(d)(2)(A)(xii), the commission believes that the MPOs and TxDOT should be responsible for making conformity determinations for the MTPs, TIPs and other projects, and does not believe a change in the rule is warranted. Section 114.260(d)(3)(E) also addresses the transportation conformity determination review process, which includes requirements for interagency consultation and public participation. The commission does**

**participate in the transportation conformity determination review process. In addition, §114.260(d)(3)(E) states that upon completion of the review process, the FHWA and the FTA will issue a joint conformity finding indicating the transportation conformity status of the document(s) under review. This statement is consistent with 40 CFR 93.104 and gives final approval authority of transportation conformity determinations to FHWA and FTA.**

#### TRANSPORTATION CONFORMITY PUBLIC HEARING REQUIREMENTS

The EPA suggested that §114.260(d)(2)(B)(ii) be revised to ensure clarity by indicating that the public hearings will be conducted in accordance with the SIP public hearing requirements found in 40 CFR 51.102.

**The commission agrees. Section 114.260(d)(2)(B)(ii) has been revised to indicate that the public hearings will be in accordance with 40 CFR 51.102. The rule was re-proposed on August 14, 1998, and a second public comment hearing was held on September 8, 1998. EPA stated during the second public comment period that the second rule proposal satisfactorily incorporated its comments.**

#### CONSULTATION PROCESS

H-GAC stated that the commission has been highly responsive to the needs of the transportation planning and conformity process when receiving MTPs and TIPs from H-GAC, but has been less consultative when developing SIPs. H-GAC also stated that consultation on the Metropolitan Transportation Plan by H-GAC with the commission has worked well, however, consultation with the

MPO by the commission has worked less well, particularly with regard to the most recent attainment demonstration SIP. H-GAC also provided a proposal with several suggestions to improve the consultation process between the commission and the MPO.

**The commission assumes that since the proposal was submitted as a comment on the proposed transportation conformity rule, H-GAC's intent was for the proposal to be incorporated into the rule. Therefore, the commission will comment on each item of the proposal in that context.**

H-GAC stated that consultation must be reciprocal to carry out the vision of coordinated transportation and air quality planning contained in the transportation conformity rule.

**The commission agrees and believes that the consultation requirements in the proposed rule define a reciprocal consultation process.**

H-GAC stated that consultation by the commission with MPOs is required whenever the commission develops transportation related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. H-GAC also indicated that most of what it is requesting from the consultation process is already required by the regulation.

**The commission agrees. Section 114.260(d)(2)(B) of both the existing rule and of this rulemaking states that the commission shall work in consultation with the agencies specified in §114.260(d)(1)(A) in developing applicable transportation related SIP revisions, air quality**

**modeling, general emissions analysis, emissions inventory, and all related activities. Since nonattainment area MPOs are specified in §114.260(d)(1)(A), this requirement applies to H-GAC and other nonattainment area MPOs.**

H-GAC requested that the commission use a broader vision of “transportation-related” so that issues that will affect the control strategy, and which will include transportation emission budgets, could be highlighted to the MPO early so that planning assumptions can change as needed. H-GAC further stated that the context in which transportation planning takes place affects the transportation controls that would be imposed or the strategies that are developed. Finally, H-GAC noted that reciprocal consultation addresses these issues up front rather than at public hearings.

**The commission interprets this request to mean that any issue which will establish or affect the motor vehicle emissions budgets contained in a SIP should be brought to the MPO’s attention as soon as possible. The commission agrees, but believes that §114.260(d)(2)(B) adequately addresses this concern. Section 114.260(d)(2)(B) of both the existing rule and of this rulemaking states that the commission shall work in consultation with the agencies specified in §114.260(d)(1)(A) in developing applicable transportation related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Section 114.260(d)(2)(B)(i) also states that the commission shall set agendas and schedule meetings to seek advice and comments from all agencies specified in §114.260(d)(1)(A) during preparation of applicable transportation related SIP revisions. The commission believes that the inclusion of a precise definition of “transportation**

**related” into the rule could ultimately prove to be unduly constraining, because transportation issues, programs, and policies continue to evolve.**

H-GAC stated that while informal consultation is great, the regulation requires more formal consultation as well. H-GAC suggested that written documentation, in the form of letters, memos, or other records, should be required to record all discussions.

**Although H-GAC’s definition of informal and formal consultation is unclear, the commission assumes that H-GAC is equating formal consultation with written documentation and informal consultation with verbal communication. If this is H-GAC’s intent, then the commission refers to the proposed rule which requires both formal and informal consultation in specific instances as defined in §114.260(d)(2). In addition, §114.260(d)(1)(B) lists the designated points of contact for all correspondence addressed to the affected agencies in §114.260(d)(1)(A). The commission agrees that letters or memos written to the relevant agency point of contact may help document informal consultation, and will incorporate such practices into its operating procedures as appropriate. However, the commission believes that adding requirements to the rule language for letters or memos documenting informal consultation would be unduly burdensome and constraining.**

H-GAC suggested that the commission should enable the MPO to participate in the development of technical methodologies for emission estimation and provide early opportunities to participate when travel data is to be used for any reason.

**The commission must follow federal emission estimation methodologies and guidelines when applicable. However, §114.260(d)(2)(B) of both the existing rule and of this rulemaking states that the commission shall work in consultation with the agencies specified in §114.260(d)(1)(A) in developing applicable transportation related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. This section enables the MPO to participate in the development of technical methodologies for emission estimation that are not defined by federal methodologies or guidelines. Because travel data is an integral part of the activities listed in §114.260(d)(2)(B), the commission believes that the MPO has early opportunities to participate when travel data is used by the commission.**

H-GAC stated that it wants to receive hard copies of final documents adopted by the commission that relate to its region.

**Section 114.260(d)(2)(B)(iii) of the existing rule and of this rulemaking requires the commission to provide copies of final documents, including applicable adopted or approved transportation related SIP revisions and supporting information, to all agencies specified in §114.260(d)(1)(B). Nonattainment area MPOs are specified in §114.260(d)(1)(B), therefore this requirement applies to H-GAC and other nonattainment area MPOs.**

UNRESOLVED ISSUES WITH THE FEDERAL AND STATE TRANSPORTATION  
CONFORMITY PROCESS

H-GAC stated that it understands most of the changes to the regulation must be an adoption by reference to EPA regulatory changes. H-GAC also stated that it will continue to work with other stakeholders and press for further clarity of the state and federal rules. H-GAC stated that it remains concerned about issues not fully resolved by the EPA changes, such as the continuing discrepancy between SIP timelines (attainment year - 2007) and the mandated 20+ year extent of the metropolitan transportation plan (2025). H-GAC hoped that further resolution of this issue will come soon.

H-GAC believes that with emissions budgets, having to demonstrate conformity for all plan analyses in the years beyond the attainment year may be impossible.

**Although this comment is out of scope of this rule proposal, the commission recognizes the need for further improvement in the transportation conformity process. The commission will transmit the H-GAC concerns to appropriate EPA staff. The commission appreciates the cooperation and input provided by H-GAC and the other stakeholders.**

TCM IMPLEMENTATION AND EFFECTIVENESS MONITORING

An individual commented that he was opposed to removing the requirement under §114.270(d) (called 260(d)(2)(A)(x)) for local governments to recover emissions reductions if a shortfall is found due to a lack of TCM implementation or effectiveness.

**The commission notes that §114.270(d) and §114.260(d)(2)(A)(x) are two different sections of Chapter 114, Control of Air Pollution From Motor Vehicles. Section 114.270 is the TCM Enforcement Rule and §114.260 is the Transportation Conformity Rule. The requirement for local governments to recover emission reductions if a shortfall is found due to a lack of TCM implementation and effectiveness is found in §114.270. This rule proposal did not remove the requirement from §114.270, but did remove references to this requirement from §114.260. The federal transportation conformity rule, as a condition of transportation conformity, does not require local governments to recover emission reductions if a shortfall is found due to TCM implementation and effectiveness, or develop alternative TCMs. The reference to §114.270 was removed from §114.260 in order to make the state transportation conformity rule more accurately reflect the requirements of the federal transportation conformity rule.**

An individual commented that the implementation and resulting effectiveness of TCMs have not been properly monitored by the commission. The commenter further stated that the commission has allowed park and ride lots in Houston to be empty or partially full for 10 years, even though the commission knows that empty or partially full lots mean little or no emission reductions.

**Section 114.270 requires MPOs to report to the commission annually on TCMs included in the SIP. This report includes, but is not limited to, information on TCM implementation, funding, emission reductions and modifications. The commission believes that the TCM annual report provides adequate monitoring of TCM implementation and effectiveness. The commission agrees that underutilized or ineffective TCMs do not contribute to effective emission reduction strategies,**

**and it is in the interest of the commission and the nonattainment area to have TCMs that result in actual emission reductions. In accordance with §114.270(d), it is, however, the responsibility of the MPO to implement effective TCMs, such as park-and-ride lots, and if information regarding the status of the TCMs in the SIP indicates that any TCM has not been adequately implemented, the MPO is required to develop, submit, and initiate an alternative TCM that demonstrates the required emission reduction.**

#### UNDEFINED TERMS

An individual commented that §114.260(d)(2)(A)(iv) does not adequately define “significant change” or “significantly affect.” The individual further stated that this means the definitions can change, and that arbitrary and subjective definitions can be applied each time there is a need to apply the definition. The commenter recommended stable and permanent definitions for these terms.

**The commission believes that although the terms are not specifically defined in the definitions section, they are adequately defined in the context of the rule language. Section 114.260(d)(2)(A)(iv) contains the phrases “significant change in design concept and scope” and “significantly affect.” The language in the same section defines the phrases “as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections.” The next sentence of Section 114.260(d)(2)(A)(iv) states that “in addition to new facilities, examples 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.” The terms “design concept” and “design scope” are also defined in 40 CFR 93.101 of the federal transportation conformity rule, which §114.260 incorporates by reference.**

#### STATUTORY AUTHORITY

This amendment is adopted under the TCAA, Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. Revisions to §114.260 are also adopted under TCAA, §382.011, which provides the commission with the authority to control the quality of the state’s air; §382.012, which allows the commission to prepare and develop a general, comprehensive plan for the proper control of the state’s air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

## **SUBCHAPTER G : TRANSPORTATION PLANNING**

### **§114.260. Transportation Conformity.**

(a) Purpose. The purpose of this section is to implement the requirements set forth in Title 40 of the Code of Federal Regulations (40 CFR) Part 93, Subpart A (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 Laws), which are the regulations developed by the EPA under the FCAA Amendments of 1990, §176(c). It includes policy, criteria, and procedures to demonstrate and assure 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 ten micrometers ( $PM_{10}$ ) and smaller, and the precursors of those pollutants. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) CFR incorporation. The Transportation Conformity Rules, as specified in 40 CFR 93, Subpart A, (62 FR 43780) dated August 15, 1997, are incorporated by reference with the exception of §93.102(d) and §93.105. The requirements of §93.105 are addressed in this section.

(d) Consultation. Under 40 CFR, §93.105, 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, concerning consultation, the affected agencies shall include:

(i) - (vii) (No change.)

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of FCAA, §105 funds).

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph shall be addressed to the following designated points of contact:

(i) - (v) (No change.)

(vi) FTA: Director of Office of Program Development or designee -  
FTA Region 6;

(vii) EPA: Regional Administrator or designee - EPA Region 6,

(viii) - (xi) (No change.)

(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 commission's Air Quality Planning and Assessment Division Director, or a designated representative, to be a voting member 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. This 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) (No change.)

(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 traveled, or network connections. In addition to new facilities, examples 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 before 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 under 40 CFR, Part 93, §93.126 and §93.127. 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. In addition, if no comments are received as part of the subsequent 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, §93.126;

(vii) as required by 40 CFR, §93.116 and §93.123, and in cooperation with TxDOT, make a preliminary identification of those projects located at sites in PM<sub>10</sub> nonattainment and maintenance areas that require quantitative PM<sub>10</sub> 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) - (ix) (No change.)

(x) ensure timely TCM implementation and report on the implementation and emissions reductions status of adopted TCMs annually to the commission;

(xi) - (xii) (No change.)

(B) The commission, 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, the commission shall:

(i) (No change.)

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

(iii) (No change.)

(iv) after consultation with the MPO regarding TCMs, 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 commission 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, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures.

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR, §93.109(g)(2)(iii).

(C) Any group, entity, or individual planning to construct a regionally significant transportation project which is not an FHWA-FTA project (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered) must disclose project plans to the MPO on a regular basis and disclose any changes to those plans immediately. This requirement also applies to recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws.

(3) General procedures.

(A) - (B) (No change.)

(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, agencies specified in paragraph (1)(A) of this subsection shall participate in a working group identified as the Technical Working Group for Mobile Source Emissions (TWG). The frequency of meetings and agendas for them will be cooperatively determined by 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 commission, affected MPOs, affected local air quality agencies, 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, §93.104 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.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR, Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process, (including consultation, public participation, and all other requirements of this section), FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The effective date of the conformity determination for an area is the date of the joint conformity finding made by FHWA-FTA.

(4) Conflict resolution.

(A) The commission 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 commission's concerns, and that no further progress is possible, the MPO or TxDOT shall notify the commission 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 under subparagraph (C) of this paragraph.

(C) The commission has 14 calendar days from date of receipt of notification, as required in subparagraph (B) of this paragraph, to appeal to the Governor. If the commission 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 commission staff, a local air quality agency, the Texas Transportation Commission or TxDOT staff, or an MPO. This subparagraph shall be cited by the commission in any notification of a conflict which may require action by the Governor or his or her delegate. If the commission 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, concerning public involvement, the agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all MTPs and TIPs, as required by 23 CFR §450.316 (b) and this section. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.95. 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 an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) (No change.)

(e) Effective date. The revisions to this section adopted by the commission on November 18, 1998, and filed with the Secretary of State on November 23, 1998, shall be in effect on the date of EPA approval of the transportation conformity SIP associated with this rule.