The Texas Commission on Environmental Quality (commission) propose an amendment to §114.260 and corresponding revisions to the Transportation Conformity State Implementation Plan (SIP) for Texas Nonattainment and Maintenance Areas.

The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. required each state to submit a revision to its SIP by 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). Final rules regarding conformity requirements were published by EPA on November 24, 1993. The Texas SIP revision, which incorporated conformity requirements, was adopted October 19, 1994 and approved by EPA on November 8, 1995. EPA has amended the federal transportation conformity rule six times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; August 6, 2002; and July 1, 2004. The commission previously incorporated the federal changes up to and including the 2002 amendments. The commission is now updating its rule to incorporate the July 1, 2004 federal amendments. The addition of these changes to the existing state rules will allow metropolitan planning organizations in Texas nonattainment areas to take advantage of the flexibility in the recent federal amendments during their required June 2005 conformity determinations.

Transportation conformity is required under FCAA, §176(c), to ensure that federally supported highway and transit project activities are consistent with the purpose of the state's SIP. Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under the FCAA. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA has amended the transportation conformity rule to finalize several provisions that were proposed last year. The latest transportation conformity rule includes criteria and procedures for implementing conformity in accord with the new eight-hour ozone NAAQS and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) NAAQS. The final EPA rule also addresses a March 2, 1999 ruling by the United States Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al., 167 F. 3d 641, D.C. Cir. 1999*). Specifically, the court's ruling affected provisions of the rule which pertained to the issues of funding of metropolitan transportation plans (MTP) and transportation improvement programs (TIP); use of the motor vehicle emission budget (MVEB) prior to SIP approval; federal transportation projects in areas without a conforming MTP and TIP; timing of conformity consequences following an EPA SIP disapproval; and use of submitted safety margins in areas with approved SIPs submitted prior to November 24, 1993. Lastly, the EPA final rule incorporates into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been utilized in place of certain regulatory provisions of the rule since the Environmental Defense Fund v. EPA court decision. DOT is EPA's federal partner in

implementing the transportation conformity regulation.

The primary changes to 40 Code of Federal Regulations (CFR) Part 93 regarding transportation conformity include the following. 40 CFR §93.101 is amended by adding new definitions for one-hour ozone NAAQS; eight-hour ozone NAAQS; donut areas; isolated rural nonattainment and maintenance areas; and limited maintenance plan, and by revising definitions for control strategy implementation plan revision and milestone. 40 CFR §93.102 adds a new term to the list of criteria pollutants, particles with $PM_{2.5}$. Section 93.102 incorporates into the rule a one-year grace period before conformity is required in areas designated as nonattainment for a given air quality standard for the first time. 40 CFR §93.104 streamlines conformity frequency requirements. 40 CFR §93.106 states that there will be a two-year grace period for transportation plan requirements in certain ozone and carbon monoxide (CO) areas. Principal changes to 40 CFR §93.109 include the applicability of conformity for one-hour nonattainment or maintenance areas up until the effective date of revocation of the one-hour ozone NAAQS; eight-hour nonattainment areas with and without MVEBs; $PM_{2.5}$ nonattainment and maintenance areas; areas with limited maintenance plans; and areas with insignificant motor vehicle emissions. 40 CFR §93.110 clarifies that conformity determinations will be based on the latest planning assumptions at the time a conformity analysis begins, rather than at the time of DOT's conformity finding. 40 CFR §93.116 is amended so that project-level hotspot analyses in metropolitan nonattainment and maintenance areas must consider the full time frame of an area's transportation plan at the time the analysis is conducted. This also applies to hotspot analyses for new projects in isolated, rural nonattainment and maintenance areas. Regional emissions analyses in isolated rural areas also cover a 20-year time frame, consistent with the general requirements in metropolitan and donut areas. 40 CFR §93.117 concerns FTA and FHWA project requirements to be in compliance with a SIP's $PM_{2.5}$ control measures. 40 CFR §93.118 concerns motor vehicle emissions budgets. The final rule,

for example, modifies several provisions under 40 CFR §93.118 of the conformity regulation to specify that EPA must affirmatively find submitted budgets adequate before they can be used in a conformity determination. The final rule also establishes the process by which EPA will review and make adequacy findings for submitted SIPs, as described in the June 30, 2003 proposal. 40 CFR §93.119 concerns interim emission tests in areas without motor vehicle emissions budgets. Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming plan and TIP is generally demonstrated with the interim emission tests, as described in revised 40 CFR §93.119. Primary changes to 40 CFR §93.120 include the point in time at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. Specifically, the final rule deletes the 120-day grace period from 40 CFR §93.120(a)(2), so that a conformity ''freeze'' occurs immediately upon the effective date of EPA's final disapproval of a SIP and its budgets without a protective finding. EPA is amending 40 CFR §93.121(a) of the conformity rule so that regionally significant non-federal projects can no longer be advanced during a conformity lapse, unless they have received all necessary state and local approvals prior to the lapse. Second, EPA is adding a new 40 CFR §93.121(c) to the rule to address regionally significant non-federal projects in areas where EPA has found a pollutant or precursor to be regionally insignificant. 40 CFR §93.122 concerns procedures for determining regional transportation-related emissions, and principally involves the addition of subsection (c), which sets a two-year grace period for regional emissions analysis requirements in certain ozone and CO areas. Minor amendments were also made to 40 CFR §§93.124 - 93.126.

SECTION DISCUSSION

§114.260, Transportation Conformity

The proposed amendment to §114.260(a) would incorporate the acronym USC for the term United States Code.

The proposed amendments to §114.260(b) would include an incorporation of the phrase "particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$)." This phrase refers to the new NAAQS for fine particles adopted by EPA. Another proposed amendment to §114.260(b) would specify that the section is only applicable to the precursors of ozone, nitrogen dioxide, and particles with an aerodynamic diameter of ten micrometers (PM_{10}). This distinction is made because EPA is not finalizing requirements for addressing $PM_{2.5}$ precursors in transportation conformity at this time. The last proposed amendment to subsection (b) points to the CFR rather than the Texas Administrative Code for the official list and boundaries of nonattainment areas. This change is made to ensure that the most up-to-date list is incorporated.

The proposed amendments to §114.260(c) would update the date through which the transportation conformity rules are amended, i.e., from August 6, 2002 to July 1, 2004. In addition, the proposed amendments to subsection (c) adopt by reference the federal amendments, except for 40 CFR §93.105. The federal requirements at §93.105 are addressed in the commission's rule in §114.260(d).

The proposed amendment to §114.260(d)(1)(A)(vi) would remove the words, "formerly §9," as this citation is now more commonly referred to as FTA §5307.

The proposed amendment to §114.260(d)(1)(A)(vii) would remove the words "TCEQ or." The proposed amendment would delete the language to be consistent with current agency style and format.

The proposed amendment to §114.260(d)(1)(A)(viii) would substitute the reference to "FCAA, §105," with a reference to "42 USC, §7405" because FCAA, §105 has been codified into the USC.

The proposed amendment to §114.260(d)(1)(B) would change "shall" to "must" to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, October 2002.

The proposed amendment to §114.260(d)(1)(B)(ix) would remove the words, "formerly §9," as this citation is now more commonly referred to as FTA §5307.

The proposed amendment to §114.260(d)(1)(B)(x) would substitute the reference to "FCAA, §105," with a reference to "42 USC, §7405" because FCAA, §105 has been codified into the USC.

The proposed amendment to §114.260(d)(2)(A)(i) would replace, "Strategic Assessment" Division director, with "Environmental Planning and Implementation" Division director because the Strategic Assessment Division has been renamed.

The proposed amendment to §114.260(d)(2)(A)(ii) would change "shall" to "must" to be consistent with guidance provided in the Texas Legislative Council Drafting Manual, October 2002.

The proposed amendment to §114.260(d)(2)(A)(viii) would correct the spelling of "emissions."

The proposed amendments to §114.260(d)(2)(C) would replace the phrase, "Title 23 United States Code," with "23 USC," and change "Federal Transit Laws," to "federal transit laws" to be consistent with current agency style and format.

The proposed amendment to §114.260(d)(4)(B) would replace "TCEQ" with "commission's" to be consistent with current agency style and format.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

EPA amended the federal transportation conformity rule on July 1, 2004. Transportation conformity is an FCAA requirement ensuring that federally supported highway and transit projects conform to state SIPs. The transportation conformity rule requires states to submit transportation conformity SIP revisions within 12 months of the publication of federal amendments. The proposed rulemaking would update commission rules to incorporate the latest federal amendments to transportation conformity. These federal amendments establish revised criteria and procedures for demonstrating conformity.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a revised SIP, ensuring

that transportation activities do not interfere with the attainment and maintenance of the NAAQS.

This proposed rule is not expected to have a fiscal impact on individuals and industry. The proposed amended section incorporates the requirements of the amended federal transportation conformity rule and revises the SIP to include the federal transportation conformity requirements into the SIP to ensure that federally supported highway and transit project activities are consistent with the purpose of the SIP. The proposed amendment would not require additional emission controls or new capital expenses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses because of this proposed rulemaking. The proposed amended section incorporates the requirements of the amended federal transportation conformity rule and revises the SIP to include the federal transportation conformity requirements to ensure that federally supported highway and transit project activities are consistent with the purpose of the SIP. The proposed amendment would not require additional emission controls or new capital expenses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of

Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amended section incorporates the requirements of the amended federal transportation conformity rule and revises the SIP to include the federal transportation conformity requirements into the SIP to ensure that federally supported highway and transit project activities are consistent with the purpose of the SIP. While this rulemaking is intended to protect the environment by ensuring that federally supported highway and transit project activities are consistent with the SIP, the commission finds that the rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the state, since no fiscal implications are anticipated as a result of administration or enforcement of the proposed rule.

Additionally, the proposed revision to Chapter 114 is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rule does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the proposed revision to Chapter 114 was developed to meet the specific requirement of FCAA, §176(c), which requires that federally supported highway and transit project activities are consistent with the purpose of a SIP. In addition, states are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Specifically, the requirement to have federally supported highway and transit project activities conform to the SIP ensures that transportation activities do not interfere with the attainment and maintenance of the NAAQS. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor proposed solely under the general powers of the agency. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and Texas Water Code (TWC) that are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet any of the four applicability requirements. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking action is to incorporate the requirements of the amended federal transportation conformity rule. If adopted, the incorporation of the requirements of the amended federal transportation conformity rule will assure that highway and transit project activities are consistent with the Texas SIP. This rule will not place a burden on private, real property.

Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. This proposed rulemaking action is not subject to Chapter 2007 of the Texas Government Code because it is reasonably taken to fulfill an obligation mandated by federal law. The 1990 Amendments to the FCAA, §176(c), require that federally supported highway and transit project activities are consistent with the purpose of a SIP.

In addition, states are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Specifically, the requirement to have federally supported highway and transit project activities conform to the SIP ensures that transportation activities do not interfere with the attainment and maintenance of the NAAQS.

Consequently, the commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The CMP policy applicable to this rulemaking is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in coastal areas (31 TAC §501.14(q)). The proposed rulemaking and SIP revision will ensure that federally funded highway and transit activities will conform to the SIP, and complies with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking will be held in Austin on December 21, 2004 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., January 3, 2005, and should reference Rule Project Number 2005-002-114-AI. For further information, please contact Margie McAllister of the Environmental Planning and Implementation Division at (512) 239-1967 or Debra Barber, Policy and Regulations Division at (512) 239-0412.

SUBCHAPTER G: TRANSPORTATION PLANNING

§114.260

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.002, which provides that the policy and purpose of the TCAA are to safeguard the state's air resources from pollution; and TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, which requires the commission to develop and implement transportation programs necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; and §382.208, relating to Attainment Program.

§114.260. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement the requirements set forth in [Title] 40 Code of Federal Regulations (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 (USC) or the Federal Transit Laws), which are the regulations developed by the United States Environmental Protection Agency (EPA) [EPA] under the Federal Clean Air Act [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, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$), and the precursors of ozone, nitrogen dioxide, and PM_{10} [those pollutants]. (For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent Federal Register notices.) [The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).]

(c) CFR incorporation. The transportation conformity rules [Transportation Conformity Rules], as specified in 40 CFR Part 93, Subpart A, (62 FR 43780) dated August 15, 1997 and amended through July 1, 2004 [August 6, 2002], are adopted [incorporated] by reference with the exception of §93.105. The requirements of §93.105 are addressed in subsection (d) of 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) - (v) (No change.)

(vi) local publicly owned transit services in nonattainment or maintenance areas (the designated recipient of FTA §5307 [(formerly §9] funds);

(vii) Texas Commission on Environmental Quality ([TCEQ or] commission);

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of 42 USC, §7405 [FCAA, §105] funds).

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

(i) - (viii) (No change.)

(ix) local publicly owned transit services (the designated recipient of FTA §5307 [(formerly §9)] funds): general manager or designee;

(x) local air quality agencies (recipients of 42 USC, §7405 [FCAA, §105] funds): director or designee; and

(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 Environmental Planning and Implementation [Strategic 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 contacts [agencies] specified in paragraph (1)(B) of this subsection. This information must [shall] be provided in accordance with the locally adopted public involvement process as required by 23 CFR §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 contacts [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 contacts [agencies] specified in paragraph (1)(B) of this subsection;

(iv) - (vii) (No change.)

(viii) before adoption of any new or substantially different methods or assumptions used in the hot spot or regional emissions [emmissions] analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) - (xii) (No change.)

(B) (No change.)

(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 23 USC [Title 23 United States Code] or the federal transit laws [Federal Transit Laws].

(3) (No change.)

(4) Conflict resolution.

(A) (No change.)

(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's [TCEQ] 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 [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 [Governor]. If the commission appeals to the governor [Governor], the final conformity determination must then have the concurrence of the governor [Governor]. The governor [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 [Governor] or his or her delegate. If the commission does not appeal to the governor [Governor] within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) (No change.)

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

(e) (No change.)