

06- DEPARTMENT OF ENVIRONMENTAL PROTECTION

096 BUREAU OF AIR QUALITY CONTROL

CHAPTER 139: TRANSPORTATION CONFORMITY

1. Applicability

A. Action applicability

- (1) Except as provided for in this Section or Section 93.126, "Exempt Projects", conformity determinations are required for:
 - (a) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a Metropolitan Planning Organization (MPO) or the Maine Department of Transportation (MaineDOT).
 - (b) The adoption, acceptance, approval or support of Transportation Improvement Programs (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by an MPO or MaineDOT or DOT; and
 - (c) The approval, funding, or implementation of Federal Highway Administration/Federal Transit Administration (FHWA/FTA) projects.
- (2) Conformity determinations are not required under this Chapter for individual projects which are not FHWA/FTA projects unless they are considered regionally significant.

B. Geographic applicability

- (1) The provisions of this Chapter shall apply in all federally designated nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
- (2) The provisions of this Chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}).

- (3) The provisions of this Chapter apply with respect to emissions of the following precursor pollutants:
- (a) Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in federally designated ozone areas.
 - (b) Nitrogen oxides (NO_x) in nitrogen dioxide (NO₂) areas; and
 - (c) VOC, and NO_x in PM₁₀ areas if the EPA Regional Administrator or the director of the State Air Agency has made a finding that transportation-related precursor emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO, MaineDOT, and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
 - (d) NO_x in PM_{2.5} areas, unless both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO, MaineDOT and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and
 - (e) VOC, sulfur oxides (SO_x) and/or ammonia (NH₃) in PM_{2.5} areas either if the EPA Regional Administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
 - (f) The provisions of this subpart apply to PM_{2.5} nonattainment and maintenance areas with respect to PM_{2.5} from re-entrained road dust if the EPA Regional Administrator or the director of the State Air Agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM_{2.5} nonattainment problems and has so notified the MPO, MaineDOT, and DOT, or if the applicable

implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of this Chapter apply to maintenance areas for 20 years from the date EPA approves the area's request for re-designation to attainment, unless the applicable implementation plan specifies that the provisions of this Chapter shall apply for more than 20 years.

C. Limitations. In order to receive an FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this chapter, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in Section 93.114, except as provided by Section 93.114 (b).

D. Grace Period for new nonattainment areas. For areas or portions of areas which have been continuously designated attainment or not designated for any National Ambient Air Quality Standards for ozone, CO, PM₁₀, PM_{2.5} or NO₂ since 1990 and are subsequently re-designated to nonattainment or designated nonattainment for any National Ambient Air Quality Standard for any of these pollutants the provisions of this chapter shall not apply for 12 months following the effective date of final designation to nonattainment for each National Ambient Air Quality Standard for such pollutant.

2. Definitions

Terms used but not defined in this chapter shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, other DOT regulations, or under Chapter 100 of the Maine Department of Environmental Protection Regulations in that order of priority.

A. Applicable implementation plan. “Applicable implementation plan” is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA. This would include a State Implementation Plan or Federal Implementation Plan.

B. CMAQ. “CMAQ” means the Congestion Mitigation and Air Quality program, funded by FHWA and administered by MaineDOT.

- C. Control strategy implementation plan revision.** “Control strategy implementation plan revision” is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), and 189(b)(1)(A); 189(d), and Sections 192(a) and 192(b) for nitrogen dioxide and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).
- D. Design concept.** “Design concept” means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.
- E. Design scope.** “Design scope” means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
- F. DOT.** “DOT” means the United States Department of Transportation.
- G. FHWA.** “FHWA” means the Federal Highway Administration of DOT.
- H. FHWA/FTA project.** “FHWA/FTA project”, means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
- I. Forecast period.** “Forecast period” with respect to a transportation plan is the time period covered by the transportation plan pursuant to 23 CFR Part 450.
- J. FTA.** “FTA” means the Federal Transit Administration of DOT.
- K. Highway project.** “Highway project” means to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:
- (1) Connect logical termini and be of sufficient length to address environmental

matters on a broad scope;

- (2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

L. Horizon year. “Horizon year” is a year for which the transportation plan describes the envisioned transportation system according to Section 93.106.

M. Hot-spot analysis. “Hot-spot analysis” is an estimation of likely future localized CO and PM₁₀ and/or PM_{2.5} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

N. Isolated rural nonattainment and maintenance areas. “Isolated rural Nonattainment and maintenance areas” are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

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

P. Limited maintenance plan. “Limited maintenance plan” is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

Q. MaineDOT. “MaineDOT” means the Maine Department of Transportation.

R. Maintenance area. “Maintenance area” means any geographic region of the

United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

- S. Maintenance plan.** “Maintenance Plan” means an implementation plan under Section 175A of the CAA, as amended.
- T. Metropolitan planning organization (MPO).** “Metropolitan planning organization (MPO)” is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under Titles 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.
- U. Milestone.** “Milestone” has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM₁₀ nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.
- V. Motor vehicle emissions budget.** “Motor vehicle emissions budget” is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.
- W. National ambient air quality standards (NAAQS).** “National ambient air quality standards” are those standards established pursuant to Section 109 of the CAA.
- X. NEPA.** “NEPA” means the National Environmental Policy Act of 1969, as amended (Title 42 U.S.C. 4321 et seq.).
- Y. NEPA process completion.** “NEPA process completion” means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.
- Z. Nonattainment area.** “Nonattainment area” means any geographic region of the United States which has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

AA. Project. “Project” means a highway project or transit project.

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

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

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

EE. Statewide Transportation Improvement Program (STIP). “Statewide Transportation Improvement Program” means a staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the Statewide transportation plan and planning processes and metropolitan plans, TIPs and processes.

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

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

HH. Transit project. “Transit project” is an undertaking to implement or modify a

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

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

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

JJ. Transportation improvement program (TIP). “Transportation improvement program” means a staged, multiyear, inter-modal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR Part 450.

KK. Transportation plan. “Transportation plan” means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450. For the purposes of this document, the transportation plan also means the 20 year plan (also called the long range plan) developed by the MaineDOT for the nonattainment and maintenance areas including those outside of the MPO boundaries.

LL. Transportation project. “Transportation project” means a highway project or a transit project.

MM. Written Commitment. “Written Commitment” means a written commitment

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

3. Priority

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

4. Consultation

A. State and Federal Agency Consultation

(1) Roles and Responsibilities

(a) The Department of Environmental Protection (DEP)

- (i)** The DEP, prior to proposing any SIP revisions affecting transportation, will convene a special meeting or present SIP revisions affecting transportation at the next quarterly interagency consultation meeting. A detailed description, as outlined in 1(a)(iii) of this Chapter, will be provided to the interagency consultation committee members prior to the next meeting.
- (ii)** The DEP shall assist the MaineDOT and the MPOs in performing conformity analyses on Transportation Improvement Programs (TIPs)/Statewide Transportation Improvement Programs (STIPs) and Transportation Plans for the nonattainment and maintenance areas.
- (iii)** The DEP shall provide a detailed description of any SIP changes that affect transportation projects. This description should include but not be limited to the following:
 - a)** The relationship between VMT and emissions;
 - b)** The differences between the current model and past models, if applicable;

- c) A description of the model assumptions and how those assumptions affect future transportation projects;
- d) Proposed on-road mobile source control strategies, (i.e., inspection and maintenance program, low emission vehicle programs, retrofit programs, adoption of special fuels or alternatives fuel); and
- e) Changes to the inputs or assumptions in modeling motor vehicle emissions.

(b) The Maine Department of Transportation (MaineDOT)

- (i) The MaineDOT shall convene an interagency consultation meeting(s) with representatives from the MPOs, DEP, EPA, MTA, FHWA, and FTA prior to such time that conformity analyses on transportation plans, transportation improvement programs (statewide transportation improvement program) and/or projects are performed, or at the request of an involved agency.
- (ii) Prior to an interagency consultation meeting(s), the MaineDOT shall circulate a meeting agenda to the involved agencies.
- (iii) The MaineDOT shall document the outcome(s) of the interagency consultation meeting(s) and shall circulate said documentation to the MPOs, DEP, EPA, MTA, FHWA and FTA.
- (iv) The MaineDOT and MPOs will keep each MPO and DEP apprised of the design, schedule and funding of research and data collection efforts that produce the latest modeling assumptions for the regional and statewide transportation models.
- (v) A representative from the MaineDOT will attend MPO policy and technical meetings as required.
- (vi) The MaineDOT will assist the MPOs in their conformity analyses on their Long Range Plans and Transportation Improvement Programs (TIPs).
- (vii) The MaineDOT with the assistance of DEP and the MPOs shall perform a conformity analysis on Transportation Improvement Programs (TIPs)/Statewide Transportation Improvement Programs (STIPs), and Transportation Plans for any nonattainment and maintenance areas.

(viii) The MaineDOT will provide DEP with a list of projects to be included in the conformity analysis for the TIP/STIP and/or long range transportation plan with sufficient lead time prior to the document print date to allow for adequate quality control.

(ix) During the development of the MaineDOT Capital Program, the MaineDOT will contact stakeholders including DEP and the MPOs to ask for transportation projects, which will provide for potential air emission reductions, reduced Vehicle Miles Traveled (VMT) and congestion and are eligible for Congestion Mitigation Air Quality (CMAQ) program funding.

(c) Metropolitan Planning Organizations (MPOs):

(i) Metropolitan Planning Organizations (MPOs) are federally designated planning organizations responsible for carrying out a continuous, comprehensive, and cooperative transportation planning process for urbanized areas with populations of 50,000 or more. There are four MPOs in the State of Maine:

a) ATRC. The Androscoggin Transportation Resource Center (ATRC) is responsible for planning the transportation system for the Greater Lewiston-Auburn Area. Known as a Metropolitan Planning Organization, ATRC was established by federal requirement of the Federal Aid Highway Act of 1962 and designated to serve the urbanized area of Lewiston, Auburn, Lisbon, and a portion of Sabattus.

b) BACTS. Bangor Area Comprehensive Transportation System (BACTS) is the organization designated by federal and Maine state government to carry out transportation planning in the Greater Bangor urbanized area. The BACTS area includes Bangor, Brewer, Veazie, and major portions of Hampden, Orono, Old Town, Milford, Bradley, Eddington, Orrington and Penobscot Indian Nation.

c) KACTS. The Kittery Area Comprehensive Transportation Study (KACTS) is the Metropolitan Planning Organization (MPO) for the Maine portion of the Portsmouth-Dover-Rochester, New Hampshire urbanized area. In the case of the KACTS MPO, this area includes Kittery, Eliot, South Berwick, Berwick, and Lebanon.

d) PACTS. In 1975, the Portland Area Comprehensive

Transportation Committee (PACTS) was designated as the federally mandated “metropolitan planning organization” for the Portland region. The PACTS area includes portions or all of 15 communities: Biddeford, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, North Yarmouth, Old Orchard Beach, Portland, Saco, Scarborough, South Portland, Westbrook, Windham and Yarmouth.

- (ii) The MPOs with the assistance of MaineDOT and DEP are required to perform conformity analyses on Transportation Improvement Programs (TIP)/Statewide Transportation Improvement Programs (STIPs) and Transportation Plans for the nonattainment and maintenance areas.
- (iii) The MPOs will provide the MaineDOT a complete list of projects that require a conformity evaluation to be included in the conformity analyses prepared for the long range transportation plans or transportation improvement program/statewide transportation improvement program.
- (iv) The MPOs shall invite a representative of DEP to each Policy and Technical MPO committee meeting. When appropriate there will be an agenda item at such meeting which will provide the MPO, the MaineDOT, or DEP an opportunity to update each other on any new regionally significant transportation projects planned for and reasonably anticipated to be funded in that MPO area regardless of funding source. To the extent possible, these new or revised projects are to be detailed sufficiently to allow a transportation emission analysis to be performed.
- (v) The MPOs shall maintain and update Long-Range Transportation Plans and Transportation Improvement Programs that conform to all federal and state laws. MPOs will consult MaineDOT prior to requiring air conformity analyses in support of the MPO's Long-Range Plan, plan update, or transportation improvement program.

(2) The specific purposes of the interagency consultation meetings are to:

- (a) Provide a forum for the MaineDOT, DEP, MPO's and MTA to consult with each other and with local or regional offices of EPA, FHWA, FTA on the development of the implementation plan, the transportation plan, the TIP and associated conformity documents;

- (b) Evaluate events which will trigger new conformity determinations, in addition to those triggering events established in 40 CFR 93.104(e) “Triggers for Transportation Plan and TIP Conformity Determinations”;
- (c) Establish public participation processes that shall run concurrently with and adhere to 23 CFR Part 450 “Federal Highway Administration Planning Assistance and Standards”;
- (d) Provide the group with periodic updates, sufficient in detail, on all Long Range Plans, TIP/STIP, lists of projects and regional significant projects as these documents are updated;
- (e) Evaluate whether current air quality conformity analysis can be used for a new conformity evaluation in accordance with 40 CFR 93.122(g) “Reliance on Previous Regional Emission Analysis”;
- (f) Select the conformity test(s) to be used in accordance with the Transportation Conformity Rule;
- (g) Develop and coordinate a list of TCMs which are in the applicable implementation plan;
- (h) Evaluate SIP approved TCMs for progress, funding and substitution;
- (i) Determine, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified, and are being overcome and whether State and local agencies with influence over approvals or funding for TCMs are given maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;
- (j) Identify projects requiring hot-spot analyses (CO, PM₁₀, PM_{2.5}). Once the projects are identified then evaluate and choose a model (or models) and associated methods and assumptions to be used in hot-spot analysis and regional emissions analysis;
- (k) Select regional emissions analysis models including consulting on model development and assessing project design factors for modeling;

- (l) Allow for interagency consultation on the design, schedule and funding of research and data collection efforts and regional transportation model development by the MPO (e.g. household/travel transportation surveys);
- (m) Identify analysis methods to estimate VMT and emissions from non-regionally significant projects;
- (n) Identify regionally significant projects to be included in the regional emissions analysis including non-federally funded projects;
- (o) Ensure that plans for construction of regionally significant projects which are not FHWA or FTA funded projects (including projects for which alternative locations, design concepts and scope or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws are disclosed to the MPO on a regular basis and to ensure that any changes to those plans are immediately disclosed;
- (p) Involve the MPO and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by Section 4A.(2)(o) of this Chapter but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122;
- (q) Determine which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analyses (in addition to those functionally classified as principle arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;
- (r) Identify exempt project as defined by 40 CFR 93.126 Table 2, and 40 CFR 93.127 Table 3;
- (s) Identify exempt projects and categories of exempt projects which should be treated as non-exempt because they may have adverse air quality impacts and determine appropriate air quality analysis methodologies for analyzing such projects;
- (t) Identify transportation plan and TIP/STIP revisions which add or delete exempt projects, as defined in 40 CFR 93.126 by Tables 2 and 40 CFR

93.127 Table 3;

- (u) Identify the latest planning assumptions and evaluate consistency with SIP assumptions;
- (v) Determine if the transportation plan and TIP are fiscally constrained;
- (w) Choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(1)(2)(iii);
- (x) Consult on emissions analyses for transportation activities which cross the borders of MPO or nonattainment areas;
- (y) Consult on conformity analyses outside MPO boundaries and yet within nonattainment or maintenance areas;
- (z) Consult on the proposed development of, or changes to the motor vehicle emission budget;
- (aa) Consult on the proposed use of mobile source emission credits; and
- (bb) Update each other on relevant issues.

(3) Projects that Benefit Air Quality

- (a) During the development of the MaineDOT's Capital Program and prior to the time that DEP performs required conformity analyses on transportation plans, TIPs and projects, the MaineDOT shall convene a consultation meeting(s) with representatives from the MPOs, DEP, MTA, all pertinent Federal partners and any interested stakeholders. The specific purposes of these consultation meetings are to:
 - (i) Propose and identify projects which have an air quality benefit and are eligible for CMAQ funding. The MaineDOT shall evaluate these projects using MaineDOT transportation goals, Regional Councils (formerly called Regional Planning Organizations) developed Regional Transportation Assessments (formerly called Regional Needs Assessments), recommendations from DEP, and input from municipalities. Criteria to select projects shall include but not be limited to whether or not the project is a Transportation Control Measure (TCM) in the State Implementation Plan or listed as TCM under Section 108(f) of the Clean Air Act, quantity of potential

emissions reductions, timing of air quality benefits, impact on multiple pollutants, potential to reduce VMT, potential to alleviate congestion, the inter-modal aspects of the projects, cost effectiveness, regional applicability, public awareness, promotion of technology, educational value, innovation and potential to reduce emissions from heavy duty vehicles; and

- (ii) Evaluate and determine air quality benefits for projects which include potential air emission reductions, reduced VMT and congestion.

B. Specific Processes

- (1) Consulting members.** Interagency consultation meetings will be attended by individuals from the MPOs, the MaineDOT, and DEP. These individuals are herein described as the consulting members. Representatives from the MTA, FHWA, FTA, and EPA will also be invited to these consultation meetings and provided an agenda of topics to be discussed at the meeting.
- (2) Circulation of documents.** Documentation of the outcome of each Air Quality Interagency Consultation meeting will be distributed to the members by the MaineDOT as outlined above. Draft Transportation Plans, TIPs, and STIPs will be provided to each of the State's regional planning commission offices and will be available for public comment at the MaineDOT and DEP state offices in Augusta and at the MPO offices. DEP will provide draft SIP revisions which pertain to emission budgets for transportation projects to the MaineDOT and other consulting members for their comments prior to the initial submission to the Board of Environmental Protection unless otherwise agreed to by the MaineDOT and DEP. Final SIP submittals will be made available to each of the MPOs and the MaineDOT as well as to MTA, EPA, FHWA and FTA.
- (3) Frequency of meetings.** In order to facilitate effective communication between DEP, the MaineDOT, MTA, FHWA, FTA, EPA and the MPOs throughout the transportation planning process, the MaineDOT will hold regular interagency consultation meetings with these agencies. The MaineDOT will hold these meetings at least quarterly, unless the consensus of the group determines that a meeting is not warranted, or more often as needed. Any member of the consultation process may request a special meeting to discuss an issue requiring immediate attention by the consultation conformity group. The party requesting the special meeting must establish a meeting location and time that the interagency consultation committee is able to attend in person or via telephone/video conference call. The requesting party will also forward a synopsis/agenda for the special meeting and provide sufficient

background material to allow members to be prepared to fully discuss the issue at the meeting.

- (4) **Responding to significant comments.** Any significant comments by an involved agency will be documented in writing and distributed to all the committee members. If a regularly scheduled meeting is to be held within a reasonable time frame of the receipt of the significant comment it should be made a part of that meeting's agenda and information on the issue will be forwarded to all members to arrive in time for the meeting. If the information cannot be received in time for the regular meeting, it can be handed out at that meeting and a special meeting scheduled to answer the issue. The issue will be considered a reason to convene a special meeting with the commenting agency as the requester and the agenda consisting of the significant comment. As an agenda item, the significant comment will be made a part of the official minutes. If at the meeting, special or regularly scheduled, the issue cannot be satisfactorily resolved and/or answered the procedures under Section 4.(C). of this Chapter Resolving Conflicts between State Agencies and MPOs will apply.

C. Resolving conflicts between State Agencies and MPOs. The MaineDOT, DEP and the MPOs shall meet to outline conformity requirements as indicated above in Section 4(A) of this Chapter, and provide for the early identification and resolution of potential conflicts through the SIP conformity revision and transportation planning process.

- (1) Where conflicts arise from issues important to either the conformity determinations or potential SIP revisions, they shall be thoroughly discussed in an open and non-critical manner. If conflicts can not be resolved at one meeting, the area of conflict will be outlined and documented for distribution and verification by the participating parties. Each party is thereafter encouraged to support and substantiate its position with credible documentation which the party is to distribute to the other consulting members for further education on the conflicting positions. The conflict will thereafter be revisited at a mutually agreed upon time.
- (2) Where conflicts cannot be resolved between the consulting members, these areas of conflict are again to be outlined and verified by the parties and then presented to Commissioners of the MaineDOT and DEP and/or the directors of the MPO for resolution.
- (3) If a conformity determination is supported by MaineDOT or an MPO which the other consulting members cannot support the disagreeing members have 14 days from the date of notification of MaineDOT's or MPO's final position

on the conformity issue, to request resolution of the conflict by the Governor. The Governor must make a determination on the issue of conformity within 30 days of the request to do so.

- (4) If a SIP revision is proposed by DEP which the MaineDOT or an MPO cannot support, the Maine DOT or MPO shall have 14 days from the date of notification of DEP's final position on the SIP revision to request resolution of the conflict by the Governor or his designee. The Governor or his designee must make a determination on the issue of the SIP revision within 30 days of the request to do so.

D. Public consultation procedures. Draft Transportation Plans, TIPs/STIPs, and amendments thereof that add or delete nonexempt projects will contain a conformity analysis with stated assumptions and methodologies. These drafts will be made available by MaineDOT for public comment as outlined above in Section 4(B)(2) of this Chapter prior to any formal determination of conformity. All comments will be addressed and made part of the plan or TIP submittal for review by the public and the appropriate state and federal agencies in accordance with requirements for public involvement in 23 CFR Part 450 and/or the Maine Sensible Transportation Policy Act.

E. Public Notice Requirement. Air Quality Conformity Analysis documents for Long Range Plans require a 45 day comment period and conformity analysis for TIPs and STIPs require a 30 day comment period. Whenever practicable the MaineDOT and the MPOs will publish public notices of availability concurrently for all of the aforementioned documents. The Air Quality Conformity Analysis will be posted by MaineDOT, along with the most recent TIP/STIP and/or Long Range Plan, at www.maine.gov/mdot. Hard copies of all documents are made available at all Metropolitan Planning Organizations, MaineDOT Division Offices and depository libraries across the state. Comments will be accepted for at least 30 days after notification for the TIP/STIP Air Quality Conformity Analysis and up to 45 days after notification for the Long Range Plan Air Quality Conformity Analysis.

5. Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures

- A.** Transportation project level conformity is contingent upon receipt of commitments from the project sponsor and/or operator that all identified project-level NEPA mitigation and control measure commitments with respect to local PM₁₀, PM_{2.5} and CO shall be fulfilled. Also, written commitments must be made for project-level design concept and scope based mitigation or control measures that are conditions for making conformity determinations for the

transportation plan or TIP, and used in the regional emissions analysis required by 40 CFR Sections 93.118, 93.119 and 93.116.

- B.** Project sponsors and/or operators voluntarily committing to mitigation measures required to facilitate positive conformity determinations must comply with such commitments.
- C.** Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors and/or operators must comply with the agreed commitments.

AUTHORITY	38 M.R.S.A. 585, 585-A 42 U.S.C §7506 40 C.F.R. 51.390 et seq.
-----------	--

EFFECTIVE DATE:	September 19, 2007
-----------------	--------------------