

CHAPTER 1200-3-34 CONFORMITY

1200-3-34-.01 Transportation Conformity Interagency Consultation and General Provisions.

(1) Interagency Consultation Procedures

(a) General.

1. Pursuant to 40 CFR §51 .390, this document provides for interagency consultation (Federal, State, and local) and resolution of conflicts, public consultation procedures (per 40 CFR §93.105) and written commitments to control measures (40 CFR §93.122(a)(4)(ii)) and mitigation measures (40 CFR §93.125(c)). Such consultation procedures shall be undertaken by MPOs, the State department of transportation, and FHWA and FTA with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, the State department of transportation, and FHWA and FTA in developing applicable implementation plans.

2. The provisions of this rule shall apply in all nonattainment and maintenance areas for transportation related criteria pollutants or precursor pollutants for which the area is designated nonattainment or has a maintenance plan, and with respect to all actions outside any nonattainment area that in the judgment of the Tennessee Air Pollution Control Division (TAPCD) may cause or contribute to a new violation or increase the frequency or severity of any existing violation of any standard in any nonattainment area, or delay the timely attainment of any standard or any required interim emissions reduction or other milestone in any nonattainment area. Exhibit A illustrates stakeholders currently subject to this rule. Exhibit A is for illustrative purposes only; stakeholders need not be listed to be subject to this rule.

3. definitions:

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

(i) Local air agencies are those agencies which are charged under law with the control of air pollution existing within the geographic boundaries of the political subdivisions, as defined by the Tennessee Air Quality Act, Tennessee Code Annotated, Section 68-201-101, et seq, organized and existing under the laws of the State of Tennessee.

(ii) Local transportation agencies are publicly owned transportation agencies which provide mass transportation by bus or rail which provides general service to the public on a fixed route on a regular and continuing basis. It does not include school buses or charter or sightseeing services

van pools, or small trolley fleets.

(iii) Project means a highway project or transit project.

(iv) TAPCD means the Tennessee Air Pollution Control Division

(v) TOOT means the Tennessee Department of Transportation.

(b) Interagency consultation procedures: General factors.

1. Representatives of the Metropolitan Planning Organizations (MPOs), State and local air quality planning agencies, State department of transportation, and local publicly-owned transportation agencies not represented by an MPO, shall undertake an interagency consultation process in accordance with this rule with each other and with the Environmental Protection Agency (EPA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) on the development of the implementation plan, the transportation plan (Plan), the Transportation Improvement Program (TIP), any revisions to the preceding documents, and all conformity determinations required by this rule.

2. The TAPCD, also referred to as the State air agency, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of applicable transportation related implementation plans and control strategy implementation plan revisions.

3. MPOs subject to conformity shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the long range transportation plan, the Transportation Improvement Program (TIP), and any amendments or revisions thereto, and for providing assistance for technical analyses by employing travel-demand modeling techniques and acquiring all necessary data in the metropolitan area(s) under their jurisdiction. In the case of non-metropolitan areas, the TDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide long range transportation plan, the Statewide Transportation Improvement Program (STIP), and any amendments or revisions thereto and for providing assistance for technical analyses by employing travel-demand modeling techniques and acquiring all necessary data in non-metropolitan areas..

4. In addition to the lead agencies identified in parts 1, 2 and 3 of this subparagraph, other agencies entitled to actively participate in the interagency consultation process under this rule include: the FHWA, the FTA, EPA, and local air agencies.

5. It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in parts 2 and 3 of this subparagraph, to confer with all other agencies identified in parts 1 through 4 of this subparagraph, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in 40 CFR §93.105, assure policy-level contact with those agencies, consider the views of each agency and respond to those views in a period not to exceed

thirty (30) days from the date received, prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. Each lead agency shall provide all necessary documentation for review at the initiation, or prior to, the review and comment period. Information for scheduled meetings will be distributed to participants at least seven (7) days before the scheduled meeting. It shall be the role and responsibility of each agency specified in parts 1 through 4 of this subparagraph, when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed documents and decisions in a period not to exceed thirty (30) days, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or consultation process in accordance with 40 CFR §93.105 when requested.

6. It shall be the responsibility of the MPOs, the State and local air agencies, and the State and local transportation agencies identified in parts I through 4 of this subparagraph to schedule and convene meetings for their own agencies, and to notify all other agencies involved in the conformity process of these scheduled meetings at least fourteen (14) days in advance, unless such meetings are of an internal nature and not immediately related to tile conformity process. However, the participants may waive the fourteen (14) day advance notice requirement if all participants agree that an earlier scheduled meeting is in the best interest of the parties. Scheduling changes shall be coordinated in a timely manner. The lead agency will develop draft documents, record notes and distribute agendas prior to meetings (in person or by conference calls or other practical electronic means). The lead agency shall provide all appropriate information to those agencies needed for meaningful input and provide all draft and supportive documentation (hard copy or electronic format) in a timely manner to participating agencies. The lead agency responsible for preparing the final document subject to interagency consultation shall assure that all relevant documents and information are supplied to all participants in the consultation process prior to the release for public review.

7. Consultation on specific issues, other than the continual process of keeping all the agencies informed on all conformity and SIP actions, may be initiated at any time during the document development process by any of the agencies specified in parts 1 through 4 of this subparagraph. It shall be the responsibility of the initiate to ensure that all other agencies identified in parts 1 through 4 of this subparagraph are notified of any such action. All agencies so notified must respond to the issue(s) raised within fourteen (14) days, unless an alternate schedule is agreed upon by all participants.

8. It shall be the responsibility of the MPOs subject to this rule, and TDOT to provide the State and local air agencies specified in this rule with the latest version of the TIP or STIP and the transportation plan.

9. It shall be the responsibility of the State and local air agencies to provide the MPOs, TDOT, FHWA, FTA and EPA with the latest version of the State Implementation Plan (SIP) as it applies to transportation conformity, in particular, attainment and maintenance plans.

10. It shall also be the responsibility of each of the agencies specified in parts 1 through 4 of this subparagraph to keep their own superiors and constituents properly informed of conformity

determinations, as well as making this information available for the general public.

11. The agencies specified in parts 1 through 4 of this subparagraph may employ consultant services at their own discretion.

(c) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

1. TAPCD and the local air agencies shall be responsible for, in relation to SIP development, the following:

- (i) Developing emissions inventories,
- (ii) Developing emissions budgets,
- (iii) Conducting air quality modeling,
- (iv) Developing attainment and maintenance demonstrations,
- (v) Revising control strategy implementation plans,
- (vi) regulatory Transportation Control Measures (TCMs) intended to provide enforceable emission reductions,
- (vii) Compiling motor vehicle emissions factors,
- (viii) meeting all EPA reporting requirements related to air quality, and
- (ix) responding to all comments concerning the SIP.

The local air agencies shall be responsible for their areas of jurisdiction, with the State air agency being responsible for all remaining counties, as well as being responsible for ensuring that the local air agencies fulfill these tasks. Local air agencies may request assistance from the State air agency in any of the responsibilities listed here.

2. The MPOs subject to the conformity rule shall be responsible for, in their area(s) of jurisdiction, the following:

- (i) Developing and monitoring transportation plans and TIPs,
- (ii) evaluating transportation impact and feasibility of TCMs,
- (iii) developing transportation and socioeconomic data and latest planning assumptions and providing such data and planning assumptions to TAPCD for use in air quality analysis,
- (iv) developing system- or facility-based or other programmatic (non-regulatory) TCMs,
- (v) providing technical and policy input on emissions budgets,
- (vi) performing transportation modeling, including,
 - (I) selecting and evaluating such models,
 - (II) documenting their use in conformity determinations, and
 - (III) alerting, for comment, the agencies identified in parts(b)1 through 4 of this paragraph when any new model is being tested or employed, and,
- (vii) developing draft and final conformity determination documents for all transportation plans, TIPs and projects.

- (viii) Monitoring and coding regionally significant projects into the transportation networks,
- (ix) Developing statistical information such as VMT, vehicle mix and vehicle speeds for use in on-road mobile emissions analysis,
- (x) Making elections regarding the timeframe of the conformity determination under 40 CFR §93.106(d),
- (xi) Identify planning assumptions and evaluate those assumptions for consistency with SIP assumptions.

3. The Tennessee Department of Transportation shall be responsible for:

- (i) developing the Statewide transportation plan and STIP,
- (ii) providing technical input on new and proposed revisions to motor vehicle emission budgets,
- (iii) distributing draft and final environmental documents to other agencies,
- (iv) providing the transportation related information needed for mobile emissions analysis,
- (v) developing the statistical information, such as VMT, vehicle mix, and vehicle speeds, for use in on-road mobile emission analysis for areas outside the MPO boundary,
- (vi) developing the draft document(s) related to the NEPA process, providing it for review, responding to comments and preparing the final document(s),
- (vii) performing transportation modeling, including,
 - I selecting and evaluating such models,
 - II documenting their use in conformity determinations, and
 - III alerting, for comment, the agencies identified in parts (b)1 through 4 of this paragraph when any new model is being tested or employed.
- and,
- (viii) making conformity determinations for areas outside of the MPO boundary.

(ix) Convening consultation to cooperatively choose the appropriate conformity test(s) and methodologies for use in isolated rural nonattainment and maintenance areas, as required by 40 CFR §93.109(1)(2)(iii), and

(x) Convening air quality technical review meetings on specific projects when requested by other agencies or as needed.

4. FHWA and FTA shall be responsible for:

- (i) assuring timely action on final determinations of conformity within thirty (30) days of receiving a formal conformity determination, after consultation with other agencies as provided in this rule and 40 CFR §93.105,
- (ii) providing guidance on conformity and the transportation planning process to participating agencies in interagency consultation, and
- (iii) Reviewing and commenting on conformity determinations.

5. EPA shall be responsible for:

- (i) reviewing motor vehicle emissions budgets in submitted SIPs and finding them adequate or inadequate based on adequacy criteria and procedures,
- (ii) providing guidance on conformity criteria and procedures to agencies in interagency consultation,
- (iii) Approving or disapproving submitted SIP revisions (including TCMs), and
- (iv) Providing modeling and emissions inventory development assistance to TAPCD, TDOT and MPOs, and,
- (v) Providing comments on the regional emissions analysis and conformity determination of transportation plans, TIPs and projects.

(d) Conformity degenerations:

1. All conformity determinations shall be initiated by the sponsor of the transportation plan, program or project subject to the conformity rule.

- (i) MPOs shall be responsible for initiating conformity determinations for plans, programs or projects within the specific MPO boundary.
- (ii) TOOT shall be responsible for initiating conformity determination for plans, programs or projects external to an MPO boundary including isolated rural nonattainment and maintenance areas as required by §93.109(1)(2)(iii).
- (iii) MPOs and TOOT shall employ interagency consultation procedures to ensure compatibility of conformity determinations for the same or overlapping nonattainment or maintenance area(s).

2. It shall be the responsibility of the MPOs subject to conformity and TOOT to submit any conformity determinations to the FHWA FTA, EPA, TACPO, local air agencies, TOOT and local publicly-owned transportation agencies not represented by an MPO for review and approval before the plan, program or project subject to the conformity rule may be found to conform, or found to be exempt.

3. All conformity determinations with all supporting documentation and data shall be made available for review and comment to the TAPCD, local air agencies, FHWA, FTA and the EPA no less than thirty (30) days prior to presentation to a policy making body (electronic copy acceptable). Shorter review periods may be allowed occasionally in emergency situations with participant concurrence.

4. All conformity determinations shall also be made available to the general public, as defined in subparagraph (h) of this paragraph.

5. Conformity determinations, at a minimum, should include written documentation of the following:

- (i) All the input run streams for the latest mobile emissions model, and latest planning assumptions on the date that the conformity analysis began (with the beginning date and the criteria

used to identify this date specified), and attestation that the latest mobile emissions model is being used.

(ii) Transportation related information and assumptions used for input into the mobile model, such as, vehicle miles traveled, vehicle speeds, and vehicle mix, along with a brief description of the source of this information, including documentation of any transportation related models used.

(iii) A description of the project, plan or program that is the subject of the conformity or exemption status determination(s).

(iv) TAPCD may request further documentation however, the agency making the conformity demonstration may appeal to the Technical Secretary if the request seems unreasonable.

6. TAPCO (and/or local air agencies, where applicable) shall review and provide written comment on final conformity determinations within fourteen (14) days of the date received. This process shall consist of:

(i) review of mobile emissions model inputs and outputs

(ii) verification that the latest mobile emissions model and planning assumptions are being used

(iii) review of the reasonableness of transportation related data, and

(iv) ensuring consistency with the emissions budget and/interim emission tests, as applicable.

7. It shall be the responsibility of the MPO (or the TDOT, where applicable) making a conformity determination, to provide TAPCD and the applicable local air agencies, FTA, FHWA and the EPA with documentation of the conformity determination.

8. It shall be the responsibility of TAPCD to provide affected MPOs, FHWA, FTA, EPA, local air agencies and TDOT with appropriate information regarding any SIP changes that could impact the conformity process.

9. It shall be the responsibility of the EPA to provide TAPCD and local air agencies and FTA, FHWA, TOOT, and the affected MPOs regarding changes to the Conformity Rule that could impact conformity determinations.

10. Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless written commitments to implementation are obtained by the MPO (or TOOT, where applicable) prior to the conformity determination and such commitments must be fulfilled by the implementing entities. This rule satisfies the requirement of 40 CFR §93.122(a)(4)(ii).

11. Written commitments to mitigation measures for project-level mitigation and control measures must be obtained by FHWA (or FTA for transit related projects), from project sponsors, prior to a positive project-level conformity determination, and that project sponsors must comply with such commitments. This rule satisfies the requirement of 40 CFR §93.125(c).

12. In order to assure the most recent planning assumptions are in place at the time the conformity analysis begins, the "time the conformity analysis begins" is to be determined by interagency consultation. This point in time should occur at the point at which the MPO (or TOOT, when

applicable) or other designated agency begins to model the impact of the transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

13. Consultation shall be undertaken, and conducted in accordance with this rule, to evaluate events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR §93.104, including any changes in planning assumptions, that may trigger a new conformity determination. The consultation process pursuant to this rule shall be initiated by FHWA, EPA, TAPCD, TOOT, or the MPO where one exists.

(e) Implementation Plans:

1. Any proposed revisions to the SIP, which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity, shall be made available to the MPOs specified in this rule, as well as TDOT, FHWA, FTA, and EPA in written or electronic form for their review and comment at least thirty (30) days before presentation to the Tennessee Air Pollution Control Board. Shorter review periods may be allowed occasionally in emergency situations with participant concurrence

2. TAPCO shall also provide the public a period from the date of announcement to comment on any proposed SIP revisions which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity, as defined in subparagraph (h) of this paragraph.

3. Any proposed revisions to the SIP shall include documentation on methods of analysis, models employed and purpose of the revision.

(f) Other processes:

1. TAPCD shall be responsible for the process whereby MPOs, local air agencies, TOOT, FHWA, FTA and EPA shall study and develop supplementary consultation procedures to identify, evaluate and address, as needed, the following issues. In the absence of supplementary consultation procedures, TAPCD will include the following items for discussion during interagency consultation meetings in advance of a conformity determination:

- (i) hot spot analysis methods, models and assumptions,
- (ii) determination of regionally significant projects and projects considered to have a significant change in design concept and scope,
- (iii) evaluating when exempt projects should be treated as non-exempt,
- (iv) implementation of TCMs and processing of TCM substitutions,
- (v) identifying conformity determination triggers other than those established in 40 CFR § 93.104, and
- (vi) Methods, models and assumptions for regional emissions.

2. These supplementary procedures (in part 1 of this subparagraph) may be specific for each

metropolitan area or each nonattainment or maintenance area subject to the conformity rule.

3. TAPCD shall conduct meetings to discuss any supplementary consultation procedures as needed.

4. Final document distribution for conformity determinations associated with Plans, TIPs and STIPs (occasionally, alternate schedules may be used with concurrence by participants):

(i) The final air quality conformity determination, necessary supporting documentation and the Plan and TIP will be submitted to the FHWA Division Office, the FTA Regional Office, the EPA Regional Office, TOOT, TAPCD and any applicable local air agencies. EPA will respond in writing, to the FTA Regional Office and FHWA Division Office, as soon as possible but not later than thirty (30) days from the date received;

(ii) Comments will be resolved by FHWA and FTA, in concert with EPA, with the MPO or TOOT, in their respective areas, as necessary;

(iii) FHWA and FTA will jointly prepare correspondence to make the conformity finding. Joint conformity findings will be addressed to the MPO (or TOOT where no MPO exists), with a copy to TOOT, EPA, TAPCD and any applicable local air agencies. The findings of FTA and FHWA together constitute the DOT conformity findings;

(iv) In the event that the MPO or TOOT in their respective areas, wishes to amend the TIP to add projects that are exempt from the conformity analysis requirement, FHWA or FTA or both, if necessary, will concur in the amendment and re-affirm the original DOT conformity finding by letter. This re-affirmation letter will reference the date(s) of the original FHWA and FTA findings. In cases where the amendment involves projects that are not exempt, a new conformity analysis and determination will be required, and will, in turn, require a new DOT conformity finding.

Within fifteen (15) days subsequent to approval and adoption of final documents, including transportation plans, TIPs, conformity determinations, applicable implementation plans and implementation plan revisions, the lead agency shall provide copies (electronic copies acceptable) of such documents and supporting information to all affected agencies.

5. Generalized hot-spot determination process:

Interagency consultation shall be undertaken to evaluate and choose a model(s), associated methods and planning assumptions to be used in hot-spot analyses.

Generalized hot-spot determination process (occasionally, alternate schedules may be used with concurrence by participants):

(i) The project sponsor (or TOOT or the MPO), will seek consensus if the project is believed to be exempt from hot-spot analysis. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the

determination;

(ii) If the project is not exempt, the project sponsor (or TOOT or the MPO) will collect and organize and distribute specific data needed to determine whether nonexempt projects are or are not of air quality concern. This can be accomplished through electronic transmittal, providing for a minimum of fourteen

(14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination;

(iii) If it is determined the project is a project of air quality concern, the project sponsor (or TOOT or the MPO) will then engage and begin a consultation process to evaluate and choose a model (or models) and associated methods and assumptions to be used in hot-spot analysis. The project sponsor (or TOOT or the MPO) will make a PM_{2.5} hot-spot determination (i.e., project-level conformity determination) and request that other stakeholder agencies comment on the conclusions through formal interagency consultation as provided in this rule.

6. Regionally significant projects:

For purposes of regional emissions analysis, the MPO (TOOT where no MPO exists) shall actively consult with the affected agencies to determine which minor arterials and other transportation projects should be considered "regionally significant" projects (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. Prior to initiating any final action on these issues, the MPO (or TOOT, if applicable) shall consider the views of each agency that comments and respond in writing.

7. Transportation Control Measures (TCMs):

(i) For each Plan or TIP update, the agencies specified in this rule to participate in consultation, shall review whether past obstacles to implementation of Transportation Control Measures (TCMs) which are behind the schedule established in the applicable implementation plan are being overcome, and whether State and local agencies with influence over approval or funding for TCMs are giving maximum priority to approval or funding for TCMs. If necessary, consideration will be given as to whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

(ii) Where TCMs are to be included in an applicable implementation plan, a list of TCMs shall be developed by TOEC (and local air agencies, if applicable) in cooperation with the MPO, TOOT, or both.

8. Exempt projects which may be non-exempt:

The MPO (or TOOT where applicable) shall commence consultation regarding potentially exempt projects to (occasionally, alternate schedules may be used with concurrence by

participants):

- (i) Identify exempt project as defined by 40 CFR §93.126 Table 2, and 40 CFR §93.127 Table 3;
- (ii) 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;
- (iii) Identify transportation Plan and TIP/STIP revisions which add or delete exempt projects, as defined in 40 CFR §93.126 Table 2 and 40 CFR §93.127 Table 3.

The MPO (or TOOT where applicable), will seek consensus from the consultation participants if the project is believed to be exempt. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination.

9. Multi-jurisdictional consultation :

Agencies specified in this rule will consult on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. Where the nonattainment area crosses the boundaries of multiple MPOs, the MPOs shall share cooperatively the responsibilities of conducting conformity determinations on transportation activities. The MPOs will enter into a memorandum of agreement which will define the effective boundaries and the respective responsibilities for each MPO for regional emissions analysis. Adjacent MPOs of nonattainment or maintenance areas shall share information concerning air quality modeling assumptions and emissions rates that affect both areas. This provision also applies to MPOs and TOOT where the nonattainment area extends beyond the MPO's boundary. TAPCO and/or local air agencies (where applicable) will initiate consultation with other states when nonattainment areas extend beyond Tennessee's borders.

10. Project disclosure:

- (i) The sponsor of any potentially regionally significant project, and any agency that is responsible for taking action(s) on any such project, shall disclose such project to TOOT or the MPO (whichever is appropriate) in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant

project shall disclose to TOOT or the MPO (whichever is appropriate) on a schedule prescribed by TOOT or the MPO (whichever is appropriate), but no less than annually, each project for which alternatives have been identified through the NEPA process, and any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow the MPO (or TOOT) to perform a regional emissions analysis. This consultation process pursuant to this rule shall be initiated by TOOT, or the MPO, where one exists;

(ii) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall not be considered to be included in the regional emissions analysis supporting the current conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan or interim budget.

11. Transportation model development:

An interagency consultation process in accordance with the interagency consultation procedures outlined in this rule shall be undertaken for the design, schedule, and funding of research and data collection efforts related to regional transportation model development (such as household/ travel transportation surveys), to be initiated by MPOs (or TDOT, if applicable).

12. Responding to significant comments:

If the written response to a significant comment does not adequately address the commenting agency's concerns, further consultation is to be conducted. 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 involved agencies. If necessary, discussion and resolution of the significant comment 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.

(g) Resolving conflicts:

Any conflict among State agencies or between State agencies and the MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. All agencies involved shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible. The appeal process described herein shall apply only to MPO (or TDOT) approved conformity determinations on the transportation plan, TIP, or projects (including project-level determinations), including any documents directly related to determinations of conformity and conflicts between state agencies or between one or more state agency(ies) and the MPO. Conflicts regarding SIPs should be appealed to the State or Local Air Pollution Control Board as appropriate.

1. In the event that the MPO or TDOT determines that every effort has been made to address

TAPCD concerns and no further progress is possible, the MPO or TDOT shall notify the Director of TAPCD in writing to this effect. The memorandum shall delineate each unresolved issue to be appealed, and shall include, at a minimum:

- (i) State the legal basis of the issue/conflict and steps taken to resolve the conflict.
- (ii) Relevant reference material needed to facilitate review and mediation of the conflict, including all relevant portions of state and federal law and regulations, conformity requirements, and any other relevant documents .
- (iii) A description of all reasonable alternatives and supporting data and justification for each alternative. Quantify and document the need for the recommended alternative consistent with the Clean Air Act of 1990 et seq. and the applicable state and federal laws and regulations.
- (iv) Explain the consequences of not reaching a resolution

2. If conflicts concerning conformity determinations cannot be resolved by the interagency consultation procedures, then the State air agency shall notify the agency or agencies involved in the conflict of its intent to escalate the conflict resolution to the office of the Governor.

3. The fourteen (14) calendar day window shall commence:

- (i) on the date that the Technical Secretary of TAPCD and head of the agency or agencies involved in the conflict officially agree that the conflict cannot be resolved, or
- (ii) one or more agencies other than TAPCD request the start of the fourteen (14) day clock on a specified date, after notifying all other agencies involved of their intent, and TAPCD agrees.

4. If TAPCD does not contact the office of the Governor within the fourteen (14) day window, then the issue in conflict is considered to be resolved in favor of the agency in conflict with TAPCD.

5. The Governor may delegate his or her role, but not to the head or staff of TAPCO, TOOT, a state transportation commission or board, or an MPO.

6. TAPCO shall notify involved parties of the final decision by the office of the Governor.

7. In the case of interstate nonattainment areas, if the conflict involves agencies outside of Tennessee, and the conflict cannot be resolved by the affected agency heads, the conflicts may be resolved in a manner mutually agreed to by the parties involved.

(h) Public Participation

1. Each agency subject to conformity shall provide the general public window of opportunity no less than thirty (30) days to review and comment on new conformity determinations before formal action (approval or endorsement by an executive committee of the MPO, or where no MPO exists, TOOT management, for submission to FTA/FHWA for their finding) is taken on all

transportation plans, TIPs and STIPs, consistent with these requirements and those of 23 CFR §450.316(a). A comment period of no less than fourteen (14) days will be made available to the public on amendments to conformity determinations and associated documents. TAPCO and local air agencies shall offer the public the same opportunity to comment before final action on SIPs which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity. The notification process shall include, at a minimum, public notices and submittals to public depositories. In addition, all public comments that specifically address known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis supporting a proposed conformity determination for a transportation plan or TIP, must be responded to, in writing, within thirty (30) days of the end of the comment period.

2. The public participation procedure defined in part 1 of this subparagraph shall not be construed as superseding public involvement procedures already in effect for agencies subject to the conformity consultation process, such as the MPOs' citizen involvement process, the Uniform Administrative Procedures Act (TCA 4-5-10 et seq.), the Tennessee Sunshine Law (TCA 8-44-101 et seq.) or any other established process which already meets or exceeds these standards. In addition, this subparagraph does not apply to project-level conformity determinations subject to NEPA where a NEPA public participation process exists.

3. The public or any interested party may also inspect any of the documents related to the conformity process upon request; any charges imposed on the public for inspection or copying documents related to the conformity process shall be consistent with (or no greater than) the fee schedule contained in 40 CFR §7.43.

Exhibit A: Illustrative list of stakeholders subject to consultation as per this rule: Federal Agencies :

United State Environmental Protection Agency (EPA) Federal Transit Administration (FTA)

Federal Highway Administration (FHWA) State Agencies:

Tennessee Air Pollution Control Division (TAPCD) Tennessee Department of Transportation (TOOT)

Local Air Agencies:

Air Pollution Control Program, Memphis/Shelby County Health Department Division of Pollution Control, Metropolitan Health Department for Davidson County Department of Air Quality Management, Knox County Health Department

Air Pollution Control Bureau, Chattanooga/Hamilton County

Metropolitan Planning Organizations:

Chattanooga-Hamilton County Regional Planning Agency

Clarksville-Montgomery County Regional Planning Commission

Knoxville Regional Transportation Planning Organization

Memphis-Shelby County Department of Regional Services

Nashville Metropolitan Planning Organization

Authority: T.C.A. Section 68-201-105 and 4-5-20 I et. seq. Administrative History : Original rule filed March 29, 1995; effective June 14, 1995. Amendment filed August 31, 2001; effective November 14, 2001.

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	MAR 19, 2002	MAY 16, 2003	68 FR 26492
1 st Revision	JUL 12, 2012	MAY 17, 2013	78 FR 29027