

10 CSR 10-5.480 St. Louis Area Transportation Conformity Requirements

(1) Applicability.

(A) This rule applies to all Environmental Protection Agency (EPA) designated nonattainment and maintenance areas for transportation-related criteria pollutants.

(B) The purpose of this rule is to fulfill the requirement in 40 CFR 51.390(b) to establish a state implementation plan (SIP) revision that includes the following three (3) sections of the federal transportation conformity rule:

1. 40 CFR 93.105, which addresses consultation procedures;

2. 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization (MPO) transportation plan and transportation improvement program (TIP) and that such a commitment be fulfilled; and
3. 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination and that project sponsors comply with such commitments.

(C) Once this rule is approved by the EPA into the Missouri State Implementation Plan, it has full legal effect. Conformity determinations will be governed by these criteria and procedures as well as any applicable portions of the federal conformity rule that are not addressed by the state rule.

(D) The Federal Transportation Conformity Rule (for reference) is located at 40 *Code of Federal Regulations* (CFR) 93.100 through 93.129.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in subsection 40 CFR 93.101 of 40 CFR 93 Subpart A, promulgated as of July 1, 2009, including the revision published at 75 FR 14283 (effective April 23, 2010) and hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Participants in the interagency consultation process will be comprised of management and technical staff members from the following public agencies:

1. City of St. Louis Department of Health Air Pollution Control Program—a local air agency;

2. East-West Gateway Council of Governments—the metropolitan planning organization;

3. Federal Highway Administration, Illinois Division—a federal transportation agency;

4. Federal Highway Administration, Missouri Division—a federal transportation agency;

5. Federal Transit Administration, Region 7—a federal transportation agency;

6. Illinois Department of Transportation—a state transportation agency;

7. Illinois Environmental Protection Agency's Bureau of Air—a state air agency;

8. Madison County Highway Department— a local transportation agency;

9. Madison County Transit District—a local mass-transit agency;

10. Metro (Bi-State Development Agency)—a local mass-transit agency;

11. Missouri Department of Natural Resources' Air Pollution Control Program—a state air agency;

12. Missouri Department of Transportation— a state transportation agency;

13. St. Clair County Department of Roads and Bridges—a local transportation agency;

14. St. Clair County Transit District—a local mass-transit agency;

15. St. Louis County Department of Health—a local air agency;

16. St. Louis County Department of Highways—a local transportation agency;

17. U.S. Environmental Protection Agency, Region 5—a federal air agency; and

18. U.S. Environmental Protection Agency, Region 7—a federal air agency.

(C) When a reference is made in this rule to the state air agencies, the local air agencies, the state transportation agencies, the local transportation agencies, the MPO, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the EPA, this means the corresponding public agencies as indicated in subsection (2)(B) of this rule that are participants in the interagency consultation process.

(D) The process for additional agency participation is as follows:

1. For local transportation agencies, the MPO and the Illinois Department of Transportation will jointly appoint Illinois representatives, and the MPO and the Missouri Department of Transportation will jointly appoint Missouri representatives;

2. For local air agencies, the MPO and the Missouri Department of Natural Resources will jointly appoint Missouri representatives, and the MPO and the Illinois Environmental Protection Agency's Bureau of Air will jointly appoint Illinois representatives;

3. For local mass-transit agencies, the MPO and the Illinois Department of Transportation will jointly appoint Illinois representatives, and the MPO and the Missouri Department of Transportation will jointly appoint Missouri representatives;

4. Nothing in this paragraph will preclude the authority of the lead agencies listed in subparagraphs (3)(B)1.A., B., and C. of this rule to involve additional agencies in the consultation process which are directly impacted by any project or action subject to this rule; and

5. Representatives appointed under paragraphs (2)(D)1., 2., 3., and 4. of this rule will not come from an agency already represented as a consulting agency under subsection (2)(B) of this rule.

(E) Metropolitan planning organization (MPO)—That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision making. The East-West Gateway Council of Governments is the MPO for the St. Louis metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA.

(F) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10- 6.020.

(3) General Provisions.

(A) General. This section of the rule provides the general aspects of the transportation conformity interagency consultation process.

1. Pursuant to 40 CFR 51.390, this rule provides for interagency consultation (federal, state, and local), 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)).

2. Such consultation procedures will be undertaken by the MPO, the state transportation agencies, and the FHWA and the FTA with state and local air quality agencies and the EPA prior to making conformity determinations and by state and local air agencies and the EPA with the MPO, the state transportation agencies, and the FHWA and the FTA in developing applicable implementation plans.

(B) Interagency Consultation Procedures. This section of the rule provides the specific aspects of the transportation conformity interagency consultation process.

1. General factors.

A. Representatives of the MPO and the public agencies listed in subsection (2)(B) of this rule will undertake an interagency consultation process in accordance with this section with each other and with the EPA, the FHWA, and the FTA on the development of the transportation conformity state implementation plan (SIP), the transportation plan, the transportation improvement plan (TIP), any revisions to the preceding documents, and all conformity determinations required by this rule.

B. The state air agencies will 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 applicable transportation-related implementation and control strategy SIP revisions for their respective areas of jurisdiction.

C. The East-West Gateway Council of Governments (St. Louis's metropolitan planning agency (MPO)) will 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 long-range transportation plan, the TIP, 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 under its jurisdiction.

D. In addition to the lead agencies identified in subparagraphs (3)(B)1.A., B., and C. of this rule, other agencies entitled to actively participate in the interagency consultation process under this rule are listed in subsection (2)(B) of this rule.

E. It will be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraphs (3)(B)1.A., B., and C. of this rule, to confer with all other agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, to provide all appropriate information to those agencies needed for meaningful input, to solicit early and continuing input from those agencies, to conduct the consultation process described in 40 CFR 93.105, to assure policy-level contact with those agencies, to consider the views of each such 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 to assure that such views and written response are made part of the record of any decision or action. Each lead agency will provide all necessary documentation for review at the initiation of, 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 will be the role and responsibility of each agency specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, to review and comment as appropriate (including comments in writing) on all proposed documents and decisions in a period not to exceed thirty (30) days, to attend consultation and decision meetings, to assure policy-level contact with other participants, to provide input on any area of substantive expertise or responsibility, and to provide technical assistance to the lead agency or consultation process in accordance with this rule when requested.

F. Consultation on specific transportation conformity 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 subparagraphs (3)(B)1.A., B., C., and D. of this rule. It will be the responsibility of the initiate to ensure that all other agencies identified in subparagraphs (3)(B)1.A., B., C., and D.

of this rule 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.

G. It will be the responsibility of the MPO and the state transportation agencies to provide the state and local air agencies with the latest version of the TIP, the statewide transportation improvement plan (STIP), and the transportation plan.

H. It shall be the responsibility of the state air agencies to provide the MPO, state transportation agencies, the FHWA, the FTA, and the EPA with the latest version of the SIP.

I. It will also be the responsibility of each of the agencies specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule to keep their own superiors and constituents properly informed of conformity determinations.

J. The agencies specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule may employ consultant services at their own discretion.

2. Specific roles and responsibilities of various participants in the interagency consultation process will be—

A. The state air agencies listed in subsection (2)(B) of this rule will be responsible in relation to SIP development for—

(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 the EPA reporting requirements related to air quality; and

(IX) Responding to all comments concerning the SIP;

B. The local air agencies will be responsible for their areas of jurisdiction, with the state air agencies 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 agencies in any of the responsibilities listed here;

C. The MPO will be responsible in their area of jurisdiction for—

(I) Developing and monitoring transportation plans and TIPS;

(II) Evaluating the transportation impacts and feasibility of TCMs;

(III) Developing transportation and socioeconomic data and latest planning assumptions and providing such data and planning assumptions to the state air agencies for use in air quality analysis;

(IV) Developing system- or facilitybased or other programmatic (non-regulatory) TCMs;

(V) Providing technical and policy input on emissions budgets;

(VI) Performing transportation modeling including:

(a) Selecting and evaluating such models;

(b) Documenting their use in conformity determinations; and

(c) Alerting, for comment, the agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when any new model is being tested or employed;

(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 vehicle miles traveled, vehicle mix, and vehicle speeds for use in on-road mobile emissions analysis;

(X) Making elections regarding the time frame of the conformity determination under 40 CFR 93.106(d);

(XI) Identifying planning assumptions and evaluating those assumptions for consistency with SIP assumptions;

(XII) Developing draft documents, record notes, and distribute agendas prior to meetings (in person or by conference calls or other practical electronic means);

(XIII) Providing 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; and

(XIV) Preparing the final document subject to interagency consultation will assure that all relevant documents and information are supplied to all participants in the consultation process prior to the release for public review;

D. The state transportation agencies listed in subsection (2)(B) of this rule will be responsible for-

(I) Developing the Statewide Transportation Plan and the 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 vehicle miles traveled, vehicle mix, and vehicle speeds, for use in onroad mobile emission analysis for areas outside the MPO boundary;

(VI) Developing the draft document(s) related to the National Environmental Policy Act (NEPA) process, providing it for review, responding to comments, and preparing the final document(s);

(VII) Performing transportation modeling, including:

(a) Selecting and evaluating such models;

(b) Documenting their use in conformity determinations; and

(c) Alerting, for comment, the agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when any new model is being tested or employed;

(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(n)(2)(iii); and

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

E. The FHWA and the FTA will be responsible for-

(I) Ensuring timely action on final determinations of conformity after receiving a final 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; and

F. The EPA will 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);

(IV) Providing modeling and emissions inventory development assistance to the state air agencies, the state transportation agencies, and the MPO; and

(V) Providing comments on the regional emissions analyses and conformity determination of transportation plans, TIPS, and projects.

3. Conformity determinations.

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

(I) The MPO will be responsible for initiating conformity determinations for plans, programs, or projects within the specific MPO boundary.

(II) The state transportation agencies will 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 40 CFR 93.109(n)(2)(iii).

(III) The MPO and state transportation agencies will employ interagency consultation procedures to ensure compatibility of conformity determinations for the same or overlapping nonattainment or maintenance area(s).

B. It will be the responsibility of the MPO and the state transportation agencies to submit any conformity determinations to the FHWA and the FTA in consultation with the EPA, state air agencies, and local transportation agencies for review and approval before the plan, program, or project subject to the conformity rule may be found to conform or project found to be exempt.

C. All conformity determinations with all supporting documentation and data will be made available for review and comment in a readily-accessible manner to the state air agencies and local air agencies, and the FHWA and FTA in consultation with 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.

D. It is the responsibility of the MPO to make all conformity determinations available to the general public by following public participation procedures.

E. Conformity determinations, at a minimum, should include written documentation for:

(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; and

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

F. State air agencies and/or local air agencies, where applicable, will review and provide written comment on final conformity determinations within fourteen (14) days of the date received. This process will 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/or the interim emission tests, as applicable.

G. It will be the responsibility of the MPO, or the state transportation agencies where applicable, making a conformity determination, to provide the state air agencies and the applicable local air agencies, the FHWA, the FTA, and the EPA with documentation of the conformity determination.

H. It will be the responsibility of the state air agencies to provide the affected MPO, the FHWA, the FTA, the EPA, the local air agencies, and the state transportation agencies with appropriate information regarding any SIP changes that could impact the conformity process.

I. It will be the responsibility of the EPA to provide the state air agencies, the local air agencies, the FHWA, the FTA, the state transportation agencies, and the MPO information regarding changes to the conformity rule that could impact conformity determinations.

J. 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 the state transportation agencies 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).

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

L. 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 and documented. This point in time should occur at the point at which the MPO 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 and documented in writing and included in publicly available documentation of conformity analysis.

M. Consultation will 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 will be initiated by the FHWA, the EPA, the state air agencies, state transportation agencies, or the MPO.

4. Implementation plans.

A. 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, will be made available to the MPO specified in this rule, as well as state transportation agencies, the FHWA, the FTA, and the EPA in written or electronic form for their review and comment at least thirty (30) days before presentation to the respective state air commissions.

B. The state air agencies will 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 A. of this paragraph.

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

5. Other processes.

A. The state air agencies will be responsible for the process whereby the MPO, the local air agencies, the state transportation agencies, the FHWA, the FTA, and the EPA will study and develop supplementary consultation procedures to identify, evaluate, and address, as needed, specific issues. In the absence of supplementary consultation procedures, the state air agencies 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) Timely 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 analysis.

B. These supplementary procedures in subparagraph A. of this paragraph may be specific for the metropolitan area or each nonattainment or maintenance area subject to the conformity rule.

C. The state air agencies will conduct meetings to discuss any supplementary consultation procedure as needed.

D. 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, the state transportation agencies, state air agencies, and any applicable local air agencies. The EPA will respond in writing to the FTA Regional Office and the FHWA Division Office as soon as possible, but not later than thirty (30) days after EPA receives a formal request from FHWA and FTA with all the relevant documentation including the final conformity determination with supporting documentation and data;

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

(III) The FHWA and the FTA will jointly prepare correspondence to make the conformity finding. Joint conformity findings will be addressed to the MPO with a copy to the state transportation agencies, the EPA, the state air agencies, and any applicable local air agencies. The findings of the FHWA and the FTA together constitute the U.S. Department of Transportation (DOT) conformity findings;

(IV) In the event that the MPO or the state transportation agencies, in their respective areas, wishes to amend the TIP to add projects that are exempt from the conformity analysis requirement, the FHWA or the FTA, or both if necessary, will concur in the amendment and reaffirm the original DOT conformity finding by letter. This reaffirmation 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; and

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

E. Generalized hot-spot determination process. Interagency consultation will be undertaken to evaluate and choose a model(s), associated methods, and planning assumptions to be used in hot-spot analyses. The generalized hot-spot determination process (occasionally, alternate schedules may be used with concurrence by participants) entails-

(I) The project sponsor (or the state transportation agencies 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 the state transportation agencies 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; and

(III) If it is determined the project is a project of air quality concern, the project sponsor (or the state transportation agencies 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 the state transportation agencies or the MPO) will make a PM2.5 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.

F. Regionally-significant projects. For purposes of regional emissions analysis, the MPO will 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 the state transportation agencies, if applicable) will consider the views of each agency that comments and respond in writing.

G. Transportation control measures (TCMs).

(I) For each plan or TIP update, the agencies specified in subparagraphs (3)(A)2.A., B., C., and D. to participate in consultation will review whether past obstacles to implementation of 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 will be developed by the MPO or the state transportation agencies, or both.

H. Exempt projects which may be nonexempt. The MPO (or state transportation agencies where applicable) will commence consultation regarding potentially exempt projects to (occasionally, alternate schedules may be used with concurrence by participants)–

(I) Identify exempt projects 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 nonexempt because they may have adverse air quality impacts and determine appropriate air quality analysis methodologies for analyzing such projects;

(III) Identify transportation plan, TIP, and STIP revisions which add or delete exempt projects, as defined in 40 CFR 93.126 Table 2 and 40 CFR 93.127 Table 3; and

(IV) The MPO (or the state transportation agencies 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.

I. 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, will disclose such project to the state transportation agencies and the MPO in a timely manner. Such disclosure will 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; 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 potentially regionally-significant

project will disclose to the state transportation agencies and the MPO on a schedule prescribed by the state transportation agencies and the MPO, but no less than annually, each project for which alternatives have been identified through the National Environmental Policy Act (NEPA) process and any preferred alternative that may be a regionally-significant project. The consultation process will 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 the state transportation agencies) to perform a regional emissions analysis. This consultation process pursuant to this rule will be initiated by the state transportation agencies and the MPO; and

(II) In the case of any such regionally- significant project that has not been disclosed to the MPO and the other interested agencies participating in the consultation process in a timely manner, such regionally-significant project will 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.

J. Transportation model development. An interagency consultation process in accordance with the interagency consultation procedures outlined in this rule will 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 MPO.

K. 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.

6. Resolving conflicts. Any conflict among state agencies or between state agencies and the MPO will be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. All agencies involved will 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 will apply only to the MPO (or the state transportation agencies) 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 (1) or more state agencies and the MPO. Conflicts regarding SIPs should be appealed to the respective state air commissions.

A. In the event that the MPO or the state transportation agencies determine that every effort has been made to address the state air agencies' concerns and no further progress is possible, the MPO or the state transportation agencies will notify the directors of the respective state air agencies in writing to this effect. The memorandum will delineate each unresolved issue to be appealed and will include, at a minimum:

(I) 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; and

(IV) An explanation of the consequences of not reaching a resolution.

B. If conflicts concerning conformity determinations cannot be resolved by the interagency consultation procedures, then the state air agencies will notify the agency or agencies involved in the conflict of its intent to escalate the conflict resolution to the office of the governor within fourteen (14) calendar days.

C. The fourteen (14)-calendar-day window will commence—

(I) On the date that the directors of the state air agencies and the head of the agency or agencies involved in the conflict officially agree that the conflict cannot be resolved; or

(II) One (1) or more agencies other than the state air agencies request the start of the fourteen (14)-day clock on a specified date, after notifying all other agencies involved of their intent, and the state air agencies agree.

D. If the state air agencies do not contact the office of the governor within the fourteen (14)-calendar-day window, then the issue in conflict is considered to be resolved in favor of the agency in conflict with the state air agencies.

E. The governor may delegate his or her role but not to the head or staff of the state air agencies, the state transportation agencies, a state transportation commission or board, or an MPO.

F. The state air agencies will notify involved parties of the final decision by the office of the governor.

7. Public participation.

A. Each agency subject to conformity will provide the general public a 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 for submission to the FHWA and the FTA 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. The state and local air agencies will 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 will 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 and has 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.

B. The public participation procedure defined in subparagraph A. of this paragraph will not be construed as superseding public involvement procedures already in effect for agencies subject to the conformity consultation process, such as the MPO's citizen involvement process, the Missouri Sunshine Law (Chapter 610, RSMo), or any other established process which already meets or exceeds the requirements of subparagraph (3)(B)7.A. of this rule. In addition, this subparagraph does not apply to project-level conformity determinations subject to NEPA where a NEPA public participation process exists.

C. 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 will be consistent with (or no greater than) the fee schedule contained in 49 CFR 7.43.

(4) Reporting and Record Keeping. *(Not Applicable)*

(5) Test Methods. *(Not Applicable)*

EPA Rulemakings

CFR: 40 C.F.R. 52.1320(c)
 FRM: 78 FR 53247 (8/29/2013), effective October 28, 2013
 PRM: 78 FR 53386 (8/29/2013)
 State Submission: 3/17/2011
 State Final: 10 C.S.R. 10-5 (7/1/2010; effective 2/28/2011)
 APDB File: MO-296; EPA-R07-OAR-2013-0482
 Description: *This revision includes amendments to sections (1) through (4) of rule 10 CSR 10-5.480 St. Louis Area Transportation Conformity Requirements, providing more specificity to the interagency consultation process requirements, including roles and responsibilities. Section (1) revises language to include requirements of three sections from the federal conformity rule: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), 40 CFR 93.125(c). Section (2) adds language that describes in detail which agencies embody the interagency consultation group and defines who appoints air quality agency representatives. Section (3) revises the language to describe in detail roles and responsibilities of each agency involved in the interagency consultation group, communication strategy procedures, specific conformity processes and procedures, conflict resolution procedures, and public participation process procedures. Section (4) makes minor administrative revisions to correct spelling. This rule applies to the St. Louis ozone and PM_{2.5} nonattainment and carbon monoxide maintenance areas.*

CFR: 40 C.F.R. 52.1320(c)
 FRM: 72 FR 59014 (10/18/2007)
 PRM: 72 FR 59066 (10/18/2007)
 State Submission: 07/27/2007
 State Final: 10 C.S.R. 10-5 (10/24/2006; effective 07/30/2007)
 APDB File: MO-256; EPA-R07-OAR-2007-0912
 Description: This revision incorporates the requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

CFR: 40 C.F.R. 52.1320(c)
 FRM: 68 FR 66350 (11/26/2003)
 PRM: 68 FR 66389 (11/26/2003)
 State Submission: 09/16/2003
 State Final: 10 C.S.R. 10-5 (09/30/2003)
 APDB File: MO-168
 Description: The EPA approved a revision that will accomplish the implementation of the one-year grace period before conformity is required in areas that are designated non-attainment for a given air quality standard for the first time and will require that conformity be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emissions budgets are adequate.

CFR: 40 C.F.R. 52.1320(c)(101)(i)(B)
 FRM: 62 FR 46880 (9/5/97) Correction Notice 63 FR 6645 (02/10/98)
 PRM: 61 FR 46938 (9/5/97)
 State Submission: 2/2/97
 State Proposal: 21 MR 2651 (11/15/96)
 State Final: 10 C.S.R. 10-5 (11/30/96)
 APDB File: MO-139
 Description: The EPA approved an amendment to the rule which adopted specific revisions to the Federal transportation conformity rule contained in 40 C.F.R. 51.390-464 (Subpart T) as amended on November 14, 1995. The action of 63 FR 6645 (February 10, 1998) corrects the effective date of the September 5, 1997, notice to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act.

10 CSR 10-5.480

CFR: 40 C.F.R. 52.1320(c)(92)(i)(A)
FRM: 61 FR 7711 (2/29/96)
PRM: 61 FR 7760 (2/29/96)
State Submission: 2/14/95
State Proposal: 19 MR 2557 (11/1/94)
State Final: 10 C.S.R. 10-5 (4/28/95)
APDB File: MO-116b
Description: The EPA approved a new regulation which takes final action to approve the SIP submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's Transportation Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 C.F.R. 51.396.

Difference Between the State and EPA-Approved Regulation

None.