

VOLUME II, SECTION IV.
CONTEMPORARY FEDERAL LEGISLATIVE & REGULATORY
REQUIREMENTS FOR METROPOLITAN TRANSPORTATION PLANNING

INTRODUCTION

As noted in the preceding section relating to the chronology of federal legislation, federally funded transportation projects within a metropolitan planning boundary must be included on a long-range transportation plan and TIP developed and approved by an MPO. The plan and TIP must be fiscally constrained, subject to a locally adopted public involvement procedure and, in non-attainment areas, conform with the State Air Quality Implementation Plan. The TIP must also be approved by the Governor; and once approved by the Governor, becomes part of the Statewide Transportation Improvement Program [STIP].¹

In this section, we review both federal statutory requirements promulgated by Congress, and federal regulatory requirements promulgated thereunder by the relevant administrative agencies. (At this writing, the relevant regulations are those promulgated pursuant to ISTEA; FHWA/FTA have not yet updated those regulations to address TEA-21.) Therefore, there is a large measure of incongruity between the statutory and regulatory provisions at this writing.

MPO BOUNDARIES, STRUCTURE & DESIGNATION: STATUTORY
REQUIREMENTS

An MPO is designated for each urbanized area with a population of more than 50,000 people, by an agreement between the Governor of the state and the local government officials that together represent at least 75 percent of the affected population (including the central city). Such agreement must be in accordance with procedures established by applicable state or local law.² The MPO's policy board must consist of local elected officials,³ officials of public transportation agencies, and appropriate state officials.⁴ A designation of an MPO will remain in effect until it is redesignated.⁵

An MPO may be redesignated by agreement between the Governor and units of local government that represent at least 75 percent of the affected population (including the central city).⁶ MPOs may also be redesignated when requested by a unit(s) of local

¹ 23 U.S.C. §§ 134, 135; 23 CFR Part 51.

² 23 U.S.C. §134 (b)(1); 49 U.S.C. § 5303 (c)(1).

³Where a city council member has been appointed to an MPO board, that council member may be removed from the board upon refusal to vote in accordance with the council's wishes. This removal does not violate a First Amendment freedom of expression because the council member was appointed to represent the council. Capacity as an elected official is not compromised by removal from the MPO board. *Rash-Aldrich v. Ramirez*, 96 F3d 117 (5th Cir. 1996).

⁴ 23 U.S.C. § (b)(2); 49 U.S.C. § 5303 (c)(2).

⁵ 23 U.S.C. § 134 (b)(4); 49 U.S.C. § 5303 (c)(4), (c)(5)(D).

⁶ 23 U.S.C. § 134 (b)(5)(A); 49 U.S.C. § 5303 (5)(A).

government representing at least 25 percent of the affected population in any urban area (1) whose population is more than 5,000,000 but less than 10,000,000, or (2) which is an extreme nonattainment area for ozone or carbon monoxide as defined under the Clean Air Act, provided there is agreement between the Governor and local government representing at least 75 percent of the affected population.⁷ More than one MPO may be designated within a metropolitan planning area when the Governor and the existing MPO determine that the size and complexity of the existing area make a single MPO appropriate.⁸

Where a public agency with multimodal transportation responsibilities was operating under state law at the time 23 U.S.C. § 134 was enacted, such agency may continue its statutory duties. These duties may include developing plans and programs, developing long-range capital plans, coordination of transit services and projects and other activities with which it has been charged.⁹

An MPO may not impose legal requirements on any transportation facility, provider, or projects not eligible under Title 23 or chapter 53 of title 49 of the U.S. Code.¹⁰

MPO BOUNDARIES, STRUCTURE & DESIGNATION: REGULATORY REQUIREMENTS

Federal regulations provide that designations of MPOs made after 1991 shall be pursuant to agreement by the Governor(s) and the local governments representing 75% of the affected metropolitan population (including the central city), and in accordance with procedures established by state or local law. To the extent possible, only one MPO should be designated for each UZA [census-defined urbanized area] or group of contiguous UZAs. More than one MPO can be established only if the Governor(s) conclude that the size and complexity of the UZA makes designation of more than one appropriate.¹¹ (TEA-21 changed the statutory basis of this provision adding the existing MPO to this determination.) To the extent possible, the MPO should be designated under state legislation or interstate compact, and be authorized to carry out metropolitan planning.¹² A new MPO may be designated to replace an existing MPO only upon agreement by the Governor and affected local governments representing 75% of the metropolitan population, including the local government representing the central city.¹³

Federal regulations require that the MPO policy body must include within its voting members local elected officials, officials of agencies that administer or operate major modes of transport (e.g., transit operators, airports, rail operators) and state officials.¹⁴

⁷ 23 U.S.C. § 134 (b)(5)(B); 49 U.S.C. § 5303 (5)(B).

⁸ 23 U.S.C. § 134 (b)(6); 49 U.S.C. § 5303 (c)(3).

⁹ 23 U.S.C. § 134 (b)(3); 49 U.S.C. § 5303 (c)(6).

¹⁰ 23 U.S.C. § 134 (m).

¹¹ 23 CFR § 450.306(a).

¹² 23 CFR § 450.306(c).

¹³ 23 CFR § 450.306(d).

¹⁴ 23 CFR § 450.306(I).

Boundaries of an MPO are determined by agreement between the MPO and the Governor, but must encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period. The area may encompass the entire, or consolidated, metropolitan statistical area as defined by the Bureau of Census.¹⁵

When an urbanized area is in nonattainment for ozone or carbon monoxide, as defined by the Clean Air Act, the boundaries of the MPO in existence as of the date of the enactment of 23 U.S.C. § 134 are ordinarily retained.¹⁶ The area may, however, be adjusted by agreement of the Governor and the affected MPO in the method described above.¹⁷ If an urbanized area is designated as a nonattainment area for ozone or carbon monoxide after the enactment of 23 U.S.C. § 134, the boundaries will be established as they would under a new MPO designation.¹⁸

If more than one MPO has authority within a metropolitan area for an area that is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each MPO must consult with the other MPO and the state when coordinating plans and programs.¹⁹ If a specific project is located within the boundaries of more than one MPO, again, all involved MPOs must consult one another and must coordinate plans regarding the project.²⁰

The scope of planning by an MPO may extend beyond its own boundaries. The Governor and the MPOs are encouraged to coordinate planning within the entire metropolitan area and the State.²¹ Congress authorizes cooperation between any number of states to enter into agreements or compacts and to establish agencies in the advancement of mutual support and assistance in carrying out transportation plans.²²

Federal regulations provide that MPO boundaries shall, at minimum, include the UZA(s) and contiguous geographic area(s) likely to become urbanized within the 20-year forecast period covered by the transportation plan. Before determining the MPO's boundaries, the planning areas in use for all transport modes shall be reviewed, and adjustments made to foster an effective planning process that assures intermodal connectivity, reduces modal disadvantages, and promotes efficient transportation investment strategies.²³ The boundaries selected need not be approved by the FHWA or FTA.

¹⁵ 23 U.S.C. § 134 (c)(1)(2); 49 U.S.C. § 5303 (d)(2).

¹⁶ 23 U.S.C. § 134 (c)(3); 49 U.S.C. § 5303 (d)(3),

¹⁷ 23 U.S.C. § 134 (b)(5), (c)(3); 49 U.S.C. § 5303 (c)(5), (d)(3).

¹⁸ 23 U.S.C. § 134 (b)(1), (c)(2), (c)(4); 49 U.S.C. § 5303 (d)(4).

¹⁹ 23 U.S.C. § 134 (e)(1); 49 U.S.C. § 5303 (e)(3).

²⁰ 23 U.S.C. § 134 (e)(2); 49 U.S.C. § 5303 (e)(5).

²¹ 23 U.S.C. § 134 (d)(1); 49 U.S.C. § 5303 (e)(1).

²² 23 U.S.C. § 134 (d)(2); 49 U.S.C. § 5303 (e)(2). One example of such interstate planning is the *Tahoe Regional Planning Compact*.

²³ 23 CFR § 450.308(c).

For geographic areas designated as nonattainment or maintenance areas under the Clean Air Act Amendments of 1990, the MPO boundaries shall include at least the boundaries of the nonattainment or maintenance areas, unless a contrary agreement has been reached between the MPO and the Governor.²⁴ Where the MPO boundaries do not include the entire nonattainment or maintenance areas, there should be an agreement between the MPO and the State department of transportation, the State air quality agency, and affected local agencies describing the process for cooperative planning and analysis of projects outside the metropolitan planning area (but within the nonattainment or maintenance area), which indicates how the total transportation-related emissions will be treated for purposes of determining conformity with EPA regulations.²⁵ Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary must be coordinated with the FHWA, FTA, EPA and state air quality agency before a final decision is made.²⁶

COOPERATIVE PLANNING: STATUTORY REQUIREMENTS

The Secretary of Transportation is charged with encouraging MPOs to coordinate the design and delivery of transportation services with all recipients of funding under Title 49 of the U.S. Code, governmental agencies, and non-profit organizations (and their representatives) that receive governmental assistance from sources other than the DOT to provide non-emergency transportation services for the MPOs' metropolitan areas.²⁷

COOPERATIVE PLANNING: REGULATORY REQUIREMENTS

Federal regulations provide that the responsibilities for cooperatively carrying out transportation planning should be clearly identified in a memorandum of understanding between the MPO and the state and public transit operators.²⁸ In nonattainment or maintenance areas where the MPO is not designated as the air quality planning agency under the Clean Air Act,²⁹ the MPO should have an agreement with the designated air quality agency describing their respective roles in areas of air quality-related transportation planning.³⁰ Ideally, there should be one cooperative agreement containing these understandings between the MPO, state, local transit, and air quality agencies.³¹

Federal regulations provide that metropolitan transportation planning shall be carried out by the MPO in cooperation with the state and the local transit operator, who shall cooperatively determine their responsibilities in the planning process, the unified planning work program, the transportation plan, and the transportation improvement program. The development of the plan and the TIP must also be coordinated with other

²⁴ 23 CFR § 450.308(a).

²⁵ 40 CFR Part 51.

²⁶ 23 CFR § 450.310(f).

²⁷ 49 U.S.C. § 5303 (e)(4).

²⁸ 23 CFR § 450.310(a)(b).

²⁹ 42 U.S.C. § 7504.

³⁰ 23 CFR § 450.310(c).

³¹ 23 CFR § 450.310(d).

providers of transportation (e.g. airports, and rail freight operators).³² There must be a proactive public involvement process³³ in this plan development and, in addition, the MPO must involve traffic, ridesharing, parking, transportation safety and enforcement agencies, commuter rail operators, toll authorities and, where appropriate, private transportation providers, city officials, and environmental resource and permit agencies.³⁴ The state must also cooperatively participate in development of the metropolitan transportation plan.³⁵ The MPO is ultimately required to approve the resulting metropolitan transportation plan and its periodic updates and the MPO and the Governor must further approve the TIP and amendments thereto.³⁶

In nonattainment or maintenance areas, the MPO must coordinate development of the transportation plan with the SIP development process, and develop transportation control measures.³⁷ The MPO may not approve a transportation plan or program which does not conform with the SIP.³⁸

COMPREHENSIVE PLANNING: STATUTORY REQUIREMENTS

Federal funds may only be used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes.³⁹ The content of the plans and programs for each metropolitan area must provide for the development, integration, and management of all forms of transportation, allowing the metropolitan transportation system to function as an integral part of an intermodal transportation system serving the metropolitan area, the state, and the United States.⁴⁰ Development of plans and programs is to occur on a continuing, cooperative, and comprehensive basis, to a degree dependent upon the complexity of the transportation problems to be addressed.⁴¹

During the planning process, an MPO must consider projects and strategies that serve the following objectives:

- Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
- Increase the safety and security of the transportation system for motorized and nonmotorized users;
- Increase the accessibility and mobility options available to people and for freight;
- Protect and enhance the environment, promote energy conservation, and improve quality of life;

³² 23 CFR § 450.312(a).

³³ 23 CFR § 450.316(b).

³⁴ 23 CFR § 450.316(b)(4)(5).

³⁵ 23 CFR § 450.312(h).

³⁶ 23 CFR § 450.312(b).

³⁷ 23 CFR § 450.312(c).

³⁸ 23 CFR § 450.312(d); 40 CFR Part 51.

³⁹ 49 U.S.C. § 5303 (h).

⁴⁰ 23 U.S.C. §§ 134 (a)(3), 217 (g)(1); 49 U.S.C. § 5303 (a)(2).

⁴¹ 23 U.S.C. § 134 (a)(4); 42 U.S.C. § 7504; 49 U.S.C. § 5303 (a)(3).

- Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- Promote efficient system management and operation; and
- Emphasize the preservation of the existing transportation system

Failure to consider these factors, however, is not reviewable by any court in any matter affecting a transportation plan, a TIP, a project strategy, or the certification of the planning process.⁴²

Both pedestrian and bicycle transportation are emphasized as alternatives to transportation by automobile and MPOs are required to give due consideration to these alternate forms in creating comprehensive transportation plans. Where appropriate, such plans and projects must include safety measures, such as contiguous routes for bicyclists and pedestrians and audible traffic signs and signals at street crossings.⁴³

COMPREHENSIVE PLANNING: REGULATORY REQUIREMENTS

The following factors must be explicitly considered in all planning process products:

1. Preservation of existing transportation facilities and use of existing facilities more efficiently;
2. Energy conservation;
3. The need to relieve congestion and prevent congestion from occurring;⁴⁴
4. The effect of transportation policy decisions on land use and development;
5. Transportation enhancement activities;⁴⁵
6. The effects of all transportation projects to be undertaken within the metropolitan planning area;
7. International border crossings and access to ports, airports, intermodal transport facilities, freight distribution routes, national parks, recreational areas, monuments, historical sites, and military installations;
8. Connectivity of roads within the metropolitan planning area with those outside it;
9. Transportation needs identified through the use of management systems;⁴⁶
10. Preservation of rights-of-way to meet future transportation needs;
11. Efficient movement of freight;
12. The use of life-cycle costs in the design and engineering of bridges, tunnels, and pavement;
13. The overall social, economic, energy and environmental effects of transportation decisions;⁴⁷
14. Expansion, enhancement and increased use of transit services;

⁴² 23 U.S.C. § 134 (f); 49 U.S.C. § 5303 (b); Transportation Equity Act for the 21st Century [TEA-21], Pub. L. No. 105-178 (1998).

⁴³ 23 U.S.C. § 217 (g)(1)(2).

⁴⁴ To be considered are congestion management strategies which improve the mobility of people, and in TMAs, a congestion management system that reduces travel demand.

⁴⁵ See 23 U.S.C. § 133.

⁴⁶ See 23 U.S.C. § 303.

⁴⁷ See 23 U.S.C. § 109(h); 49 U.S.C. § 1610; 49 U.S.C. § 303; 42 U.S.C. § 7504(b).

15. Security in transit systems; and
16. Recreational travel and tourism.⁴⁸

TYPES OF PLANS: OVERVIEW

MPOs are charged with developing, or assisting in the development of, a number of different transportation plans. These include the long-range plan, the TIP, the SIP, plans for a TMA, TCMs, national corridor project plans, and other project plans. Planning does not stop with the completion of a plan; periodic assessment and updating are required.

LONG-RANGE TRANSPORTATION PLANS: STATUTORY REQUIREMENTS

Each MPO must prepare, and update periodically, as determined by the Secretary of Transportation, a long-range plan for its metropolitan area, with a minimum 20-year forecast period.⁴⁹ The MPO must consider the seven general planning objectives described in the Overview above.⁵⁰ Taking these objectives into account, the long-term plan must, at a minimum, contain the following.⁵¹

- Identification of transportation facilities that function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions. (In formulating this plan, the objectives listed in the following regulatory section must be observed as they relate to a 20-year forecast period.)
- A financial plan that shows how the long-range plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified were available.⁵² The MPO and the State must cooperatively develop the estimated funds available to support the plan.⁵³
- Assess capital investment and other measures necessary to (1) ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, and (2) ensure the operation, maintenance, modernization, and rehabilitation of existing and future transit facilities.
- Indicate, as appropriate, proposed transportation enhancement activities

⁴⁸ 23 CFR § 450.316(a).

⁴⁹ 23 U.S.C. §§ 134 (f), 135 (e); 49 U.S.C. § 5303 (b), (f)(2); Transportation Equity Act for the 21st Century [TEA-21], Pub. L. No. 105-178 (1998).

⁵⁰ 49 U.S.C. § 5303 (f)(2);

⁵¹ 23 U.S.C. § 134 (g)(2); 49 U.S.C. § 5303 (f)(1).

⁵² A State or MPO will not be required to select any project from the illustrative list of projects should additional resources become available. 23 U.S.C. § 134 (g)(6); 49 U.S.C. § 5303 (f)(6).

⁵³ 49 U.S.C. § 5303 (f)(2).

- Identify transportation strategies necessary (1) to ensure preservation, including requirements for management, operation, modernization, and rehabilitation, of the existing and future transportation system; and (2) to use existing transportation facilities most efficiently to relieve congestion, to efficiently serve the mobility needs of people and freight, and to enhance access within the metropolitan planning area.⁵⁴

During the process of formulation and prior to approval of the long-range plan, each MPO must provide all interested parties and citizens with a reasonable opportunity to comment on the plan.⁵⁵ Each plan prepared by an MPO must be published or otherwise made available for public review and must be submitted to the Governor.⁵⁶

LONG-RANGE TRANSPORTATION PLANS: REGULATORY REQUIREMENTS

Federal regulations likewise require that the metropolitan transportation planning process include a long-term transportation plan addressing at least a 20-year planning horizon, including both short and long-range strategies for the development of an integrated intermodal system which facilitates the efficient movement of goods and people. The plan should be reviewed and updated at least triennially in nonattainment areas, and every five years in attainment areas to confirm its validity and its consistency with current and projected transportation and land use conditions and trends during the forecast period. After an adequate opportunity for public official and citizen involvement in the development of the plan,⁵⁷ it must be approved by the MPO.⁵⁸

The long-term plan must:

1. Identify projected demand;
2. Identify adopted congestion management strategies;
3. Identify pedestrian walkway and bicycle transportation facilities;⁵⁹
4. Identify SOV projects that result from a congestion management system;⁶⁰
5. Assess capital investment and other measures necessary to preserve the existing transportation system and make the most efficient use of existing transportation facilities to relieve vehicular congestion and enhance the mobility of people and goods;

⁵⁴ 23 U.S.C. § 134 (g)(2)(C); 49 U.S.C. § 5303 (f)(1)(C). In metropolitan areas that are nonattainment for ozone or carbon monoxide under the Clean Air Act, the MPO must coordinate the development of the long-range transportation plan with the process for development of the transportation control measures of the SIP (a requirement of the Clean Air Act). 23 U.S.C. § 134 (g)(3); 49 U.S.C. § 5303 (f)(3).

⁵⁵ 23 U.S.C. § 134 (g)(4); 49 U.S.C. § 5303 (f)(4).

⁵⁶ 23 U.S.C. § 134 (g)(5); 49 U.S.C. § 5303 (f)(5).

⁵⁷ 23 CFR § 450.322(c).

⁵⁸ 23 CFR § 450.322(a). In nonattainment and maintenance areas for transportation related pollutants, the MPO, FWHA and FTA must make a Clean Air Act conformity determination of any new or revised plan. 23 CFR § 450.322(d); see 40 CFR Part 51.

⁵⁹ See 23 U.S.C. § 217(g).

⁶⁰ See 23 CFR Part 500.

6. Identify proposed improvements in sufficient detail to develop cost estimates;⁶¹
7. Reflect a multimodal evaluation of the transportation, socioeconomic, and financial impact of the overall plan;
8. Identify the major transportation investments for which analyses are not yet complete;
9. Reflect the area's comprehensive long-range land use plan;
10. Indicate proposed transportation enhancement activities;⁶²
11. Include a financial plan that demonstrates consistency of the transportation plan with available and projected sources of revenue.⁶³

TRANSPORTATION IMPROVEMENT PROGRAM: STATUTORY REQUIREMENTS

All MPOs must develop, in cooperation with the State and any affected public transportation operator, a TIP for their designated metropolitan area.⁶⁴ The plan must be consistent with the long-range transportation plan⁶⁵ and include funding estimates reasonably expected to be available to support TIP implementation.⁶⁶ The TIP shall be updated at least once every two years, and must be approved by both the MPO and the Governor.⁶⁷ As with the long-term transportation plan, citizens and all interested parties must be afforded a reasonable opportunity to comment on the proposed TIP.⁶⁸

The TIP must include the following⁶⁹:

- A priority list of proposed federally supported projects, parts of projects, and strategies to be carried out within each 3-year period after the initial adoption of the TIP; and
- A financial plan that (1) demonstrates how the TIP can be implemented; (2) indicates resources from public and private sources that are reasonably expected to be available to carry out the program; (3) identifies innovative financing techniques to finance projects, programs, and strategies; and (4) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

Projects designated in the TIP include all projects and strategies within the area proposed for funding under Chapter 1 of Title 23 and Chapter 53 of Title 49 of the U.S.

⁶¹ In nonattainment and maintenance areas, additional requirements are imposed to assure conformity with 40 CFR Part 51.

⁶² See 23 U.S.C. § 101(a).

⁶³ 23 CFR § 450.322(b).

⁶⁴ 23 U.S.C. §§ 134 (h)(1)(A), 135 (f)(1)(B); 49 U.S.C. § 5304 (a)(1).

⁶⁵ 23 U.S.C. § 134 (h)(3)(C); 49 U.S.C. § 5304 (c)(2)(A).

⁶⁶ 23 U.S.C. § 134 (h)(1)(C); 49 U.S.C. § 5304 (a)(2), (c)(2)(B).

⁶⁷ 23 U.S.C. § 134 (h)(1)(D); 49 U.S.C. § 5304 (a)(1).

⁶⁸ 23 U.S.C. § 134 (h)(1)(B), (h)(4); 49 U.S.C. § 5304 (a)(1), (d).

“Interested parties” include the following: citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties.

⁶⁹ 23 U.S.C. § 134 (h)(2); 49 U.S.C. § 5304 (b).

Code.⁷⁰ Only those projects for which full funding can reasonably be expected shall be listed in the TIP.⁷¹

Selection of federally funded projects in metropolitan areas listed in the TIP shall be carried out in cooperation with the MPO by the state, if funded under Title 23, or by the designated transit funding recipients, if funded under Title 49 of the U.S. Code.⁷² Modification of the priority list may be made at any time.⁷³ A State or an MPO will not be required to choose a project from the illustrative list should additional funds become available, but if the State or MPO does wish to add a project from that list, approval must be granted by the Secretary of Transportation.⁷⁴

Section 7506(c) of the Clean Air Act (as amended, 1999) places additional statutory requirements on the long-range plan and TIP⁷⁵ in nonattainment areas for a pollutant, and areas required to develop a maintenance plan with respect to the specific pollutant for which the area was designated nonattainment.⁷⁶ An MPO may not approve a project, program, or plan that does not conform to an approved implementation plan.⁷⁷ Similarly, a TIP may not be approved unless it provides for timely implementation of TCMs,⁷⁸ consistent with schedules included in the applicable implementation plan.⁷⁹

Conformity means adherence to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards.⁸⁰ Conformity prohibits activities from (1) causing or contributing to any new violation of any standard in any area; (2) increasing the frequency or severity of any existing violation of any standard in any area; or (3) delaying timely attainment of any standard or any required interim emissions reductions or other milestones in any area.⁸¹ Conformity findings are not required for a number of types of projects,⁸² including traffic signal synchronization.⁸³

⁷⁰ Individual projects may be funded under Chapter 2 of Title 23, however, if they are determined to be regionally significant or if identified in the TIP. 23 U.S.C. § 134 (h)(3)(A).

⁷¹ 23 U.S.C. § 134 (h)(3)(D).

⁷² 23 U.S.C. § 134 (h)(5)(A); 49 U.S.C. § 5304 (c)(1).

⁷³ 23 U.S.C. § 134 (h)(5)(B); 49 U.S.C. § 5304 (c)(3).

⁷⁴ 23 U.S.C. § 134 (h)(6); 49 U.S.C. § 5304 (c)(4).

⁷⁵ 42 U.S.C. § 7506(c).

⁷⁶ 42 U.S.C. § 7506(c)(5)(B); 40 C.F.R. § 93.101.

⁷⁷ 42 U.S.C. § 7506(c)(1); 40 C.F.R. § 93.102.

⁷⁸ See 40 C.F.R. § 93.113 Criteria and procedures: Timely implementation of TCMs.

⁷⁹ 42 U.S.C. § 7506(c)(2)(B); 40 C.F.R. § 93.113.

⁸⁰ 42 U.S.C. § 7506(c)(1)(A).

⁸¹ 42 U.S.C. § 7506(c)(1)(B).

⁸² See 40 C.F.R. § 93.126. Projects are not exempt, however, if the MPO in consultation with other agencies, the EPA, and the FHWA (if a highway project) or the FTA (if a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

⁸³ 40 C.F.R. § 93.128.

Determinations of conformity are based upon the most recent planning assumptions,⁸⁴ and estimates of emissions,⁸⁵ which are based upon population, employment, travel and congestion estimates as determined by the MPO or other agency.⁸⁶ No plan or TIP may be found in conformity or adopted by an MPO until a final determination has been made that emissions expected from implementation of such plans are consistent with emissions budgets.⁸⁷

A transportation project may only be adopted or approved if that project comes from a conforming plan or program, the design concept and scope of the project have not changed significantly since the plan or program was adopted, and determination for the program conformity was adequate to determine emissions.⁸⁸ If those conditions are not met, a project may still be treated as conforming. To do this, it must be demonstrated that emissions from the project, considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause those plans and programs to exceed emission reduction projections and schedules assigned to them in the applicable implementation plan.⁸⁹

The MPO must publish, or make otherwise publicly available, the TIP. Additionally, the MPO must publish an annual listing of projects for which federal funds have been obligated in the preceding year. That list must be consistent with the categories identified in the TIP.⁹⁰

TRANSPORTATION IMPROVEMENT PROGRAM: REGULATORY REQUIREMENTS

By virtue of federal regulation, in cooperation with the state and local transit provider, the MPO must prepare a transportation improvement plan [TIP] for the metropolitan planning area.⁹¹ The TIP shall cover a period of at least three years⁹² and must be updated at least every two years, and be approved by the MPO and the Governor. Once approved by the MPO and the Governor, the TIP is included in the STIP without modification, unless the TIP covers a nonattainment or maintenance area. The MPO cannot adopt the TIP unless it makes a conformity designation. The TIP becomes part of the STIP only after a conformity finding by the FHWA and FTA.⁹³ The frequency and cycle of the TIP process must be compatible with the STIP development and approval process. A copy of the TIP must be submitted to the FHWA and FTA, though neither

⁸⁴ 40 C.F.R. § 93.110 Criteria and procedures: Latest planning assumptions.

⁸⁵ 40 C.F.R. § 93.111

⁸⁶ 42 U.S.C. § 7506(c)(1).

⁸⁷ 42 U.S.C. § 7506(c)(2)(A).

⁸⁸ 42 U.S.C. § 7506(c)(2)(C); 40 C.F.R. § 93.115(c).

⁸⁹ 42 U.S.C. § 7506(c)(2)(D); 40 C.F.R. § 93.115(b).

⁹⁰ 23 U.S.C. § 134 (h)(7); 49 U.S.C. § 5304 (c)(5). Section 176(c) of the Clean Air Act places additional statutory requirements (regarding air quality conformity) on both the long-range plan and the TIP.

⁹¹ 23 CFR § 450.324(a).

⁹² 23 CFR § 450.324(d).

⁹³ 23 CFR § 450.328(a).

federal agency need approve it.⁹⁴ The FHWA and FTA must jointly find, however, that the TIP is based on a continuing, comprehensive transportation process carried out cooperatively by the MPO, the state, and the local transit operator.⁹⁵ In nonattainment or maintenance areas, the FHWA and FTA, as well as the MPO, must also jointly conclude that the TIP conforms with the adopted SIP and that priority has been given to the timely implementation of transportation control measures contained in the SIP.⁹⁶ The process for TIP preparation must provide a reasonable opportunity for public comment and, in nonattainment TMAs, an opportunity for at least one formal public hearing. Both the proposed and final TIP must be published or otherwise made readily available to the public.⁹⁷

The TIP must be financially constrained by year, and include a financial plan that specifies which projects can be implemented using available revenue, and which are to be implemented using projected revenue sources. The State and local transit provider shall cooperate with the MPO in developing the financial plan, and provide the MPO with estimates of available state and federal funds. Only those projects for which construction and operating funds whose availability can reasonably be anticipated can be included in the TIP. For transit funding, the federal share may not exceed levels of funding committed to the area in the first year of the TIP, and in subsequent years, may not exceed funds committed or reasonably expected to be available to the area.⁹⁸ The TIP must include the following:

1. All transportation projects or phases thereof within the metropolitan area proposed for federal highway or transit funding;
2. Only projects that are consistent with the long-term transportation plan;
3. All regionally significant transportation projects for which FHWA or FTA approval is required, whether or not federally funded;
4. In nonattainment and maintenance areas, all regionally significant transportation projects not covered above; and
5. For each project above, sufficient descriptive material to identify the project or phase; the estimated total cost; the amount of federal funds proposed to be obligated in each year; the agency or agencies to be responsible for carrying it out; the projects which are identified as TCMs in nonattainment or maintenance areas; also in nonattainment or maintenance areas, project description in sufficient detail to permit EPA air quality analysis; and projects which will implement Americans With Disabilities Act-required paratransit and key station plans.⁹⁹

TIPs must also:

⁹⁴ 23 CFR § 450.324(b).

⁹⁵ 23 CFR § 450.330(a).

⁹⁶ 23 CFR § 450.330(b); see 40 CFR Part 51.

⁹⁷ 23 CFR § 450.324(c).

⁹⁸ 23 CFR § 450.324(m). In nonattainment and maintenance areas, projects included in the first two years of the TIP must have funds available or committed.

⁹⁹ 23 CFR § 450.324(f)-(h).

1. Identify the criteria and process for prioritizing implementation of the elements of the transportation plan for inclusion in the TIP and any changes in priorities from prior TIPs;
2. List major projects included in the previous TIP that were implemented as well as any significant delays in their implementation; and
3. In nonattainment and maintenance areas, summarize the progress in implementing required TCMs, including reasons for significant delays, and strategies for ensuring their completion as soon as possible, as well as a list of all projects found to conform in previous TIPs and are a part of the base case for air quality conformity analysis.

TRANSPORTATION MANAGEMENT AREAS (TMAs): STATUTORY REQUIREMENTS

Transportation Management Areas (TMAs) are designated by the Secretary of Transportation for each urbanized area with a population over 200,000 people.¹⁰⁰ These TMAs get a direct allocation of Surface Transportation Program (STP metro) funds for projects within their boundaries.¹⁰¹ Those funds are distributed between all applicable TMAs on a per capita basis.¹⁰² The Secretary must designate any additional TMAs on the request of the Governor and the MPO designated for the area.¹⁰³

Within the TMA, plans and programs must be based on a continuing and comprehensive transportation planning process carried out by the MPO in cooperation with the State and transit operators.¹⁰⁴ The planning process must include a congestion management system that provides for effective management of new and existing transportation facilities eligible for funding under Titles 23 and 49 of the U.S. Code, through the use of travel demand reduction and operational management strategies.¹⁰⁵

In general, projects within the TMA are selected from the approved TIP by the MPO designated for the area, in *consultation*¹⁰⁶ with the State and any affected public transit operator.¹⁰⁷ The exception to this rule is that National Highway System projects and bridge program projects within the TMA are selected by the State in *Cooperation*¹⁰⁸ with the MPO.¹⁰⁹ All selected projects must comply with the established priorities of the TIP for the area.¹¹⁰

¹⁰⁰ 23 U.S.C. § 134(i)(1); 49 U.S.C. § 5305(a).

¹⁰¹ 23 U.S.C. § 133.

¹⁰² 23 U.S.C. § 133(3)(E).

¹⁰³ 23 U.S.C. § 134(i)(1); 49 U.S.C. § 5305(a).

¹⁰⁴ 23 U.S.C. § 134(i)(2); 49 U.S.C. § 5305(b).

¹⁰⁵ 23 U.S.C. § 134(i)(3); 49 U.S.C. § 5305(c).

¹⁰⁶ 23 C.F.R. § 450.104. “Consultation” means that one party confers with another identified party and, prior to taking action(s), considers that party’s views.

¹⁰⁷ 23 U.S.C. § 134(i)(4)(A); 49 U.S.C. § 5305(d)(1)(A).

¹⁰⁸ 23 C.F.R. § 450.104.. “Cooperation” mans that parties involved in carrying out the planning, programming, and management systems process work together to achieve a common goal or objective.

¹⁰⁹ 23 U.S.C. § 134(i)(4)(B); 49 U.S.C. § 5305(d)(1)(B).

¹¹⁰ 49 U.S.C. § 5305(d)(2).

Not less than every three years, the Secretary of Transportation must certify that the metropolitan planning process in each TMA is being carried out in accordance with applicable federal law.¹¹¹ In addition to statutory compliance, certification requires that there is a TIP for the area that has been approved by both the MPO and the Governor.¹¹² If a metropolitan planning process is not certified, the Secretary of Transportation may withhold up to 20 percent of the apportioned funds attributable to the TMA. Withheld funds, however, shall be restored upon certification.¹¹³ The Secretary may not withhold certification based on the policies and criteria established by an MPO or transit grant recipient,¹¹⁴ and shall provide for public involvement appropriate to the metropolitan area under review in making a certification determination.¹¹⁵

In the event that a metropolitan area is not designated as a TMA, the Secretary may provide for the development of an abbreviated long-range transportation plan and TIP (unless the area is in nonattainment for ozone or carbon monoxide under the Clean Air Act), taking into account the complexity of transportation problems in the area.¹¹⁶ For TMAs, or areas within an MPO, classified as nonattainment areas for ozone or carbon monoxide pursuant to the Clean Air Act, federal funds may not be given for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles, unless the project is part of an approved congestion management system.¹¹⁷ Individual projects included in the plans and programs within the TMA are reviewable under the National Environmental Policy Act of 1969. Under that Act, however, any decision by the Secretary of Transportation concerning a plan or program is not considered to be a federal action subject to review.¹¹⁸

TRANSPORTATION MANAGEMENT AREAS: REGULATORY REQUIREMENTS

The Secretary of Transportation must designate as transportation management areas [TMA] all UZAs with populations greater than 200,000. The TMA designation applies to the entire metropolitan area boundary.¹¹⁹

In TMAs, the MPO, in cooperation with the state and local transit operator, shall develop unified planning work programs [UPWPs] which discuss the planning priorities facing the metropolitan planning area, transportation related air quality planning activities anticipated within the next one or two year period, and activities to be performed with federal funds.¹²⁰ In areas not designated as TMAs, the MPO, in cooperation with the

¹¹¹ 23 U.S.C. § 134 (i)(5)(A); 49 U.S.C. § 5305 (e)(1).

¹¹² 23 U.S.C. § 134 (i)(5)(B); 49 U.S.C. § 5305 (e)(1).

¹¹³ 23 U.S.C. § 134 (i)(5)(C); 49 U.S.C. § 5305 (e)(2).

¹¹⁴ 23 U.S.C. § 134 (i)(5)(C)(iii); 49 U.S.C. § 5305 (e)(3).

¹¹⁵ 23 U.S.C. § 134 (i)(5)(D); 49 U.S.C. § 5305 (e)(4).

¹¹⁶ 23 U.S.C. § 134 (j); 49 U.S.C. § 5305 (g).

¹¹⁷ 23 U.S.C. § 134 (l); 49 U.S.C. § 5305 (f).

¹¹⁸ 49 U.S.C. § 5305 (h).

¹¹⁹ 23 CFR § 450.312(f).

¹²⁰ 23 CFR § 450.314(a).

state and local transit provider, and with the approval of the FHWA and FTA, may prepare a simplified statement of work submitted as part of the statewide planning work program, in lieu of a UPWP.¹²¹

AIR QUALITY CONFORMITY REQUIREMENTS

The MPO has an affirmative responsibility to reject any project, program or plan that does not conform to an approved implementation plan¹²² and that is in a nonattainment¹²³ or maintenance¹²⁴ area defined in the Clean Air Act, as amended (42 U.S.C. 7401, et seq.).¹²⁵ Conformity means that the purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards,¹²⁶ and achieving expeditious attainment of such standards, is not compromised.¹²⁷ Specifically, it means that activities will not (1) cause or contribute to any new violation¹²⁸ of any standard in any area; (2) increase the frequency or severity¹²⁹ of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reduction or other milestones¹³⁰ in any area.¹³¹

Conformity is determined by reviewing recent estimates of emissions.¹³² Those estimates are determined from recent population, employment, travel and congestion

¹²¹ 23 CFR §§ 450.314(d), 450.316(c).

¹²² 42 U.S.C. § 7506(c)(1).

¹²³ 40 C.F.R. § 93.104(c). Nonattainment areas have a grace period of 12 months.

¹²⁴ 40 C.F.R. § 93.102(a)(3). Conformity provisions apply to maintenance areas for 20 years from the time of attainment

¹²⁵ 42 U.S.C. § 7506(c)(1).

¹²⁶ 40 C.F.R. § 93.102(b)(1). Conformity provisions apply to the following pollutants: ozone, carbon monoxide (CO), nitrogen oxide (NO₂), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM₁₀).

40 C.F.R. § 93.102(2). Conformity provisions also apply to precursor pollutants: volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas; NO_x in NO₂ areas; and VOC, NO_x, and PM₁₀. In PM₁₀ areas there is no conformity where (1) the EPA Regional Administrator or the director of the State Air Agency has made a finding that transportation precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem, and the MPO and Dept. of Transportation have been notified; or (2) the approved implementation plan establishes a budget for such emissions.

¹²⁷ 42 U.S.C. § 7506 (c)(1)(A).

¹²⁸ 40 C.F.R. § 93.101. Cause or contribute to a new violation for a project means: (1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or (2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

¹²⁹ 40 C.F.R. § 93.101. Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/ or would otherwise exist during the future period in question, if the project were not implemented.

¹³⁰ 40 C.F.R. § 93.101. A milestone consists of an emissions level and the date it was required to be achieved.

¹³¹ 42 U.S.C. § 7506(c)(1)(B).

¹³² 40 C.F.R. § 93.111.

estimates as determined by the MPO or other agency authorized to make such estimates.¹³³

An MPO may not adopt a project, TIP, or other transportation plan until a final determination has been made that such plan meets the above definition of conformity.¹³⁴ A project appearing in prior TIP or transportation plan, even if conforming, and not in the currently conforming plan violates the Clean Air Act.¹³⁵ Similarly, a project from a transportation plan or TIP in which the conformity status has lapsed may not be “grandfathered” into a new transportation plan or TIP that is currently conforming.¹³⁶

Prior to determining project, TIP, or program conformity, the MPO must obtain from the project sponsor and/ or operator, written commitments to implement any project-level mitigation or control measures identified by the NEPA as conditions for process completion with respect to CO and PM₁₀ impacts.¹³⁷ With respect to the TIP and program conformity, written commitments for mitigation and control measures must be included in the project designs and scopes which are used in the regional emissions analysis¹³⁸ or used in the project-level hot spot analysis.¹³⁹

¹³³ 42 U.S.C. § 7506(c).

¹³⁴ 42 U.S.C. §§ 7506(c)(1)-(2)(A).

¹³⁵ Environmental Defense Fund v. Environmental Protection Agency (EPA) (D.C. App., March 2, 1999) 642, 646.

¹³⁶ EPA at 649.

¹³⁷ 40 C.F.R. § 93.125.

¹³⁸ 40 C.F.R. § 93.118 **Criteria and procedures: Motor vehicle emissions budget.**

- (a) This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.
- (b) Consistency with emissions budget(s) must be demonstrated for each year for which the applicable implementation plan specifically establishes emissions budget(s), for the last year of the transportation plan’s forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than 10 years apart.
- (c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor for which the area is in nonattainment or maintenance and for which the applicable implementation plan, or plan submission, establishes an emissions budget.
- (d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.
- (e) Motor vehicle emissions budgets in the submitted control strategy implementation plan revisions and submitted maintenance plans.

40 C.F.R. § 93.101. A 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 Clean Air Act requirements for demonstrating reasonable further progress and attainment.

40 C.F.R. § 93.122 Procedures for determining regional transportation-related emissions.

40 C.F.R. § 93.119 **Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.**

- (a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must

When project sponsors make voluntary commitments to mitigation measures to facilitate conformity determinations, those specific commitments become enforceable obligations.¹⁴⁰ If a sponsor wishes to be relieved of such obligations, it must demonstrate that the applicable hot-spot requirements, emission budget requirements, and emission reduction requirements are satisfied without the mitigation or control measure, and must notify the agencies involved in the interagency consultation process.¹⁴¹ Where the MPO wishes to be relieved of such obligations, the MPO and the Department of

contribute to emission reductions. This criterion applies to the net effect of the action on emissions from the entire transportation system.

- (b)&(c) This criterion may be met in moderate and above ozone nonattainment areas that are subject to reasonable further progress requirements of the Clean Air Act; in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas; in PM₁₀ and NO₂ nonattainment areas; in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to reasonable further progress requirements of the Clean Air Act; and in moderate with design value of less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis demonstrates that for each analysis year and for each of the pollutants: (1) The emissions predicted in the “action” scenario are less than the emissions predicted in the “baseline” scenario, and this can be reasonably expected to be true in the periods between analysis years; and (2) the emissions predicted in the “action” scenario are lower than the 1990 emissions by any nonzero amount.
- (d) Regional emissions analysis must be performed for the following pollutants: (1) VOC in ozone areas; (2) NO_x in ozone areas, unless the EPA Administrator determines that additional reductions would not contribute to attainment; (3) CO in CO areas; (4) PM₁₀ in PM₁₀ areas; (5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and (6) NO_x in NO₂ areas.
- (e) The regional emissions analysis must be performed for analysis years that are no more than 10 years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of the transportation plan’s forecast period must also be an analysis year.
- (f) “Baseline” scenario must be defined in each analysis year, and is the future transportation system that will result from current programs.
- (g) “Action” scenario must also be defined in each analysis year, and is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area.

¹³⁹ 40 C.F.R. § 93.116 **Criteria and procedures: Localized CO and PM₁₀ violations (hot spots).**

- (a) This section applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- (b) This section applies to CO nonattainment areas. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
(§ 93.123 outlines procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).

¹⁴⁰ 40 C.F.R. § 93.125

¹⁴¹ See 40 C.F.R. § 93.105. The implementation plan revision must include specific procedures for consultation between Federal, State, and local agencies to resolve conflicts. Public consultation procedures must be developed in accordance with the requirements for public involvement in 23 C.F.R. part 450.

Transportation must find that the transportation plan and TIP still satisfy the emission budget requirements and/ or emission reduction requirements, and that the project still satisfies the hot-spot requirements. That will demonstrate that conformities of the transportation plan, TIP, and project are still valid. Such a finding, however, is subject to the applicable public consultation requirements¹⁴² for conformity determinations for projects.

Additionally, emissions expected from implementation of a project, program, or plan must be consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan.¹⁴³ Further, an MPO may not adopt a TIP until it determines that the program provides for timely implementation of TCMs¹⁴⁴ which are consistent with schedules in the applicable implementation plan.¹⁴⁵

An MPO may only adopt a transportation project if it meets the following criteria: (1) the project is from a conforming plan and program; (2) the design concept¹⁴⁶ and scope¹⁴⁷ of the project has changed significantly since the conformity finding regarding the plan and program from which the project derived¹⁴⁸; and (3) the conformity determination for the program was adequate to determine emissions at the time the design concept and scope of the project were accepted.¹⁴⁹

A conformity determination for a project, plan, or program will lapse if conformity conditions are not met.¹⁵⁰ A project failing to meet the above criteria may still be treated as conforming if it is demonstrated that the projected project emissions will not cause accepted plans and programs under an approved implementation plan to exceed their assigned emission reduction projections and schedules.¹⁵¹ In CO nonattainment areas, transportation projects may demonstrate conformity if the project eliminates or reduces the severity and number of such violations in the area substantially affected by the project.¹⁵²

¹⁴² 40 C.F.R. § 93.105(e).

¹⁴³ 42 U.S.C. § 7506(c)(2)(A). Conformity determinations must be made no less than every three years for TIPs and transportation plans to avoid a conformity lapse. 40 C.F.R. § 93.104.

¹⁴⁴ 40 C.F.R. § 93.113.

¹⁴⁵ 42 U.S.C. § 7506(c)(2)(B).

¹⁴⁶ Design concept means the type of facility identified by the project, e.g., freeway, arterial highway, mixed-traffic transit, exclusive busway, etc. 40 C.F.R. § 93.101.

¹⁴⁷ 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 including approximate number and location of interchanges, preferential treatment for HOV, etc. 40 C.F.R. § 93.101.

¹⁴⁸ If a significant change in design or scope of the project has occurred, a new conformity determination is required. 40 C.F.R. § 93.102(c) (2).

¹⁴⁹ 42 U.S.C. § 7506 (c)(2)(C).

¹⁵⁰ See 40 C.F.R. § 93.109. This section outlines specific criteria and procedures for determining conformity of transportation plan, programs, and projects.

¹⁵¹ 42 U.S.C. § 7506 (c)(2)(D).

¹⁵² 42 U.S.C. § 7506 (c)(3)(B).

When an implementation plan revision is pending approval, the conformity of its plans, programs and projects may be demonstrated by showing the following: (1) consistency with the most recent estimates of mobile source emissions; (2) provisions for the expeditious implementation of transportation control measures in the applicable implementation plan; and (3) a reduction in annual emissions in ozone and CO nonattainment areas.

Conformity determinations must be made for the entire transportation program, and during the environmental review phase of project development for an individual project.¹⁵³

¹⁵³ 42 U.S.C. § 7506 (c)(3)(B).

MPO RELATIONSHIPS WITH EXTERNAL INSTITUTIONS

