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# MEETING NOTICE AND AGENDA

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- San Diego Unified Port District
- San Diego County Water Authority
- Southern California Tribal Chairmen's Association
- Mexico

## SAN DIEGO CONFORMITY WORKING GROUP

The San Diego Conformity Working Group may take action on any item appearing on this agenda.

Wednesday, December 3, 2008

**10:30 a.m. to 12 noon**

SANDAG, Conference Room 8D  
 401 B Street, Suite 800  
 San Diego, CA 92101-4231

Staff Contact: Rachel Kennedy  
 (619) 699-1929  
 rke@sandag.org

### AGENDA HIGHLIGHTS

- EMFAC 2010 DEVELOPMENT
- SAN DIEGO REGION CONFORMITY SIP DEVELOPMENT

***Please contact Rachel Kennedy prior to the meeting if you wish to participate by conference call.***

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# SAN DIEGO CONFORMITY WORKING GROUP (CWG)

Wednesday, December 3, 2008

ITEM #		RECOMMENDATION
1.	INTRODUCTIONS	
+2.	SUMMARY OF NOVEMBER 5, 2008, MEETING	APPROVE
	<p>The summary for the November 5, 2008, CWG meeting is attached. The CWG is asked to review the meeting summary.</p>	
3.	PUBLIC COMMENTS/COMMUNICATIONS	
	<p>Members of the public will have the opportunity to address the CWG during this time.</p>	
+4.	2008 REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM CONFORMITY DETERMINATION AND 2030 REGIONAL TRANSPORTATION PLAN CONFORMITY REDETERMINATION	INFORMATION
	<p>On November 17, 2008, Federal Highway Administration and Federal Transit Administration made a finding of conformity for the 2008 Regional Transportation Improvement Program and a conformity redetermination for the 2030 Regional Transportation Plan: Pathways for the Future. The letter is attached.</p>	
5.	EIGHT-HOUR OZONE STANDARD RE-CLASSIFICATION UPDATE	DISCUSSION
	<p>The United States Environmental Administration staff will provide the CWG with a status update on the 8-hour Ozone Standard Re-classification for the San Diego region.</p>	
6.	EMFAC 2010 DEVELOPMENT	DISCUSSION
	<p>California Air Resources Board (ARB) staff will provide CWG with an overview of the timeline for the development of the next generation of Emission Factors (EMFAC) software.</p>	
+7.	SAN DIEGO REGION CONFORMITY STATE IMPLEMENTATION PLAN DEVELOPMENT	DISCUSSION/ COMMENT
	<p>The federal Transportation Conformity Rule requires locally-developed procedures defining the process for interagency consultation on air quality and transportation planning documents. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contains streamlined requirements for state conformity State Implementation Plans (SIP). SANDAG and San Diego County Air Pollution Control District staffs have prepared a draft San Diego Region Conformity SIP, which is attached for CWG review and comment.</p>	
8.	OTHER BUSINESS	

+ next to an item indicates an attachment

The next meeting of the San Diego Region Conformity Working Group is scheduled for Wednesday, February 4, 2009, from 10:30 a.m. to 12 noon at SANDAG.

**San Diego Association of Governments**  
**CONFORMITY WORKING GROUP**

December 3, 2008

AGENDA ITEM NO.: **2**

**Action Requested: APPROVE**

SUMMARY OF NOVEMBER 5, 2008, MEETING

File Number 3000400

**Item 1: Introductions**

Self-introductions were made. See attached attendance list.

**Item 2: Summary of September 3, 2008, Meeting**

No comments were made.

**Item 3: Public Comments/Communications**

There were none.

**Item 4: Final National Ambient Air Quality Standards for Lead**

Rachel Kennedy, SANDAG, explained that the United States Environmental Protection Agency (EPA) released the final national air quality standards for lead (a fact sheet is included in the agenda). She summarized these new standards. John Kelly, EPA, said he could answer questions as needed.

On October 15, 2008, the EPA substantially strengthened the national ambient air quality standards (NAAQS) for lead. The revised standards are ten times tighter than the previous standards and will improve health protection for at-risk groups, especially children.

Mr. Kelly stated that no areas in California currently are being recommended as being in non-attainment of the standard. Although the recommendations are not due for another year, there is an indication that San Diego and California would be conformance with this new standard.

The EPA revised the level of the primary (health-based) standard from 1.5 micrograms per cubic meter to 0.15 and with rounding rules, 0.154 attains the standard. The standard uses a 3-month rolling average to show non attainment and three years to show attainment. Final designations are due to the EPA in October 2009. Information on this standard is found in Subpart 5 (of 6) of Title 1 of the Clean Air Act (CAA). The standard uses a total suspended particle (TSP) indicator. More information will be published in the Federal Register November 12, 2008.

Mr. Kelly noted that the attainment demonstrations are on a different timeline than the 8-hour ozone standard. For the lead standard there is an 18-month timeline from the designation date to allow for an attainment demonstration. Areas have up to five years to demonstrate attainment, with no extensions granted.

Elisa Arias, SANDAG, asked if areas are bumped up if they do not attain. Mr. Kelly indicated that penalties would be incurred, because there are no classifications to bump up.

Mr. Kelly stated that part of the problem with lead is there are not monitoring data in place. The CAA allows one year for a recommendation and the EPA has one year to designate, unless there is not sufficient data; in this case, the CAA allows one additional year. No areas in California are anticipated to be designated non-attainment. Mr. Kelly stated that the regulation is source-specific and population-based (cities with more than 50,000 required to comply).

Mike Brady, Caltrans, asked whether additional hot spot analysis would be required at the project level.

Carl Selnick, Air Pollution Control District (APCD), stated that usually the hot spot implications associated with lead are related to aviation. Mr. Kelly stated that the hot spots are associated mainly with the construction phase.

Mr. Kelly described a study being conducted at race tracks to look at the different sources of lead and different types of monitoring, with particular emphasis on exposure of employees. NASCAR has an agreement to prohibit use of leaded fuel, but it may not have been implemented fully. Mr. Brady stated that other club racetracks with older cars may continue use of leaded fuels.

#### **Item 5: Final Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program**

Ms. Kennedy stated that on October 20, 2008, the Federal Highway Administration (FHWA) published the Final Guidance on the CMAQ program. Stew Sonnenberg, FHWA, provided the CWG with an overview of the final guidance on the CMAQ program. Mr. Sonnenberg stated that these final regulations will be replacing the interim guidance that has been in place for the past two years.

The final regulation closely reflects the interim guidance, and includes some administrative changes.

Mr. Sonnenberg described how the final guidance differs from the interim guidance by section and referred to the Federal Register notice published on October 20, 2008.

- **Section IV: Priority for Use of CMAQ Funds** – The interim guidance referenced Appendix IV, whereas the new regulations do not. Appendix IV was removed (but still makes reference to the cost-effectiveness study from May 2007). The language was clarified in response to the EPA updated cost-effectiveness study.
- **Section V.D – Federal Share and State/Local Match Requirements** – The interim guidance called for 80 percent federal share, but under the Energy Independence and Security Act of 2007, the federal share for eligible CMAQ projects may be up to 100 percent of the cost of the project if obligated in FY 2008 and FY 2009 at the discretion of the state.
- **Section VII.B.2 – Projects Ineligible for CMAQ Funding** – The interim guidance did not define a high-occupancy vehicle (HOV), whereas the new guidance defines HOV project eligibility to include high-occupancy toll (HOT) lanes. This change helps to clarify and refine the language.
- **Section VII.D.3 – Alternative Fuels and Vehicles Fuel** – The rulemaking finalized this section without major changes (the section had referred to the ‘proposed’ rulemaking, which was since finalized and footnoted).

- **Section VII.D.5.d – Transit Operating Assistance** – This section was changed to allow operating assistance for New Starts transit projects. The interim guidance did not allow operating assistance for New Starts.

#### **Item 6: 2008 Regional Transportation Improvement Program (RTIP) Amendments No. 1 and 2**

Ms. Kennedy stated that SANDAG received requests from member agencies to amend the 2008 RTIP. Exempt projects for Amendment No. 1 were distributed to CWG for interagency consultation. CWG agreed with the status of the non-capacity increasing projects, but made slight revisions to some of the categories based on comments from Caltrans. Amendment No. 1 is scheduled to go to the SANDAG Transportation Committee for action on November 7, 2008. SANDAG also will be soliciting projects for inclusion in Amendment No. 2, which will not include any new capacity increasing projects. The public notice for Amendment No. 2 will be posted on December 5 and is scheduled to go to the Transportation Committee on January 16, 2009.

Ms. Arias asked when to expect the conformity determination for the 2008 RTIP. It was stated that it should occur on November 17, 2008.

#### **Item 7: Eight-Hour Ozone Standard Re-Classification**

Mr. Kelly provided CWG with a status update on the 8-hour ozone standard re-classification for the San Diego region. The rule has been cleared at the Office of Management and Budget (OMB). A Web site, [www.reginfo.gov](http://www.reginfo.gov) allows tracking of the progress of federal rules. Users can search the RIN 2060-AO96 and title, "Proposed Rule to Implement the 8-hour Ozone NAAQS Revisions to Subpart 1 Areas 1-Hour Contingency Measures."

Mr. Kelly stated that the EPA would sign-off on the rule and take public comment. San Diego will be recommended as a moderate area (based on 2001-2003 data), and would fit into the classification strategy developed for Subpart 2 areas. If areas are unable to meet the standard, they can request a voluntary bump up.

Ms. Arias asked if San Diego must prepare a new State Implementation Plan (SIP) within the 12-month deadline after the final rule making to submit an attainment demonstration, or if another year is allowed for submittal of attainment demonstration if a bump up request is submitted.

Mr. Kelly responded that the region would have to bump up before the attainment SIP.

Mr. Selnik stated that we would not likely do a bump-up request, because of the length of time it takes to do the modeling. He said that we have to attain as fast as possible under the law for 2010, using data from 2007, 2008, and 2009. San Diego has data for 2007 and 2008. Depending on the 2009 data APCD will plan to submit a moderate area Attainment SIP or a serious or severe area Attainment SIP in 2010. Mr. Brady asked if it is achievable to submit a moderate SIP for San Diego.

Mr. Selnik stated that San Diego could qualify for an extension if 2009 is a clean year. There are extensions available if a region is able to demonstrate a clean year. If 2009, 2010, and 2011 are all clean, then we will attain in 2011 (due to extensions of the attainment date).

Mr. Kelly stated that the same process was completed for Imperial County. First, the EPA looks to see if an area attained by their attainment date, then EPA asked if they qualify for a one-year extension. If not, areas get bumped up. Generally, Mr. Kelly was not aware of any areas that were able to qualify for extensions.

Mr. Selnik clarified that San Diego did qualify an extension for attainment of the 1-hour ozone standard.

Ms. Arias asked if there was an estimated time that the proposed classification rule would be published in the Federal Register.

Mr. Kelly replied that there is no estimate at this time, but it has cleared OMB and is waiting on administration signature, which could take one to two months.

The new 8-hour ozone standard was promulgated (signed) March 12, 2008, and triggers recommendations to come from Air Resources Board (ARB) for areas that attain and do not attain the new standard by March 12, 2009. Mr. Kelly said there is discussion of a more 'across the board' approach. San Diego's classification will reflect a projected attainment date.

Mr. Brady asked where the rule makes mention of truncating rather than averaging. Mr. Kelly stated that Part 50 has the information along with Appendices explaining how to handle data.

Mr. Kelly stated that public comment was received on this issue. This 0.075 standard is under litigation currently and could change.

Ms. Arias asked if the litigation would affect designation dates.

Mr. Kelly stated that it is possible; it would depend on when the decision is released. It could be years before the litigation is complete, but it is likely that this would not affect the designation date.

#### **Item 8: San Diego Region Conformity State Implementation Plan (SIP) Development**

Ms. Kennedy stated that the federal Transportation Conformity Rule requires locally-developed procedures defining the process for interagency consultation on air quality and transportation planning documents. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) contains streamlined requirements for state conformity SIPs. She stated that SANDAG and San Diego County APCD are developing a draft San Diego Region Conformity SIP. Mr. Kelly provided a completed SIP in Clark County, Nevada, and a checklist to assist in the development of the San Diego plan. The draft Conformity SIP is being reviewed internally at SANDAG and will be reviewed by APCD. A draft for the CWG should be available in December for comments and input.

Ms. Kennedy asked that the group review the table of roles and responsibilities provided as Attachment 8 to the agenda. The table shows what agencies are responsible for conformity consultation, and provides a list of their specific activities. She said she would e-mail the table and asked that CWG members review their sections and send any comments or suggested edits to her in track changes or directly on the document by November 21, 2008. These comments will be incorporated into the draft Conformity SIP.

Mr. Kelly asked if the Checklist worked well as a guide to developing the SIP. Ms. Kennedy stated that SANDAG used the checklist as a starting point for their draft. Andrea Hoff, SANDAG, used the checklist to determine what sections in the existing draft need to be changed to match the new requirements.

Mr. Sonnenberg asked if there was revised guidance being developed at EPA for Conformity SIP development and if so, when that would be available. Mr. Kelly stated that the Clark County SIP was being signed as final, indicating that any further guidance would not change what regions are currently preparing. He said he would check with Karina O'Connor, EPA, on the revised guidance to ensure it would not require different information than what is available currently. Mr. Kelly stated he would follow up with Ms. Kennedy in order to send the group the response from headquarters.

#### **Item 9: Other Business**

Ms. Kennedy said that the Statewide CWG meeting will take place in Fresno on November 13, 2008, and the contact phone number is on the Caltrans Web site for people who will participate via conference call.

Mr. Brady stated that the MPO project timeline being discussed at the statewide meeting needs to be uploaded to the Web site. Mr. Kelly asked if there were specific sections for the San Diego region that needed to be adjusted on the timeline. Ms. Arias and Ms. Kennedy indicated that the timeline seemed accurate.

Ms. Kennedy announced that the next meeting of the San Diego Region Conformity Working Group is scheduled for Wednesday, December 3, 2008, from 10:30 a.m. to 12 noon at SANDAG. She thanked the group for participating and noted that the next meeting would be Sandy Johnson's last meeting before her retirement.

# San Diego Region Conformity Working Group

Meeting Attendance

November 5, 2008

<b>Name</b>	<b>Agency</b>
Dennis Wade (phone)	ARB
Carl Selnick	APCD
Mike Brady (phone)	Caltrans
Sandy Johnson	Caltrans
Ellen Jenny	Caltrans
John Kelly	EPA
Stew Sonnenberg (phone)	FHWA
Elisa Arias	SANDAG
Andrea Hoff	SANDAG
Rachel Kennedy	SANDAG



**U.S. DEPARTMENT OF TRANSPORTATION**

FEDERAL HIGHWAY ADMINISTRATION

CALIFORNIA DIVISION

650 Capitol Mall, Suite 4-100

Sacramento, CA. 95814

November 17, 2008

IN REPLY REFER TO  
HDA-CA  
Document #S52196

Mr. Gary Gallegos, Executive Director  
San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, CA 92101

Dear Mr. Gallegos.:

**SUBJECT:** Conformity Determination for SANDAG's 2008 Regional Transportation Improvement Program and Conformity Redetermination for SANDAG's 2030 Regional Transportation Plan

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed our review of the conformity determination for the San Diego Association of Governments' (SANDAG) 2008 Regional Transportation Improvement Program (RTIP) and 2030 Regional Transportation Plan (RTP). A FTA/FHWA air quality conformity determination is required for the new 2008 RTIP pursuant to the Environmental Protection Agency's (EPA) *Transportation Conformity Rule*, 40 CFR Parts 51 and 93, and the United States Department of Transportation's *Metropolitan Planning Rule*, 23 CFR Part 450. An air quality conformity redetermination is also being made for the 2030 RTP as part of the 2008 RTIP update process.

On July 25, 2008, SANDAG adopted the 2008 RTIP and made the corresponding conformity determinations via Resolution 2009-01. The conformity analysis submitted by SANDAG indicates that all air quality conformity requirements have been met. Based on our review, we find that the 2008 RTIP and 2030 RTP conform to the applicable state implementation plan in accordance with the provisions of 40 CFR Parts 51 and 93. In accordance with the July 15, 2004, *Memorandum of Understanding (MOU) between the Federal Highway Administration, California Division and the Federal Transit Administration, Region IX*, the FTA has concurred with this conformity determination. Additionally, this conformity determination was made after consultation with the EPA, Region 9 office.

In accordance with the above MOU, the FHWA's single signature constitutes FHWA and FTA's joint air quality conformity determination for SANDAG's new 2008 RTIP and conformity redetermination for SANDAG's 2030 RTP. If you have any questions pertaining to this conformity finding, please contact Stew Sonnenberg, FHWA, at (916) 498-5889.

Sincerely,

/s/ *K. Sue Kiser*

For  
Gene K. Fong  
Division Administrator



**DRAFT**  
**SAN DIEGO COUNTY**  
**TRANSPORTATION AIR QUALITY**  
**CONFORMITY**  
**STATE IMPLEMENTATION PLAN**

NOVEMBER 2008

Prepared by:  
San Diego County Air Pollution Control District and the  
San Diego Association of Governments

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## **1. Introduction**

The purpose of the San Diego Transportation Air Quality Conformity State Implementation Plan (SIP) is to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401), and the related requirements of 23 U.S.C. 109 (j), 40 CFR Part 51 Subpart T, and 40 CFR Part 93 regarding the conformity of transportation plans, programs, and projects with state implementation plans. To fall within the scope of the conformity regulation, transportation plans, programs, and projects must be developed, funded, or approved by the United States Department of Transportation (USDOT) and the San Diego Association of Governments (SANDAG) or other recipients of funds under Title 23 of the U.S. Code or the Federal Transit Act, 49 U.S.C. 1601.

The San Diego Transportation and Air Quality Conformity SIP is based on the CAA section 176(c)(4)(E), which provides the requirements for conformity SIPs, and the transportation conformity regulations at 40 CFR Part 51.390<sup>1</sup> and Part 93.100-129. These regulations detail consultation criteria, policies, and procedures that Metropolitan Planning Organizations (MPO) must follow when addressing transportation conformity issues.

The San Diego Transportation and Air Quality Conformity SIP applies to all nonattainment and maintenance areas designated by the U.S. Environmental Protection Agency (EPA) for transportation related criteria pollutants within San Diego County, now or in the future. SANDAG will update this plan whenever Congress enacts new laws and the EPA and USDOT promulgate (sign) new regulations that affect transportation consultation criteria, policies, or procedures.

### ***1.1 History of SANDAG***

SANDAG is composed of the 18 cities and county government within San Diego County. Serving as the forum for regional decision-making, SANDAG engages in strategic planning, obtains and allocates resources, plans, engineers, and builds public transportation, and provides information on a broad range of topics pertinent to the region's quality of life.

As the region's planning agency for transportation, SANDAG is required to demonstrate that transportation projects that receive state and federal funding will not adversely affect the region's air quality standards. SANDAG prepares the Regional Transportation Plan (RTP) and Regional Transportation Improvement Program (RTIP) and conducts the required air quality transportation conformity analyses.

### ***1.2 Federal Regulations***

CAA requires the EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. CAA defines a 'nonattainment area' as a region where air pollution levels persistently exceed the NAAQS. The EPA requires that each state containing nonattainment areas develop plans for reaching attainment, known as SIP.

CAA requires federally supported transportation activities to be consistent with the SIP. This requirement is referred to as transportation conformity. Conformity is to ensure that new transportation projects do not jeopardize air quality in nonattainment areas.

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<sup>1</sup> Code of Federal Regulations

Conformity also is a way to ensure that federal funding and approval are given to those transportation activities that are consistent with air quality goals. Projects cannot be approved, funded, advanced through the planning process, or implemented unless those projects meet air quality standards.

SANDAG must demonstrate that the RTP and the RTIP are in conformity with the SIP for meeting federal air quality standards.

In addition to the CAA, federal conformity rulemakings Parts 51 and 93 of Title 40 of the Code of Federal Regulations (CFR) specify criteria and procedures for conformity determinations for transportation plans, programs, and projects. Since its initial promulgation, the federal transportation conformity rule has been revised several times to reflect EPA rule changes and court opinions.

In light of these federal regulations, the EPA requires that states with areas that do not meet the NAAQS, designated as nonattainment areas, submit a SIP revision containing the criteria and procedures for federal, state, and local agencies to determine the conformity of transportation plans, programs, and projects with the SIP. This stipulation applies to “all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan (40 CFR 93.102(b)).”

The EPA has designated parts of San Diego County as nonattainment for the 8-hour ozone standard, which was promulgated in April 2004, and as a maintenance area for carbon monoxide. The conformity requirement applies to federal transportation decisions made in ozone and carbon monoxide nonattainment or maintenance areas. As such, San Diego County must submit a Transportation Conformity Plan to the EPA, via the state of California, to satisfy the criteria of 40 CFR Part 51, Subpart T and Part 93, Subpart A.

### ***1.3 Transportation Conformity***

The Transportation Conformity Rule contains the criteria and procedures for determining SIP conformity. Conformity determinations are made by MPOs in metropolitan areas and by state departments of transportation in non-metropolitan areas. SANDAG, as the MPO for San Diego County, serves as the agency for conducting transportation conformity activities.

The Transportation Conformity Rule applies to Long-Range Transportation Plans, Transportation Improvement Programs (TIP), and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Conformity determinations are required every four years, as well as when long-range or transportation improvement plans are updated. If a MPO adopts a 20-year RTP, or a short-term federal TIP, it must include a conformity analysis. In addition, sponsors of transportation projects that require federal approval are responsible for assessing project conformity. The FHWA, in consultation with the FTA and the EPA, provide approval of the conformity finding developed by SANDAG for RTPs and TIPs.

### ***1.4 Conformity Procedures***

While SANDAG, as the MPO, shall adhere to the conformity procedures in the transportation conformity rule, areas are required to tailor three sections of the conformity rule for their local Conformity SIP. These sections cover, procedures for interagency consultation, conflict resolution, and public consultation (40 CFR 93.105(a)). CAA section 176(c)(4)(E) requires that the conformity SIP contain:

- 1.4.1 Consultation procedures (40 CFR 93.105);
- 1.4.2 Procedures to obtain written commitments to implement control measures that are not included in an MPO plan and TIP prior to using emissions reductions associated with the control measures in conformity determinations, and requirements that such commitments must be fulfilled (40 CFR 93.122(a)(4)(ii)); and
- 1.4.3 Procedures to obtain written commitments to mitigation measures prior to a project-level conformity determination, and a requirement that project sponsors must comply with such commitments (40 CFR 93.125(c)).

In general, the procedural aspect of the rule provides an effective mechanism to address and resolve problems as early as possible (58 FR 62188 at 62201, November 24, 1993). The procedures set forth are clear, explicit, mandatory, and binding on all parties covered by the federal regulations (40 CFR 51.390(d), CAA 110 (a)(2)(E)(i)).

## **2. Consultation Procedures (93.105)**

### ***2.1 Affected Agencies and Documents***

Interagency consultation procedures shall be undertaken by SANDAG (representing as appropriate its member agencies, and acting in its capacity as the MPO for San Diego County), in partnership with the San Diego County Air Pollution Control District (APCD), California Department of Transportation (Caltrans), California Air Resources Board (ARB), USDOT, and the EPA, before making conformity determinations, and in developing RTPs, RTIPs, and transportation-related SIPs.

### ***2.2 Affected Area***

These procedures apply to the area defined by the boundaries of San Diego County/region. The geographic limits of the region define the MPO planning area, as well as the nonattainment area/air basin.

The requirements of the final conformity rule are based on an area's nonattainment status in regard to each pollutant for which there are NAAQS and apply to nonattainment and maintenance areas.

### ***2.3 The Consultation Process***

Interagency consultation involves the affected agencies in a three tier process that (1) formulates and reviews drafts through a conformity working group, (2) provides local agencies and the public with opportunities for input through existing regional advisory committees and workshops, and (3) seeks comments from affected federal and state agencies through participation in the development of draft documents and circulation of supporting materials prior to formal adoption.

## *Conformity Working Group*

### **2.4 General**

A Conformity Working Group (CWG), made up of the agencies identified in Section (1) is established to carry out the interagency consultation process in the San Diego region. The CWG is comprised of technical staff from the member agencies. The CWG is a working group which provides input on air quality conformity transportation matters. Policy-level decisions are made by the appropriate policy body.

CWG meetings will scope issues and formulate products, as appropriate, to take to relevant advisory committees and other interested parties. CWG members shall be provided the opportunity for participation through distribution of meeting agendas, minutes, supporting materials, and, where possible, conference telephone.

The CWG shall meet when the identified events are triggered (See Subsection 3(A)(ii)), or to address other relevant transportation or air quality issues, and at least annually in the form of a general meeting (See Subsection 3(A)(vi)). A lead agency is designated for each trigger.

### **2.5 CWG/Consultation Process Triggers**

The interagency consultation process is initiated with a CWG meeting arranged by the designated lead agency and activated by the following actions:

- (1) Development/review of draft RTPs;
- (2) Development/review of draft RTIPs;
- (3) Development/review of draft RTP Conformity analyses;
- (4) Development/review of draft RTIP Conformity analyses;
- (5) Development of new conformity analyses prompted by revisions or amendments to RTPs and RTIPs;
- (6) Development of revisions to the SIP which affect transportation or the emissions budget;
- (7) Notification of SIP findings that may lead to nonconformity and/or sanctions;
- (8) Annual Conformity Working Group meetings;
- (9) Revisions to Transportation Control Measures (TCM) Plan prepared by SANDAG for the SDAPCD to include in the SIP;
- (10) Proposed changes to, or elimination of mitigation measures for conforming, regionally-significant projects, if allowed under 40 CFR 93.125; and
- (11) Proposed changes to, or elimination of, mitigation measures which are initiated by SANDAG as conditions for RTP or RTIP conformity determinations.

### 3. Lead Agencies

- (1) *SANDAG*. SANDAG is the lead agency for the following events: 1, 2, 3, 4, 5, 8, 9, and 11.
- (2) *SDAPCD*. SDAPCD is the lead agency for the following events: 6 and 7.
- (3) *Project Proponents*. Project proponents are identified as the lead agency for initiating the interagency consultation process for event number 10. Project proponents are defined as follows: Lead public agency having discretionary project and mitigation requirement approval authority.
- (4) *Other Parties*. The consultation process may be initiated by any CWG member or another party at any time based on the triggering events previously identified, to propose revisions or further development of the conformity procedures, or for any other reason.

#### 3.1 Meeting and Document Review Guidelines

For the triggering events previously identified, including the CWG annual meeting, the following stages shall be followed in the process unless two or more members of the CWG agree that the topic does not fit within this framework, in which case a reasonably equivalent framework shall be adopted:

*Initial Meeting of CWG*: An Initial Meeting of the CWG shall be convened by the lead agency at least 60 days before a new draft RTP or new RTIP conformity document is either issued or accepted for distribution by policy board action, whichever occurs first. The lead agency will provide in verbal or written form, relevant requirements and criteria, the analytical approach to be taken, and proposed alternatives, hereafter referred to as pre-draft information. The lead agency may provide this pre-draft information at the Initial Meeting or at a follow-up meeting, thereby relying on the initial meeting to determine specifically which pre-draft materials the CWG members want to review.

For the TIP or RTP Conformity Determinations, pre-draft information may consist of the following materials as determined appropriate by the members of the CWG: emissions data analyses, model documentation and assumptions used to perform a conformity determination, and project categories to be included in the analysis, including Transportation Control Measures (TCM).

For transportation-related or emissions budget-related SIP revisions, pre-draft information may consist of the following materials as determined appropriate by the members of the CWG: emissions data analyses, model documentation and assumptions used to prepare emissions budgets/control strategies/maintenance demonstrations, the analytical process for determining which control strategies (including TCMs) to include in the SIP, and the process for determining the emissions reductions associated with each strategy.

At the request of CWG members, the lead agency shall provide whatever other available public information is deemed important for the purpose of providing a common basis of understanding among CWG participants. Sufficient pre-draft information shall be provided at either the Initial Meeting, follow-up meeting, or electronically to enable member agencies to review and comment knowledgeably.

*CWG Review and Comment Periods*: The lead agency shall provide 30 days for review and comment on pre-draft RTP or new RTIP conformity information which is provided either at the

initial meeting, follow-up meeting, or electronically, and shall consider comments received prior to issuance of draft documents. For RTIP amendments not requiring a regional emissions analysis, the lead agency shall conduct interagency consultation on exempt projects, as defined by the conformity rule Tables 2 and 3. The list of projects may be distributed at a CWG meeting or electronically. CWG members shall have at least one week to comment on the exempt project list.

Draft RTP and RTIP conformity and SIP documents also should be provided to CWG members for a 30-day review period, which may run concurrently with the general public review period. The lead agency shall provide written responses to particular or all comments if requested by a CWG member.

*Objections to Information Provided By Lead Agency:* The pre-draft information provided for review and comment shall be considered complete unless, in the opinion of two or more member agencies, particular additional information should be provided to the CWG. In this event, the lead agency shall make a good faith effort to provide the requested information. If any member then believes the information received still is insufficient, that agency shall send a letter to the lead agency stating the objection. The letter shall be sent to all member agencies by the objecting agency, and shall be entered into the permanent record, and included in the final document.

### 3.2 Lead Agency Responsibilities

It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process (lead agency) to:

- (1) Provide opportunity for early review and comment regarding issues pertinent to the completion of a draft document, and convene CWG meetings early in the process of decision on the final document.
- (2) Assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.
- (3) Provide CWG members with at least 30 days for review and comment on draft conformity and SIP documents prior to taking a final action, and prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive manner prior to any final decision, and, upon request by any member of the CWG, provide responses in writing.
- (4) Record minutes of the meetings, and distribute meeting agendas and minutes to the other members of the CWG and any interested parties in a timely manner.
- (5) Maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities, and make the record available for public inspection upon request.
- (6) Facilitate review of draft materials by the agency's advisory committees as appropriate.
- (7) Notify the public of the availability of draft and final documents and supporting materials.

- (8) Distribute final documents (transportation-related SIP submittals, RTIPs/RTPs/conformity determinations, etc.) to CWG members at the same time a submittal is made to federal agencies.

### 3.3 Annual Conformity Working Group Meeting

A CWG meeting will be held once a year for the purpose of addressing any regulatory, policy, or technical developments which may affect the conformity criteria or procedures. The annual meeting should address the need for revisions, additions, and deletions, to the adopted Conformity Criteria and Procedures for the San Diego Region.

Other annual CWG agenda topics which may be covered include agency status reports on topics relevant to conformity (i.e., the status of sanction clocks, the status of transportation-related SIPs, the date of the latest conformity findings, etc.).

#### *Local Agency, Citizen, and Committee Involvement*

CWG meeting topics will be discussed with SANDAG and APCD advisory committees and the public as appropriate. Committees, the cities, the County, and other interested parties will be provided with reasonable opportunity for review and comment on RTP and RTIP conformity determinations prior to formal adoption.

SANDAG shall maintain a comprehensive committee structure that provides a forum for local agencies and the public to participate in the regional transportation planning process and associated air quality conformity determinations. APCD advisory committees also shall provide for broad-based community involvement on state and federal air quality compliance activities.

In addition to committee involvement, local agency and public participation shall be encouraged through participation in Board meetings, public hearings, and the SANDAG public involvement program.

#### *Federal and State Review*

State and federal agencies are identified as members of the CWG and their input will be sought during the interagency consultation process through the circulation of draft RTPs, RTIPs, conformity determinations, and transportation-related SIP submittals at least 30 days prior to formal adoption. As CWG members, the state and federal agencies also will be sent meeting agendas, meeting minutes, other supporting documentation, and final documents following Board of Director approvals. Following Board adoption of final documents, formal submittals will be made to appropriate state and federal officials for final approval.

#### *Definition of Agency Roles in Consultation Process*

In addition to participation on the CWG, the roles and responsibilities of each agency with regard to RTPs, RTIPs, conformity determinations, and SIP documents are identified in Table 1.

**Table 1  
Definition of Agency Roles in Consultation Process**

AGENCY	ROLES			
	SIP	RTP	RTIP	CONFORMITY FINDINGS
<p><b>San Diego Association of Governments (SANDAG)</b> <i>Lead Agency on RTP, RTIP, and RTP and RTIP Conformity Findings</i></p>	<ol style="list-style-type: none"> <li>1) Provide technical and policy consultation on emissions budgets.</li> <li>2) Prepare system-based (facilities) and non-regulatory (programmatic) TCMs, based on SDAPCD criteria, for inclusion in the SIP.</li> <li>3) Provide consultation on proposed SIP revisions that relate to transportation and/or emissions budgets.</li> <li>4) Implement TCMs on schedule where responsible and monitor implementation of TCMs generally.</li> <li>5) Recommend when SIP revisions are necessary to replace ineffective TCMs.</li> </ol>	<ol style="list-style-type: none"> <li>1) Develop, implement, and revise as necessary in a manner consistent with applicable regulations.</li> <li>2) Incorporate TCMs developed with SDAPCD and Caltrans into the RTP.</li> <li>3) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</li> </ol>	<ol style="list-style-type: none"> <li>1) Develop, implement, and amend as necessary in a manner consistent with applicable regulations.</li> <li>2) Regularly obtain plans for regionally-significant federal and nonfederal projects from Caltrans and local agencies and consult with those agencies on possible alternatives, locations, design concept, and scope for regional emissions analysis purposes.</li> <li>3) Regularly obtain changes to plans for regionally-significant federal and nonfederal projects and alternatives and make a new RTIP conformity determination when applicable.</li> <li>4) Solicit candidate projects from Cities, County, MTDB, NCTD, and Port District for inclusion in draft and final RTIPs.</li> <li>5) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</li> </ol>	<ol style="list-style-type: none"> <li>1) Properly document and determine conformity between the SIP and RTPs, RTIPs, and amendments which involve projects not exempt from the federal transportation conformity regulations.</li> <li>2) Conduct transportation modeling and regional emissions analysis in accordance with applicable criteria and requirements.</li> <li>3) Monitor and document implementation of TCMs in SIP in consultation with CWG.</li> <li>4) Obtain written commitments for project-level and regional mitigation/ control measures which are identified as conditions for making conformity determinations for RTPs and/or RTIPs. Include project-level mitigation in the assumptions used in the regional conformity analysis.</li> <li>5) Propose changes to, or elimination of, mitigation measures for conforming RTIPs or RTPs to the CWG in accordance with 40 CFR Part 93.125 if requirements are satisfied without the mitigation or control measures.</li> <li>6) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</li> </ol>
<p><b>San Diego County Air Pollution Control District (APCD)</b> <i>Lead Agency on SIPs</i></p>	<ol style="list-style-type: none"> <li>1) Develop, implement, and revise transportation-related SIP revisions and rule-makings, in a manner consistent with applicable law, including the development of attainment/ maintenance demonstrations, reasonable further progress reports, regulatory TCMs, and other actions which affect the mobile source emissions budget.</li> <li>2) Consult with CWG on development of transportation-related SIP revisions, including development of new control measures and inclusion of TCMs (i.e., substitution or deletion).</li> <li>3) Adopt emissions budgets in consultation with the CWG and in accordance with other conformity SIP provisions.</li> <li>4) See also Subsection 3(A)(v). "Lead Agency Responsibilities."</li> </ol>	<ol style="list-style-type: none"> <li>1) Provide consultation as appropriate on draft RTPs.</li> <li>2) Submit candidate projects/ programs for inclusion in the Draft RTP.</li> </ol>	<ol style="list-style-type: none"> <li>1) Provide consultation as appropriate on proposed RTIPs.</li> <li>2) Submit candidate projects/ programs for inclusion in the Draft RTIP.</li> </ol>	<ol style="list-style-type: none"> <li>1) Provide consultation to SANDAG on proper use of motor vehicle emissions budgets and other regional emissions modeling issues.</li> <li>2) Collaborate with SANDAG to develop, implement, and revise TCMs in a manner consistent with this and any other applicable agreements, laws, and regulations.</li> <li>3) Consultation on draft RTP and RTIP conformity findings.</li> </ol>

AGENCY	ROLES			
	SIP	RTP	RTIP	CONFORMITY FINDINGS
<p><b>Local Agencies:</b>  <b>Cities, County, MTDB, NCTD, Port District, Transportation Corridors Agency</b></p> <p><i>Lead Agency on Project-Level Conformity Findings</i></p>	<ol style="list-style-type: none"> <li>1) Implement TCMs on schedule where responsible.</li> </ol>	<ol style="list-style-type: none"> <li>1) Submit candidate projects/programs for inclusion in Draft RTP.</li> <li>2) Provide consultation on Draft RTP, EIR, and amendments.</li> </ol>	<ol style="list-style-type: none"> <li>1) Submit candidate projects/programs for inclusion in the Draft RTIP.</li> <li>2) Provide consultation on Draft RTIP and amendments.</li> </ol>	<ol style="list-style-type: none"> <li>1) Perform hot-spot air quality analysis of candidate projects in accordance with §93.125 of this procedure.</li> <li>2) Provide written commitments to implement (in the construction of the project or the operation of the resulting facility/service) any project-level mitigation identified as conditions for NEPA process completion with respect to localized air quality impacts.</li> <li>3) Provide written commitments to implement (in the construction of the project or the operation of the resulting facility/service) any project-level mitigation identified as a condition for making a conformity determination for the RTP, RTIP, or project.</li> <li>4) Propose changes to or elimination of, mitigation measures for conforming, regionally-significant projects to the CWG in accordance with §93.125 of this procedure (e.g., if requirements are satisfied without the mitigation or control measures).</li> </ol>
<p><b>State Agencies:</b>  <b>Caltrans</b></p>	<ol style="list-style-type: none"> <li>1) Provide consultation on development of emissions budgets and overall transportation-related SIP revisions.</li> <li>2) Provide consultation on development of TCMs for inclusion in SIP.</li> <li>3) Implement TCMs for which Caltrans has responsibility.</li> <li>4) Provide consultation to ARB on proposed revisions to motor vehicle emissions factors.</li> </ol>	<ol style="list-style-type: none"> <li>1) Submit candidate projects/programs for inclusion in Draft RTP.</li> <li>2) Provide consultation on Draft RTPs and amendments.</li> <li>3) Review RTP and provide recommendations to the California Transportation Commission for inclusion in the State Transportation Plan.</li> </ol>	<ol style="list-style-type: none"> <li>1) Submit candidate projects/programs for inclusion in Draft RTIP and RTP amendments.</li> <li>2) Review and comment on Draft RTIP and amendments.</li> <li>3) Incorporate the Regional TIP into the Federal STIP (FSTIP) and submit it to FHWA Division and FTA Region.</li> </ol>	<ol style="list-style-type: none"> <li>1) Provide consultation to SANDAG on draft conformity determinations.</li> <li>2) Determine project-level conformity of regionally-significant state transportation projects.</li> <li>3) Provide consultation to FHWA Division on SANDAG conformity determinations.</li> </ol>
<p><b>California Air Resources Board</b></p>	<ol style="list-style-type: none"> <li>1) Review draft and final SIP submittals for compliance with applicable requirements.</li> <li>2) Transmit SIP submittals to EPA.</li> <li>3) Develop, solicit input on, and adopt updated motor vehicle emissions factors for use in control strategy SIP development.</li> <li>4) Provide consultation on emissions and air shed modeling as appropriate.</li> </ol>	<p>Provide consultation as appropriate.</p>	<p>Provide consultation as appropriate.</p>	<ol style="list-style-type: none"> <li>1) Provide consultation on draft conformity findings.</li> <li>2) Provide consultation to federal agencies on final conformity determinations.</li> <li>3) Develop, solicit input on, and adopt updated motor vehicle emissions factors for use in conformity analysis.</li> </ol>

AGENCY	ROLES			
	SIP	RTP	RTIP	CONFORMITY FINDINGS
<b>Federal Agencies: U.S. Environmental Protection Agency (EPA)</b>	1) Review and make findings on SIP revisions in a timely fashion. 2) Notify affected agencies of final SIP actions, including findings of non-submittal, completeness, incompleteness, approval, and disapproval. 3) Provide guidance on CAA requirements to other agencies. 4) Provide USUSDOT with a 30-day comment period before making SIP findings.	Provide consultation on RTP as appropriate.	Provide consultation on RTIP as appropriate.	1) Provide consultation to SANDAG on draft conformity determinations. 2) Provide consultation to USDOT on final RTP and RTIP conformity determinations. 3) Provide the most recent EPA-approved motor vehicle emissions factors for use in emission analysis.
<b>Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)</b>	1) Review and comment on SIP revisions within 30 days of EPA notification. 2) Provide guidance to SANDAG on the conformity implications of SIP submittals as appropriate.	1) Provide consultation on drafts. 2) Determine conformity and notify CWG members and other affected agencies.	1) Provide consultation on drafts. 2) Determine conformity and notify CWG members and other affected agencies.	1) Provide consultation to SANDAG on draft conformity findings. 2) Determine conformity of SANDAG RTP, RTIP, and amendments. 3) Consult with EPA and ARB during the 30-day comment period prior to making conformity determinations. 4) Provide guidance on current federal planning regulations when relative to conformity determinations.

## 4. Specific Areas for Interagency Consultation

As required by 40 CFR 93.105(c), the interagency consultation process defined previously in this document shall be undertaken and initiated by the applicable lead agency for the following:

- 4.1 As required by 40 CFR 93.105(c)(1)(i), and applicable criteria: §§ 93.106, 93.110, 93.111, 93.118, 93.122, evaluating and choosing which data, models, assumptions, and methods will be used in hot-spot analyses and regional transportation emissions analyses, including forecasting of vehicle miles traveled (VMT), and in the preparation of motor vehicle emissions budgets in SIPs.
- 4.2 As required by 40 CFR 93.105(c)(1)(ii), determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (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 RTP or RTIP. In the course of this process, the definition of regionally significant project, as defined by the transportation conformity regulation, 40 CFR 93.101, shall apply.
- 4.3 As required by 40 CFR 93.105(c)(1)(iii), evaluating whether projects otherwise exempted from meeting the requirements of the transportation conformity regulations (see §§ 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason.
- 4.4 As required by 40 CFR 93.105(c)(1)(iv), regarding TCMs, making a determination as required by 93.113(C)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the SIP have been identified and are being overcome, whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, and whether delays in TCM implementation necessitate revisions to the applicable SIP to remove TCMs or substitute TCMs or other transportation-related emission reduction measures. The following shall apply:
  - 4.4.1 Monitoring of TCMs
    - 4.4.1.1 SANDAG shall maintain the record of, and shall monitor the effectiveness of, the specific TCMs contained in the applicable SIP. For these processes, SANDAG shall facilitate the participation of its relevant advisory committees.
    - 4.4.1.2 When a conformity analysis and finding is required to enable the adoption/ amendment of the RTP or RTIP by SANDAG, or when the District revises or amends transportation-related measures in the SIP, SANDAG shall prepare an update on the progress and status of the implementation of TCMs contained in the applicable SIP for review and consultation by the CWG, and for consideration by the lead agency.

- 4.4.2 Regarding consideration of TCMs in the development of RTIPs, RTPs, and SIPs, the CWG, based on the TCM implementation update provided by SANDAG, shall make recommendations to the lead agency regarding the following:
- 4.4.2.1 Whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable SIP have been identified and are being overcome;
  - 4.4.2.2 Whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; and
  - 4.4.2.3 Whether delays in TCM implementation necessitate revision of the applicable SIP to remove and/or substitute TCMs or other transportation-related emissions reduction measures. If, in the opinion of the CWG, a revision or substitution of TCMs is needed, SANDAG may develop and recommend the TCM action to the District in accordance with California Health and Safety Code §40717, and in accordance with any existing applicable agreements between the District and SANDAG.
  - 4.4.2.4 Which, if any, TCMs are to be included in a SIP revision.
- 4.4.3 In the event that a TCM is not included in the RTP or RTIP in the time frame contained for that measure in the applicable SIP, the parties in the interagency consultation process established pursuant to Section 93.105 shall assess whether such measure continues to be appropriate. Where the MPO and the air district concur that a transportation control measure identified in the SIP is no longer appropriate, the agencies may initiate the process described below to identify and adopt a substitute control measure.

A substitute control measure must provide for equivalent or greater emissions reductions than the measure contained in the SIP. In addition, a replacement measure must be implemented in the time frame established for the measure contained in the SIP. Where such implementation date has already passed, measures selected pursuant to this procedure that require transportation funding must be included in the first year of the next TIP and the adopted RTP. The substitute measures must be fully implemented within two years of the implementation date of the original measure in order to be a basis for a finding of timely implementation under Section 93.113. In order for the air district to adopt substitute measures under this procedure, there must be evidence of adequate personnel, funding, and authority under state or local law to implement and enforce the measures. Commitments to implement the substitute measures must be made by the agency with legal authority for implementation.

The MPO will convene a committee (or working group) to identify and evaluate possible substitute measures. The committee shall include members from all affected jurisdictions, state and/or local air quality agencies, and local transportation agencies. In addition, the working group shall consult with the EPA. Consultation with the EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 9.

The MPO, air district, and EPA Region 9 must concur with the appropriateness and equivalency of the substitute TCM. All substitute measures must be adopted by the air district following a public comment period and an EPA 14-day concurrence period as described below. The measure to be replaced shall stay in effect until the substitute measure has been adopted.

The TCM to be replaced must be rescinded for the new measure substituted pursuant to this procedure to be effective. By adopting a substitution under this procedure, the air district formally rescinds the previously applicable TCM and adopts the substitute measures.

Prior to adopting a substitute measure under this procedure, the substitute transportation control measure(s) must have been subject to a public hearing and comment process. This means there must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will include, at least 30 days prior to the hearing:

- Notice given to the public by prominent advertising in the area affected announcing the date time and place of the hearing;
- Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply;
- Notification to interested parties in accordance with the Administrative Procedures Act;
- Notification to the regional offices of the EPA, FHWA, and FTA;
- Notification to the ARB and the Caltrans;
- Notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, and economic development agencies.

A description of the measure(s) and analysis supporting the proposal, including assumptions and methodology, must be made available to the public and the parties in the interagency consultation process described in Section 93.105 within a reasonable time before the public hearing, and at least 30 days prior to the close of the comment period. The air district shall submit to EPA Region 9 a summary of comments received during the public comment period along with the district's responses following the close of the public comment period. The EPA shall notify the air district within 14 days if the agency's concurrence with the substitution has changed as a result of the public comments. Where the EPA fails to notify the district within 14 days, the EPA is deemed to concur.

The analysis of substitute measures under this procedure must be consistent with the methodology used for evaluating measures in the SIP. Where emissions models and/or transportation models have changed since those used for purposes of evaluating measures in the maintenance plan, the TCM to be replaced and the substitute measure(s) shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions reductions will be achieved through implementation of the substitute measure(s).

Key methodologies and assumptions that must be consistent, and reconciled in the event of a discrepancy, are, for example:

- EPA approved regional and hot-spot (for carbon monoxide [CO] and particulate matter [PM-10]) emissions models;
- The area's transportation model; and
- Population and employment growth projections.

The air district will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitution process including the committee or working group members, the public hearing and comment process, EPA concurrence, and air district adoption. The documentation will be submitted to EPA following adoption of the substitute measure by the air district board, and made available to the public as an attachment to the air quality plan.

- 4.5 As required by 40 CFR 93.121(a), making a determination whether a project is included in the regional emissions analysis supporting the currently conforming RTIPs conformity determination, even if the project is not strictly "included" in the RTIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
- 4.6 As required by 40 CFR 93.105(c)(v), identifying projects located at sites in PM-10 nonattainment areas as required by 40 CFR 93.123(b) which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM-10 hot-spot analysis.
- 4.7 As required by 40 CFR 93.105(c)(1)(vi), early notification by local agencies to SANDAG of RTP or RTIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126 or 93.127, in addition to the requirement that such notice be provided prior to final action.
- 4.8 As required by 40 CFR 93.105(c)(1)(vii) chose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(g)(2)(iii).
- 4.9 As required by 40 CFR 93.105(c)(2)(i), evaluating events which will trigger new conformity determinations in addition to those triggering events established in paragraph (4) of this agreement and 40 CFR 93.104.
- 4.10 As required by 40 CFR 93.105(c)(2)(ii), consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.
- 4.11 As required by 40 CFR 93.105(c)(4), ensuring that plans for construction of regionally significant projects, as defined in Section 93.101, which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option still are being considered), including all those by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Law, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed.

- 4.12 As required by 40 CFR 93.105(c)(5), assuming the location and design concept and scope of projects which are disclosed to the MPO as required by subparagraph (4)(J) of this agreement, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122.
- 4.13 As required by 40 CFR 93.105(c)(6), considering the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO.

## **5. Resolving Conflicts**

As required by 40 CFR 93.105(d), conflicts among state agencies or between state agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

Also as required by 40 CFR 93.105(d), the state air quality agency has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under the transportation conformity regulation) to the Governor after the state DOT or MPO has notified the state air quality agency head of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the state DOT or the MPO has confirmed receipt by the director of the state air agency of the resolution of the comments of the state air quality agency. If the state air quality agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The state air quality agency must provide notice of any appeal under this subsection to the MPO and the state DOT. If the state air quality agency does not appeal to the Governor within 14 days, state DOT or the MPO may proceed with the final conformity determination.

Also as required by 40 CFR 93.105(d), the Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the state air quality agency or any local air quality agency, the state DOT, a state transportation commission or board, any agency that has responsibility for only one of these functions, or an MPO.

In the event of conflicts involving local or regional agencies, the current SANDAG Conflict Resolution Procedure shall be followed. At the local level, conflicts among agencies over transportation/air quality conformity issues and other matters may be resolved through the current SANDAG Conflict Resolution Procedure.

## **6. Public Consultation**

As required by 40 CFR 93.105(e), affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all RTPs and RTIPs, consistent with the requirements of 23 CFR Part 450, including §§ 450.316(b)(1), 450.322(c), and 450.324(c). In addition, any such agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not

been properly reflected in the emissions analysis supporting a proposed conformity finding for a RTP or RTIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA). The opportunity for public involvement provided under this section shall include access to information, emissions data, analyses, model documentation, and assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments.

## **7. Conformity Procedures**

Under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), conformity SIPs shall include conformity procedures that address 40 CFR 93.122(a)(4)(ii) and 93.125(c) (all remaining conformity procedures apply automatically).

### ***7.1 Enforceable Written Commitments Required for Emissions Reduction Credits***

In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the RTP or TIP, SANDAG will not include emissions reduction credits from any control measures that are not included in the RTP or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity analysis unless SANDAG or FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities [93.122(a)(4)(ii)].

### ***7.2 Enforceability of Design Concept and Scope: Project-Level Mitigation and Control Measures***

In accordance with 40 CFR section 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR section 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA approval. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the RTP or TIP, SANDAG will ensure the project design concept and scope are appropriately identified in the regional emissions analysis used in the conformity analysis.