

I. Requirement to Comply with the Federal Rule

The purpose of Regulation Number 10 is to fulfill the requirement in 40 CFR 51.390(b) to establish a SIP revision that addresses the provisions of Sections 40 CFR 93.105(a) through (e), 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c) of the federal transportation conformity rule (see 40 CFR Part 93, Subpart A). Any person making a transportation conformity determination or adopting or approving a regionally significant project shall comply with the provisions of 40 CFR, Part 93, Subpart A., except as follows:

I.A. The interagency consultation procedures established in Section III. of this document specify Colorado procedures and shall apply in addition to the consultation procedures established in 40 CFR Section 93.105 (a) through (e).

I.B. Colorado-specific provisions in Section IV. of this document that require obtainment of and fulfillment of written commitments to SIP control measures not included in a transportation plan or Transportation Improvement Program (TIP) shall apply, pursuant to 40 CFR Section 93.122 (a)(4)(ii).

I.C. Colorado-specific provisions in Section V. of this document regarding design concept and scope and enforceability of project-level mitigation and control measures shall apply, pursuant to 40 CFR Section 93.125 (c).

II. Definitions

CDOT means the Colorado Department of Transportation.

Commission means the Air Quality Control Commission as defined in Section 25-7-103(7), C.R.S.

Division means The Air Pollution Control Division, pursuant to Section 25-7-111, C.R.S.

Hot Spot Analysis is an estimation of likely future localized criteria pollutant (or their precursor) concentrations and a comparison of those concentrations to the national ambient air quality standards. Federally required hot spot analyses assess impacts of pollutants on a scale smaller than the entire nonattainment or maintenance area, including for example, congested roadway intersections, highway portions, or transit terminals, using air quality dispersion modeling.

Lead Planning Agency (LPA) is an agency designated by Colorado's Governor that is charged, together with the Division, with the duty of developing the State Implementation Plan (SIP) for any nonattainment or maintenance area.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the lead agency for preparing transportation plans, TIPs and transportation conformity documents, and it provides a forum for cooperative transportation decision-making.

Project-level Conformity See: Hot Spot Analysis

Regional Transportation Conformity refers to the status of a transportation planning region's conformance to relevant State Implementation Plans (SIPs). A conforming region's transportation plans and TIPs have passed emissions tests that must indicate they are unlikely to cause, contribute to, or increase the severity and frequency of future violations of national ambient air quality standards. Regional Conformity is demonstrated using

transportation network models and air quality models and comparing projected transportation-related pollutant emissions to motor vehicle emissions budgets, or where budgets are not established, other emission limits for the region. To make a positive Conformity finding for a region, future emissions must not exceed certain limits, e.g., emission budgets, and transportation projects, plans and TIPs must not interfere with any transportation control measures required by SIPs.

Review Team is that group of interagency representatives who consult regarding Transportation Conformity assessment and findings, e.g., the Interagency Consultation Group (ICG) developed by the Denver Regional Council of Governments. The review team's responsibilities are defined in Section IV of this rule.

Regionally Significant Project means a transportation project (other than an exempt project*) for a facility that serves regional transportation needs, such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. For the purposes of this rule, regionally significant projects include only those located in nonattainment or maintenance areas. *Exempt projects are listed in the Federal Regulation at 40 CFR Part 93.126 and Part 93.127 and include safety improvements.

Routine Conformity Determination is one that is made for transportation plans and TIPs and/or their amendments involving: (1) Individual roadway projects adding less than two lane miles, with additional miles for all projects equaling <10 lane miles; and /or (2) Projects with revisions to staging years only, and/or (3) Minor transit station plan revisions. Conformity Determinations for areas with Limited Maintenance Plans, which do not have emissions budgets, as such areas have been in attainment for 20 years or longer, would also generally be considered "routine." Notwithstanding this general definition, the APCD at its discretion may request that any Conformity Determination be reviewed by the Commission.

Transportation Control Measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan (air quality SIP) through the process established in CAA Section 176 (c) (8), that is either one of the types listed in CAA Section 108, or any other measure designed to reduce emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Vehicle technology-based, fuel-based and maintenance-based measures, e.g., inspection and maintenance programs, are not TCM's.

Transportation Improvement Program (TIP) A prioritized program of transportation projects funded with federal transportation funds, developed under 23.U.S.C. 134(j) and 23 CFR Parts 450.324 through 450.330. The TIP must be fiscally constrained, and, in air quality nonattainment and maintenance areas, the MPO, as well as FHWA and FTA must determine that the TIP achieves Conformity

Transportation Plan in the context of this regulation means a fiscally constrained plan prepared by a Metropolitan Planning Organization or CDOT and a local government or governments and/or regional planning commission pursuant to 23 U.S.C. 134 and as amplified by 23 CFR Part 450.322 (also referred to as a metropolitan transportation plan, regional transportation plan, or long-range transportation plan) for which a regional conformity determination is required. Outside of MPO's, the Colorado Department of Transportation, along with local governments, develops regional transportation plans. The overall State Transportation Plan incorporates all of the regional plans.

Transportation Planning Region (TPR) is a geographic area for which the transportation planning process required by 23 USC 134 and 135 and Section 8 of the Federal Transit Act must be carried out. Per Colorado regulations (CCR 43-1-1102), a TPR is a geographically designated area of the state for which a regional transportation plan may be developed pursuant to the provisions of 43-1-1102 and 1103, CRS.

III. Interagency Consultation

III.A. Roles and Responsibilities for Transportation Conformity Determinations and Related SIP Development.

III.A.1. This rule sets out the minimum requirements for interagency consultation (Federal, State, regional and local) and resolution of conflicts. Representatives of the MPOs, local transit agency, the Division, the LPA and CDOT shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the transportation plan, the TIP, and all conformity determinations required by this rule. The MPO shall provide notice of revisions to Conformity documents through the normal planning process. The interagency consultation process shall be used in developing or noticing revisions to any documents that could affect Transportation Conformity.

III.A.2. It shall be the role and responsibility of each agency identified as a lead agency to prepare the final document and to ensure the adequacy of the interagency consultation process. Designation as a lead agency for any decision item shall mean that such agency shall be responsible for making the final decision on such decision item, except that any such decision shall be subject to the dispute resolution process set out in Section IV.H.

III.A.3. In each nonattainment area, CDOT, the LPA, the Division, the MPO, local transit agency, and other agencies, as appropriate, may develop a written agreement pursuant to Section IV.G. that outlines the specific roles and responsibilities of various participants in the interagency consultation process for the preparation of SIPs, transportation plans, TIPs and conformity determinations. In the absence of such a written agreement, in addition to the other duties specified in this rule, the specific roles and responsibilities of the various participants in the interagency consultation process shall be as follows:

III.A.3.a. The Division shall be responsible for: (A) emissions inventories; (B) air quality modeling and/or quality-assuring air quality modeling that is performed by the MPOs or CDOT; (C) performing attainment demonstrations; (D) assisting the LPA in the development of pollutant specific implementation plan revisions; (E) providing technical and policy input regarding emission factors and emissions budgets; and (F) updating motor vehicle emissions factors.

III.A.3.b. The LPA, or the Division if there is no LPA, shall: (A) develop pollutant-specific state implementation plans for submittal to the Commission; and (B) prepare emissions budgets.

III.A.3.c. The MPO shall: (A) develop transportation plans and TIPs, and shall make conformity determinations on transportation plans