

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

TABLE OF CONTENTS

CHAPTER Env-A 1500 CONFORMITY

PART Env-A 1501 PURPOSE AND APPLICABILITY

- Section Env-A 1501.01 Purpose
- Section Env-A 1501.02 Applicability

PART Env-A 1502 REFERENCES AND DEFINITIONS

- Section Env-A 1502.01 References
- Section Env-A 1502.02 Federal Definitions Incorporated
- Section Env-A 1502.03 Definitions

PART Env-A 1503 TRANSPORTATION CONFORMITY

- Section Env-A 1503.01 Purpose
- Section Env-A 1503.02 Applicability
- Section Env-A 1503.03 Conformity to State and Federal Implementation Plans
- Section Env-A 1503.04 Metropolitan Planning Organizations (MPOs)
- Section Env-A 1503.05 Roles and Responsibilities of the Department
- Section Env-A 1503.06 Roles and Responsibility of NHDOT
- Section Env-A 1503.07 Roles and Responsibilities of MPOs
- Section Env-A 1503.08 Interagency Consultation
- Section Env-A 1503.09 Access to Materials
- Section Env-A 1503.10 Responding to Comments
- Section Env-A 1503.11 Transportation Control Measures .
- Section Env-A 1503.12 Regionally Significant Projects
- Section Env-A 1503.13 Emissions and Transportation Modeling
- Section Env-A 1503.14 Exempt/Not Exempt Project Lists
- Section Env-A 1503.15 Projects in PM_{2.5} Nonattainment or Maintenance Areas - RESERVED
- Section Env-A 1503.16 Notification of Metropolitan Transportation Plan, TIP or STIP Proposed Amendments of Exempt Projects
- Section Env-A 1503.17 Conformity in Nonattainment or Maintenance Areas Outside MPO Areas or Containing More Than One MPO Area
- Section Env-A 1503.18 Resolving Conflicts
- Section Env-A 1503.19 Public Consultation
- Section Env-A 1503.20 Commitments for Regional Emissions Analysis
- Section Env-A 1503.21 Commitments for Project-Level Mitigation and Control Measures

PART Env-A 1504 CONFORMITY OF GENERAL FEDERAL ACTIONS

- Section Env-A 1504.01 Purpose
- Section Env-A 1504.02 Applicability
- Section Env-A 1504.03 References
- Section Env-A 1504.04 Federal Definitions Incorporated
- Section Env-A 1504.05 Conformity to State and Federal Implementation Plans

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

AIR RESOURCES DIVISION

CHAPTER ENV-A 1500 CONFORMITY

Chapter Env-A 1500 Conformity

Statutory Authority: RSA 125-C:4

PART Env-A 1501 PURPOSE AND APPLICABILITY

Env-A 1501.01 Purpose. The purpose of this chapter is to implement §176 of the Clean Air Act (the Act), as amended, and 40 CFR 93, relative to conformity determinations for transportation plans, programs, and projects and federal actions, to ensure that the purpose and intent of the state implementation plan (SIP) are being met.

Env-A 1501.02 Applicability. This chapter shall apply as specified in Env-A 1503.02 and Env-A 1504.02.

PART Env-A 1502 REFERENCES AND DEFINITIONS

Env-A 1502.01 References.

(a) For the purpose of this chapter, unless otherwise specified all references to 23 CFR 450 shall be to the April 1, 2011 edition.

(b) For the purpose of this chapter, unless otherwise specified all references to 40 CFR 93, including any subpart thereof, shall be to the July 1, 2011 edition.

Env-A 1502.02 Federal Definitions Incorporated. Except as specified in Env-A 1502.03 or Env-A 1504.03, the definitions contained in and referred to in 40 CFR §93.101 shall apply to the terms used in this chapter.

Env-A 1502.03 Definitions.

(a) “Interagency consultation” means a meeting or other formal consultation process convened or initiated pursuant to Env-A 1503.08.

(b) “Large scale development” means a development that is expected to generate 10,000 or more vehicle trip ends on any typical summer day.

(c) “Long-range statewide transportation plan” means “long-range statewide transportation plan” as defined in 23 CFR §450.104, namely “the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.”

(d) “Maintenance area” means any geographic region of New Hampshire previously designated as a nonattainment area pursuant to the Act, and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan that is subject to transportation conformity measures under §175A of the Act.

(e) “Metropolitan planning organization (MPO)” means “metropolitan planning organization” as defined in 23 CFR §450.104, namely “the policy board of an organization created and designated to carry out the metropolitan transportation planning process.”

(f) “Nonattainment area” means any geographic region in New Hampshire designated as a nonattainment area by EPA under §107 of the Act for any pollutant for which a NAAQS exists.

(g) “Provide access to” means:

(1) For any document(s) for which access is being provided to a specific entity (recipient entity), to do one or more of the following:

a. Send a paper or electronic copy of each document to each recipient entity;

b. Post a copy of each document on a web site that is accessible by each recipient entity and notify the recipient entity(ies) of the document’s URL; or

c. Make a paper or electronic copy of each document available for inspection at the providing entity’s office and notify each recipient entity of the availability of the document for inspection; or

(2) For documents for which access is being provided to the public, to comply with the requirements of RSA 91-A:4.

(h) “Regional planning commission (RPC)” means any specific planning region as delineated by the office of energy and planning or otherwise established as specified in RSA 36:45 through RSA 36:58. For the purposes of this chapter, the

reference to RPCs includes only those RPCs with municipalities located in a nonattainment or maintenance area.

(i) “Significant comments” means, for purposes of conformity findings, comments relating to any issue or data that have the potential to change the outcome of a conformity determination, including but not limited to the following:

- (1) Incorrect project design concept and scope that could affect emissions analysis;
- (2) Improper or missing analysis years;
- (3) Regionally significant projects improperly reflected in the emissions analysis;
- (4) Incorrect emission factors;
- (5) Missing pollutant analyses;
- (6) Projects improperly placed in a baseline scenario;
- (7) Incorrect comparison with SIP emissions budgets; and
- (8) Failure to list not exempt projects as specified in Env-A 1503.14 in the emissions analysis.

(j) “Statewide transportation improvement program (STIP)” means “a statewide transportation improvement program (STIP)” as defined in 23 CFR §450.104, namely “a statewide prioritized listing/ program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPS, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.”

(k) “Transportation improvement program (TIP)” means “a transportation improvement program (TIP)” as defined in 23 CFR §450.104, namely “a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.”

PART Env-A 1503 TRANSPORTATION CONFORMITY

Env-A 1503.01 Purpose. The purpose of this part is to implement the following provisions relating to transportation conformity:

- (a) The consultation procedures required by 40 CFR §93.105;
- (b) The control measures required by 40 CFR §93.122(a)(4)(ii); and
- (c) The mitigation measures required by 40 CFR §93.125(c).

Env-A 1503.02 Applicability. This part shall apply as specified in 40 CFR §93.102.

Env-A 1503.03 Conformity to State and Federal Implementation Plans.

- (a) All transportation plans, programs, and projects developed, funded, or approved by the state of New Hampshire shall conform to the SIP or federal implementation plan (FIP) developed pursuant to §110 and §§171 through 193 of the Act.
- (b) Conformity determinations shall be made in accordance with §176 of the Act and 40 CFR 93, Subpart A.

Env-A 1503.04 Metropolitan Planning Organizations (MPOs).

- (a) When used in this chapter, the term “metropolitan planning organizations (MPOs)” shall include the Southern New Hampshire MPO, the Nashua MPO, the Strafford MPO, and the Rockingham MPO.
- (b) Each MPO shall serve as a forum for cooperative transportation decision-making.

Env-A 1503.05 Roles and Responsibilities of the Department. The department shall:

- (a) Develop and implement the SIP and its revisions;
- (b) Monitor progress in achieving the NAAQS;
- (c) Consult with representatives of the NH department of transportation (NHDOT), MPOs, RPCs, EPA, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) at the initiation of and during the development of SIP revisions pertaining to mobile sources, including those relating to inventories, budgets, forecasts, and strategies for reduction of emissions, transportation control measures (TCMs), transportation conformity, general conformity, area classifications, and redesignations;

- (d) Coordinate with EPA on issues related to the SIP and transportation;
- (e) Coordinate with NHDOT, MPOs, RPCs, and EPA to determine inputs for air quality analysis emissions modeling on MPO transportation improvement programs (TIPs), transportation plans, and projects;
- (f) Provide assistance to NHDOT, RPCs, and MPOs during transportation planning processes relating to air quality, including but not limited to emissions modeling, emissions budget comparisons, exempt/not exempt project lists, and regionally significant projects;
- (g) Review and provide comments on the conformity determinations for metropolitan transportation plans, TIPs, and NHDOT regional emissions analyses of transportation projects outside MPO areas or in areas covered by more than one MPO; and
- (h) Forward unresolved disputes regarding conformity determinations to the governor of New Hampshire for resolution in accordance with Env-A 1503.18.

Env-A 1503.06 Roles and Responsibility of NHDOT. In implementing 23 CFR 450, NHDOT shall:

- (a) Act as the lead agency responsible for coordinating and planning multi-regional and statewide transportation systems;
- (b) Develop a long-range statewide transportation plan and a statewide transportation improvement program (STIP) as specified in RSA 228:99;
- (c) Obtain required FHWA and FTA approvals for the STIP;
- (d) Develop, in coordination with MPOs and the department, current estimates of vehicle miles traveled (VMT) for each nonattainment or maintenance area and forecasts of VMT necessary for input to the SIP;
- (e) Provide assistance to MPOs in performing analysis leading to transportation conformity determinations in their regions;
- (f) Conduct analyses and make transportation conformity determinations for all projects outside MPO boundaries, but within nonattainment or maintenance areas;
- (g) Make project-level conformity determinations as required by 40 CFR 93.116, including hot-spot analyses in carbon monoxide (CO) nonattainment or maintenance areas, for all projects in the STIP;
- (h) Coordinate interagency consultation with MPOs, the department, RPCs, EPA,

FHWA, and FTA at the initiation of and during the transportation conformity determinations and transportation planning processes relating to air quality issues such as VMT and speed estimates, exempt/not exempt project lists, emissions modeling, emissions budget comparisons, and regionally significant projects;

(i) Coordinate conformity determinations in nonattainment or maintenance areas consisting of more than one MPO area;

(j) Evaluate, select, maintain, and update a statewide transportation model capable of emissions analysis in non-attainment areas outside MPO boundaries, in consultation with the department;

(k) Coordinate and consult with the department and EPA to determine appropriate data inputs into air quality models used for emissions analysis in conformity determinations to ensure consistency with the SIP;

(l) Consult with MPOs, RPCs, and the department in the selection and development of TCMs if determined to be necessary or desirable to attain the NAAQS and in the preparation of the SIP with respect to these measures;

(m) Provide assistance and comments to the department on SIP revisions dealing with mobile source issues;

(n) Notify the department, MPOs, RPCs, FHWA, FTA, and EPA of STIP amendments which add or delete exempt and non-exempt projects;

(o) Document timely implementation of TCMs which are in the SIP and transportation projects in the STIP which have positive air quality impacts; and

(p) In cooperation with MPOs, develop a list of regionally significant public or private transportation projects in accordance with Env-A 1501.14(c).

Env-A 1503.07 Roles and Responsibilities of MPOs. In implementing 23 CFR 450, each MPO shall:

(a) Develop a metropolitan transportation plan;

(b) Develop TIPs;

(c) Assist the department and NHDOT in determining current estimates of VMT and forecasts of VMT necessary for input to the SIP development process;

(d) Implement public involvement procedures in the development of its metropolitan transportation plan and TIPs including conformity determinations;

- (e) Make conformity determinations for its metropolitan transportation plan and TIPs, with assistance from NHDOT and the department;
- (f) Coordinate and consult with NHDOT, EPA, and the department to determine appropriate data inputs into emissions analysis models used for emissions analysis in conformity determinations to ensure consistency with the SIP;
- (g) Consult with the department and NHDOT in the selection and development of TCMs for the MPO area, if the department determines that TCMs are necessary or desirable to attain the NAAQS, and assist in the analysis of these measures for inclusion in the SIP;
- (h) Provide assistance and comments to the department on SIP revisions dealing with mobile source issues in the MPO area;
- (i) Consult with the department, NHDOT, EPA, FHWA, RPCs, and FTA in transportation conformity determinations and transportation planning processes relating to air quality issues including but not limited to VMT, speed estimates, emissions modeling, and emissions budget comparisons, exempt/not exempt project lists, and regionally significant projects;
- (j) Notify NHDOT, FHWA, FTA, EPA, other MPOs, RPCs, and the department of any amendments to the MPO's metropolitan transportation plan or TIPs that add or delete exempt and non-exempt projects;
- (k) Evaluate, select, maintain, and update regional transportation models in nonattainment or maintenance areas in cooperation with NHDOT, RPCs, and the department;
- (l) Document implementation of TCMs which are in the SIP and transportation projects in the MPO's metropolitan transportation plan and TIPs which have positive air quality impacts;
- (m) Through interagency consultation, develop a list of regionally significant projects in the MPO's area and provide the list to NHDOT and the department;
and
- (n) Provide preliminary conformity findings to the department.

Env-A 1503.08 Interagency Consultation.

- (a) To facilitate the consultation required by 40 CFR §93.105, NHDOT shall schedule and convene consultation meetings relating to the transportation conformity process as follows:

(1) Regular meeting shall be held no less frequently than semi-annually;
and

(2) Additional meetings may be held as needed to facilitate interagency communications.

(b) NHDOT shall invite the department, MPOs, RPCs, EPA, FHWA, and FTA to participate in each meeting convened pursuant to (a), above, provided however that a meeting shall qualify as a regular meeting under (a)(1), above, only if representatives of NHDOT, the department, and MPOs are present. One or more representatives may participate by electronic means provided the individual can hear and be heard simultaneously by all other attendees.

(c) Any invitee listed in (b), above, may request NHDOT to schedule an interagency consultation meeting at any time.

(d) The purpose of regular interagency consultation meetings shall be to discuss topics relevant to transportation conformity requirements, including but not limited to the following:

(1) Development of a SIP or SIP revisions, including but not limited to those involving transportation-related issues and mobile sources;

(2) Development of a metropolitan transportation plan or TIP, minor revisions to a TIP, or any amendment(s) to a TIP, and any determination of conformity for such plans;

(3) Emissions budgets;

(4) TCMs and mitigation measures pursuant to 40 CFR 93.125(c) and 93.122(a)(4)(ii), respectively, that are in the SIP or are being considered for inclusion in the SIP;

(5) Evaluation and determination of events that will trigger new conformity determinations; and

(6) Coordination of emissions analyses for transportation activities that cross the borders of MPOs or nonattainment or maintenance areas or include areas outside of MPO boundaries.

Env-A 1503.09 Access to Materials.

(a) NHDOT or each MPO, as appropriate, shall provide access to the following materials to the department no later than at the start of the public comment period for the metropolitan transportation plan, TIP, or regional emissions analyses

performed by NHDOT outside MPO areas:

- (1) Lists of exempt/not exempt projects and regionally significant projects, regardless of funding source;
- (2) Metropolitan transportation plans, TIPs, and corresponding air quality analyses and conformity determinations and analyses of all projects outside MPO boundaries, but within the nonattainment or maintenance area;
- (3) Amendments to the metropolitan transportation plans and TIPs and significant changes in project design and scope since the previous conformity determination;
- (4) Notices of public hearings and public comment periods for the metropolitan transportation plans, TIPs, or regional emissions analyses performed by NHDOT;
- (5) All correspondence received from EPA, FHWA, FTA, or MPOs regarding conformity determinations and/or transportation planning processes relating to air quality issues; and
- (6) STIP amendments in nonattainment or maintenance areas outside MPO areas.

(b) The department shall provide access to the following materials to NHDOT, EPA, FHWA, FTA, MPOs, and RPCs for comment during the SIP development process and conformity determination process:

- (1) SIP revisions pertaining to mobile sources including inventories, budgets, forecasts, and strategies for reduction of emissions, TCMs, transportation conformity, general conformity, area classifications, and redesignations;
- (2) Proposed and final inputs to emissions analyses models necessary for SIP development and conformity determinations;
- (3) Comments and guidance from EPA to the department regarding SIP development issues relating to mobile sources and transportation; and
- (4) Notices of public hearings and public comment periods on SIP revisions regarding mobile sources or emissions budgets.

(c) Each MPO shall provide access to its metropolitan transportation plan and TIPs that have received a final conformity determination by the MPO to NHDOT

and to the department.

(d) NHDOT shall provide access to the following materials as noted:

(1) The metropolitan transportation plans and TIPs to FHWA, EPA, and FTA for conformity findings; and

(2) Any final regional emissions analysis for non-attainment or maintenance areas outside MPO boundaries to the department, each MPO, the affected RPC, EPA, FHWA, and FTA.

(e) Access to all materials specified in (b) through (d), above, also shall be provided to the public for review and comment.

Env-A 1503.10 Responding to Comments.

(a) After reviewing comments received on conformity determinations performed for TIPs, metropolitan transportation plans, and any non-attainment or maintenance areas outside the MPO areas, NHDOT shall:

(1) Document and respond to significant comments; and

(2) Include a compilation of written comments and responses in any final conformity determinations.

(b) After reviewing comments received on draft conformity determinations for the metropolitan transportation plan and TIP, each MPO shall:

(1) Document and respond to significant comments; and

(2) Include a compilation of written comments and responses in the final metropolitan transportation plan and TIP conformity determination.

(c) If any significant comment requires additional analysis, NHDOT, the department, and the appropriate MPO(s) shall establish the appropriate course of action pursuant to 40 CFR 93, Subpart A.

Env-A 1503.11 Transportation Control Measures.

(a) If, after consultation as described in Env-A 1503.05(c), the department determines the need for TCMs in the SIP, the following actions shall occur:

(1) The department shall request NHDOT to coordinate an interagency consultation to identify the quantity of emissions reductions necessary;

(2) The department, NHDOT, affected MPO(s), and RPCs shall each prepare a list of appropriate TCM(s) which potentially achieve the emissions reductions required, quantify the emissions benefits from their proposed projects, and review funding availability, scheduling, and permitting issues for the proposed TCM(s);

(3) NHDOT shall coordinate an interagency consultation to discuss the list of TCM(s) and corresponding emissions benefits to be incorporated into the SIP;

(4) The TCM(s) selected shall be incorporated into the affected metropolitan transportation plan(s), affected TIP(s), and the STIP, if necessary, and go through the applicable public participation process(es) necessary to amend the STIP, TIP(s), and/or metropolitan transportation plan(s);

(5) The TCM(s) shall include a written commitment to implement the measure from the responsible entity per 40 CFR 93.122(a)(4)(ii); and

(6) The department shall develop a SIP revision in accordance with §110 of the Act which incorporates the selected TCM(s) according to the implementation time frame agreed to by the affected MPO(s), NHDOT, and the department.

(b) If TCMs are incorporated into the SIP, NHDOT shall:

(1) Track the implementation of the TCM project and provide periodic updates no less than annually on implementation to the department, the affected MPO(s), and RPCs;

(2) Prepare an update on TCM(s), if any, identified in the SIP prior to conformity determinations and provide the update to the department, affected MPO(s) and RPCs; and

(3) Coordinate an interagency consultation if TCM(s) are not on schedule or if funding for the project is in jeopardy.

Env-A 1503.12 Regionally Significant Projects.

(a) Projects that are considered regionally significant for purposes of regional emissions analysis shall include any transportation project that:

(1) Is not otherwise required to be included in the metropolitan

transportation plan, TIPs, or STIP;

(2) Is not considered exempt according to the federal transportation conformity rule, 40 CFR §93.126 and 40 CFR §93.127; and

(3) Is expected to have a significant impact on travel patterns, consistent with the definition of regionally significant in 40 CFR §93.101 and as determined through interagency consultation.

(b) Each MPO shall:

(1) Maintain a list of regionally significant projects for inclusion in the conformity determinations in its area based on information requested from communities in the MPO through established committees including technical advisory committees and other public participation; and

(2) Provide access to the list of regionally significant projects to NHDOT and the department.

(c) Pursuant to 23 CFR 450, NHDOT shall:

(1) Develop a list of regionally significant projects in nonattainment or maintenance areas outside an MPO area based on information regarding state funded or permitted projects and on information gathered from RPCs in the nonattainment or maintenance areas;

(2) In cooperation with the MPOs and RPCs, combine the list described in (1), above, with the list of regionally significant projects, described in (b)(1), above, from the MPOs and RPCs;

(3) Provide access to the combined list described in (2), above, to the department, the MPOs, RPCs, EPA, FHWA, and FTA as part of conformity determinations of the metropolitan transportation plan, TIP or regional emissions analyses of projects outside MPO areas; and

(4) Provide information on regionally significant projects within MPO and RPC areas to the affected MPO(s) and RPCs.

(d) When an application is received from a major traffic generator for access to a state-maintained highway, NHDOT shall:

(1) Notify the affected MPO and RPC to make the MPO and RPC aware of potential traffic impacts from major traffic generators; and

(2) If the application results in a transportation project which meets the

criteria of a regionally significant project, include that project on its list of regionally significant projects circulated as specified in (c), above.

Env-A 1503.13 Emissions and Transportation Modeling. Pursuant to 23 CFR 450:

(a) NHDOT shall coordinate an interagency consultation for the evaluation and selection of both microscale and mesoscale emissions models used in the conformity determination process for metropolitan transportation plans, TIPs, and projects.

(b) MPOs shall:

(1) Evaluate and select the appropriate travel demand models for their area with input from NHDOT;

(2) At the time of initial model selection or at the time when an MPO has decided to change to a new model, notify EPA, FHWA, FTA, and the department; and

(3) If MPOs are located in nonattainment or maintenance areas, maintain regional transportation models.

(c) NHDOT, FHWA, and FTA shall have an opportunity to comment on the development and maintenance efforts of these models through approval of the unified planning work program.

(d) In areas where transportation models exist currently or are required in the future, MPOs shall update, at least every 2 years, land use assumptions in the model to reflect any large scale developments approved subsequent to the date of the last update.

Env-A 1503.14 Exempt/Not Exempt Project Lists. Pursuant to 23 CFR 450:

(a) Prior to making any conformity determinations, MPOs and NHDOT shall:

(1) Review all projects within nonattainment or maintenance areas that are on the STIP and TIPs, to determine whether the projects are exempt under 40 CFR §§93.126 and 93.127; and

(2) Determine if any exempt projects shall be classified as not exempt because of potential emissions impacts.

(b) NHDOT and MPOs shall provide access to the department, RPCs, EPA, FHWA, and FTA for review and comment a list of projects and their exempt/non-exempt status as part of conformity determinations of metropolitan

transportation plans, TIPs, and regional emissions analyses performed outside the MPO areas.

Env-A 1503.15 Projects in PM_{2.5} and Nonattainment or Maintenance Areas. - RESERVED

Env-A 1503.16 Notification of Metropolitan Transportation Plan, TIP, or STIP Proposed Amendments of Exempt Projects. Pursuant to 23 CFR 450:

- (a) NHDOT shall notify the appropriate MPO(s), the department, affected RPCs, EPA, FHWA, and FTA of any proposed STIP amendment which adds or deletes an exempt or non-exempt project as listed in 40 CFR §93.126 and §93.127.
- (b) MPOs shall notify NHDOT, the department, EPA, FHWA, and FTA of any proposed amendment to a metropolitan transportation plan or TIP that adds or deletes an exempt or non-exempt project as listed in 40 CFR §93.126 and §93.127.

Env-A 1503.17 Conformity in Nonattainment or Maintenance Areas Outside MPO Areas or Containing More Than One MPO Area. Pursuant to 23 CFR 450:

- (a) In portions of nonattainment or maintenance areas that are not included in an MPO area or that contain more than one MPO area, NHDOT shall determine conformity of TIPs, metropolitan transportation plans, and plans for any nonattainment or maintenance areas outside the MPO boundaries, incorporating the most recent emissions analysis from the currently conforming metropolitan transportation plan and TIP for all MPOs which are within the nonattainment or maintenance area.
- (b) In nonattainment or maintenance areas which contain more than one MPO, each MPO shall consider the most recent emissions analysis from the other currently conforming metropolitan transportation plans and TIPs within the region.
- (c) NHDOT shall coordinate conformity determinations in nonattainment or maintenance areas with more than one MPO.

Env-A 1503.18 Resolving Conflicts.

- (a) During the public comment period on conformity determinations of metropolitan transportation plans, TIPs, and NHDOT regional emissions analyses of transportation projects, the department shall:
 - (1) Review the conformity determination of such metropolitan transportation plans, TIPs, and NHDOT regional emissions analyses;

(2) Submit written comments on the conformity determinations to the appropriate MPO and to NHDOT as soon as possible but no later than the close of the public comment period; and

(3) Include in the comments specified in (2), above, a clear finding of concurrence or nonconcurrence on the conformity determinations and a list of issues to be addressed, if any.

(b) If the department does not concur with the conformity determination, NHDOT or the appropriate MPO, as applicable, shall submit a written response(s) to the department within 14 calendar days of the receipt of the department comments, which clearly addresses each of the stated issues either by revising the determination or by explaining why the determination was not revised.

(c) If the issues cannot be resolved, the provisions of 40 CFR 93.105(d) relative to resolving conflicts shall apply.

(d) Pursuant to 23 CFR 450, if a conflict arises among MPOs with respect to conformity determinations, NHDOT shall:

(1) Act as the arbitrator; and

(2) Invite the department to any meetings held to resolve the conflict.

Env-A 1503.19 Public Consultation.

(a) Pursuant to 23 CFR 450, NHDOT, the department, and MPOs, RPCs, EPA, FHWA, and FTA shall implement all applicable federal and state required public notification and public participation processes throughout the interagency consultation process.

(b) MPOs shall provide a minimum of 10 days for receipt of public comment prior to taking a formal action on conformity determinations of MPO transportation plans and MPO TIPs.

(c) NHDOT shall provide a minimum of 10 days for receipt of public comment prior to taking formal action on conformity determinations of NHDOT regional emissions analysis in areas outside MPO areas or in areas covered by more than one MPO.

Env-A 1503.20 Commitments for Regional Emissions Analysis. In accordance with 40 CFR 93.122(a)(4)(ii), an MPO shall not include emissions reduction credits from control measures that are not included in its metropolitan transportation plan or TIP and that do not require a regulatory action in the regional emissions analysis used in the conformity

determination unless the MPO, FHWA, or FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures.

Env-A 1503.21 Commitments for Project-Level Mitigation and Control Measures.

(a) In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the FHWA or FTA shall obtain from the project sponsor or operator a written commitment, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measure in the construction or operation of the project identified as a condition for NEPA process completion.

(b) Prior to making a conformity determination for a metropolitan transportation plan or TIP, the MPO shall ensure that any project-level mitigation or control measures for which a written commitment has been made are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis.

(c) Written commitments shall be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis for a project-level determination.

PART Env-A 1504 CONFORMITY OF GENERAL FEDERAL ACTIONS

Env-A 1504.01 Purpose. The purpose of this part is to implement §176(c)(4) of the Clean Air Act (the Act), as amended, and 40 CFR 93, Subpart B, with respect to the conformity of federal actions to the SIP, to ensure that the purpose and intent of the SIP are met.

Env-A 1504.02 Applicability.

(a) Pursuant to §176(c)(1) of the Act, this part shall apply to any federal department, agency, or instrumentality which meets the applicability criteria as specified in 40 CFR §93.153.

(b) This part shall not apply to any entity subject to a conformity determination for a federal action related to a transportation plan, program, or project developed, funded, or approved under 23 USC §§101 et seq. or the Federal Transit Act, as amended, 49 USC §§1601 et seq.

Env-A 1504.03 References. For the purpose of this part, unless otherwise specified all references to 40 CFR 93, Subpart B, shall be to the July 1, 2011 edition.

Env-A 1504.04 Federal Definitions Incorporated.

(a) The definitions contained in and referred to in 40 CFR §93.152 shall apply to the terms used in this part.

Env-A 1504.05 Conformity to State and Federal Implementation Plans.

(a) Pursuant to §176(c)(1) of the Act, no applicable federal entity shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to the SIP or FIP developed pursuant to §110 and §171 through §185 of the Act.

(b) Such determination that a federal activity conforms to the SIP or FIP shall be made in accordance with §176 of the Act and 40 CFR 93, Subpart B.

Appendix

Rule Section/Paragraph	State Statute Implemented	Federal Statutes or Regulations Implemented
Env-A 1501.01 - Env-A 1502.02	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 93, Subpart A
Env-A 1502.01(a)	RSA 125-C:4, I(a)	42 U.S.C. §7506; 23 CFR §450
Env-A 1502.01(b)	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR §93
Env-A 1502.02	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR §93.101
Env-A 1502.03	RSA 125-C:4, I(a); RSA 36:45 - 58	42 U.S.C. §7506; 40 CFR §93.101
Env-A 1502.03(d) & (f)	RSA 125-C:4, I(a)	42 U.S.C. §7506; 42 U.S.C. §7407; 40 CFR §51.852
Env-A 1503.01	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR §93.105; 40 CFR §93.122(a)(4)(ii); 40 CFR §93.125(c)
Env-A 1503.02	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR §93.102
Env-A 1503.03	RSA 125-C:4, I(a)	42 U.S.C. §7506; 42 U.S.C. §7511; 42 U.S.C. §§ 7501-7515; 40 CFR 93, Subpart A
Env-A 1503.04	RSA 125-C:4, I(a)	42 U.S.C. §7506; 42 U.S.C. §7407
Env-A 1503.05	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 51, Subpart T; 40 CFR 93, Subpart A

Env-A 1503.06	RSA 125-C:4, I(a)	42 U.S.C. §7506; 23 CFR 450, Subpart B
Env-A 1503.07	RSA 125-C:4, I(a)	42 U.S.C. §7506; 23 CFR 450, Subpart C
Env-A 1503.08-1503.21	RSA 125-C:4, I(a)	42 U.S.C. §7506; 23 CFR 450; 40 CFR 93, Subpart A
Env-A 1504.01	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 51, Subpart W
Env-A 1504.02	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 51.853
Env-A 1504.03	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 51
Env-A 1504.04	RSA 125-C:4, I(a)	42 U.S.C. §7506; 40 CFR 51.852
Env-A 1504.05	RSA 125-C:4, I(a)	42 U.S.C. §7506; 42 U.S.C. §7511; 42 U.S.C. §§ 7501 through 7515; 40 CFR 51, Subpart W