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40 CFR Parts 51 and 93
Air Quality: Transportation Plans, Programs, and Projects; Federal or State Implementation Plan Conformity; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–4804–3]

Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes the criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved under title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required under section 176(c)(4) of the Clean Air Act, as amended in 1990.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, Federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment or required interim emission reductions towards attainment. This final rule establishes the process by which the Federal Highway Administration and the Federal Transit Administration of the United States Department of Transportation and metropolitan planning organizations determine conformity of highway and transit projects.

EFFECTIVE DATE: This final rule is effective on December 27, 1993.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–92–21. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, Attention: Docket No. A–92–21, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 p.m. and from 1:30 p.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 741–7884.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Authority

Authority for the actions taken in this notice is granted to EPA and DOT by section 176(c) of the Clean Air Act as amended (42 U.S.C. 7521(a)).

II. Summary of the Final Rule

This rule requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

This rule applies to nonattainment and maintenance areas. EPA will issue a supplementary notice of proposed

rulemaking to propose criteria and procedures for determining conformity in attainment areas.

The provisions of this rule apply with respect to those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan approved under Clean Air Act section 175A (i.e., ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM–10)). The provisions of this rule also apply with respect to the following precursors of those pollutants: volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in ozone areas, NO_X in NO_2 areas, and VOC and NO_X in PM–10 areas.

This rule requires States to submit to EPA revisions to their State implementation plans (SIPs) establishing conformity criteria and procedures consistent with this rule by November 25, 1994. However, the requirements of this rule apply as a matter of Federal law beginning December 27, 1993. All conformity determinations made after this date must be made according to the requirements of this rule and, after the conformity SIP revision is approved by EPA, according to the requirements of the applicable SIP.

The criteria and procedures in this rule differ according to the pollutant for which an area is designated nonattainment or maintenance, and according to the type of action (i.e., transportation plan, TIP, project from a conforming transportation plan and TIP, or project not from a conforming transportation plan and TIP). The rule requires regional emissions analysis of transportation plans and TIPs. All regionally significant highway and transit projects, regardless of funding source, must either come from a conforming transportation plan and TIP, have been included in the regional emissions analysis of the plan and TIP which supports the plan or TIP's adoption, or be included in a newly performed regional analysis. Transportation projects funded or approved by FHWA or FTA must also be analyzed for their localized air quality impacts in PM–10 and CO nonattainment areas.

The criteria and procedures also vary according to the period of time in which the conformity determination is made. Transportation plans, TIPs, and projects must satisfy different criteria depending on whether a State has submitted a SIP revision which establishes control strategies to demonstrate reasonable further progress and attainment. Criteria and procedures also vary depending on whether the SIP revision has been submitted, approved, disapproved, or the Clean Air Act deadline for submission of the SIP revision has been missed.

The final rule is being placed in both 40 CFR part 51 and 40 CFR part 93. Part 93 applies to Federal agencies immediately, and part 51 establishes requirements for States in submitting SIPs. The requirements of the rule are the same in both parts, except that the rule does not require a conformity SIP revision in part 93.

The final rule has a variety of minor changes from the proposal based on comments received regarding specific details of the regulatory text. In addition, several major changes have been made in response to public comment. These include changes to the criteria and procedures during the interim period and specific requirements for regionally significant "non-federal" projects (those not requiring FHWA or FTA funding or approval). The reader is referred to the Discussion of Major Issues and Discussion of Comments sections for details on these and other issues.

III. Background of the Final Rule

A. History of Conformity

Conformity provisions first appeared in the Clean Air Act Amendments of 1977 (Pub. L. 95–95). Although these provisions did not define conformity, they provided that no Federal department "shall: (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve any activity which does not conform to a [State implementation plan] after it has been approved or promulgated." Assurance of conformity was an affirmative responsibility of the head of each Federal agency. In addition, no MPO could approve any transportation project, program, or plan which did not conform to a State or Federal implementation plan.

Following enactment of the 1977 Amendments, DOT consulted with EPA to develop conformity procedures for programs administered by FHWA and the Urban Mass Transportation Administration (now FTA). The June 14, 1978 "Memorandum of Understanding Regarding Integration of Transportation and Air Quality Planning" provided EPA an opportunity to jointly review and comment on the conformity of transportation plans and TIPs.

In April 1980, EPA published an advance notice of proposed rulemaking on conformity (45 FR 21590, April 1, 1980). EPA maintained that the Congressional intent of Clean Air Act section 176(c) was to prevent Federal actions from causing a delay in the attainment or maintenance of the NAAQS. However, no further rulemaking action was taken.

In June 1980 EPA and DOT jointly issued a guidance document entitled "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This guidance established that in nonattainment and maintenance areas (areas experiencing violations of the national ambient air quality standards (NAAQS) and required to develop air quality maintenance plans under 40 CFR part 51, subpart D), conformity determinations must be documented as a necessary element of all certifications, TIP reviews, and environmental impact statement findings. It was necessary to make certifications that the planning process had been conducted according to a continuous, cooperative, and comprehensive transportation planning process and consistent with Clean Air Act requirements.

Transportation plans and programs were considered to conform with the SIP if they did not adversely affect the transportation control measures (TCMs) in the SIP, and if they contributed to reasonable progress in implementing those TCMs. A transportation project would conform if it were a TCM from the SIP, came from a conforming TIP, or did not adversely affect the TCMs in the SIP.

Subsequently, DOT developed and issued an interim final rule (46 FR 8426, January 26, 1981) based upon the joint guidance. DOT established this rule to meet its obligations under section 176(c) of the Clean Air Act, and the rule was put into effect immediately upon publication. It amended 23 CFR part 770 (FHWA Air Quality Guidelines) and added 49 CFR part 623 (UMTA Air Quality Conformity and Priority Procedures).

The rule used the joint guidance's definition of conformity, interpreting conformity in the context of TCMs rather than emissions budgets or air quality analysis. Compliance with the conformity requirements was to be demonstrated as part of the planning and National Environmental Policy Act (NEPA) processes.

B. Conformity Under the Clean Air Act As Amended in 1990

In addition to adding specific provisions regarding the conformity of transportation actions, the Clean Air Act Amendments of 1990 expand the scope and content of the conformity

provisions by defining conformity to an implementation plan to mean

> Conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Clean Air Act Amendments of 1990 emphasize reconciling the estimates of emissions from transportation plans and programs with the implementation plan, rather than simply providing for the implementation of TCMs. This integration of transportation and air quality planning is intended to protect the integrity of the implementation plan by ensuring that its growth projections are not exceeded without additional measures to counterbalance the excess growth, that progress targets are achieved, and that air quality maintenance efforts are not undermined.

C. Interim EPA/DOT Conformity Guidance

On June 7, 1991, EPA and DOT jointly issued guidance for determining conformity of transportation plans, programs, and projects during the period before the final rule is promulgated. This guidance was based on the interim conformity requirements in section 176(c)(3) of the CAA. This rule will supersede the June 7, 1991, interim guidance on its effective date.

D. Public Participation

The Notice of Proposed Rulemaking (NPRM) for this rule was published in the **Federal Register** on January 11, 1993 (58 FR 3768) as a proposed amendment to 40 CFR part 51. A March 15, 1993 **Federal Register** notice proposed the January 11 requirements for 40 CFR part 93. The comment period lasted from January 11 until March 12, 1993, and was subsequently reopened from March 15 until May 1, 1993, in order to allow comment in the context of the NPRM for conformity of general Federal actions (see next section). Over 300 written comments were received, including comments from Governors, State air agencies, State DOTs, MPOs and other local transportation agencies, local air agencies, the associations of these agencies, environmental interest groups, highway interest groups, and private citizens. Copies of the comments in their entirety can be obtained from the docket for this rule (see **ADDRESSES**). The docket also includes a complete Response to Comments document for this rule.

Three public hearings were held on the transportation conformity NPRM during the public comment period. In addition, opportunity to comment on the transportation conformity NPRM was provided at the public hearing for the NPRM on conformity of general Federal actions.

E. Conformity of General Federal Actions

Section 176(c) of the Clean Air Act applies to all departments, agencies, and instrumentalities of the Federal government. This rule applies only to the conformity of transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act. Criteria and procedures for determining the conformity of all other Federal actions ("general conformity"), including highway and transit projects which require funding or approval from a Federal agency other than FHWA or FTA, are promulgated in a separate rule. Criteria and procedures for determining conformity of general Federal actions were proposed in the **Federal Register** on March 15, 1993 (58 FR 13836).

IV. Discussion of Major Issues

A. Attainment Areas

1. EPA's Position

In the NPRM, EPA indicated that the statute was ambiguous with respect to whether conformity applied only in nonattainment areas, or in attainment areas as well. EPA received significant public comment arguing that the statute should be read to apply conformity also in attainment areas, based on the wording of Clean Air Act section 176(c)(1) and the policy merits of such applicability. Similar comments were received arguing that conformity did not apply in attainment areas.

EPA continues to believe that the statute is ambiguous, and that it provides discretionary authority to apply these transportation conformity procedures to both attainment and nonattainment areas. EPA plans to carry out a separate rulemaking proposing to apply transportation conformity procedures to certain attainment areas. EPA sees strong policy reasons not to apply conformity in all attainment areas, given the significant burden associated with making conformity determinations relative to the risk of NAAQS violations in clean areas. Thus EPA believes that it would be reasonable to propose applying conformity in attainment areas for which air quality is close to nonattainment levels, for example at 85% of nonattainment levels (see discussion below).

EPA intends to take comment on the basic proposal to apply conformity in attainment areas. EPA will also seek comment on the specific application of conformity in certain categories of attainment areas.

Therefore, EPA intends to issue in the near future a supplemental notice of proposed rulemaking dealing with conformity requirements in attainment areas.[1] The requirements of this final rule will apply only in nonattainment and maintenance areas, as proposed.

2. Supplemental Notice of Proposed Rulemaking

While EPA will solicit comments on other options, the supplemental notice of proposed rulemaking on transportation conformity will propose to require conformity determinations only in the metropolitan planning areas (the urbanized area and the contiguous area(s) likely to become urbanized within twenty years) of attainment areas which have exceeded 85% of the ozone, CO, NO_2, PM–10 annual, or PM–10 24-hour NAAQS within the last three, two, one, three, and three years, respectively. These periods are consistent with the way areas are designated as attainment or nonattainment. Further, the statistical form of the comparison to the 85% value would follow that specified for the relevant ambient standard.

Transportation plans, TIPs, and projects in all other areas, including all rural areas and all urbanized areas which are not subject to EPA requirements for ambient monitoring, would be exempt from the obligation to conduct transportation conformity determinations, based on the de minimis impact on air quality that would result from transportation activities in such areas. All attainment areas above 85% of the CO or PM–10 standard in which motor vehicles and transportation project construction do not contribute significantly to ambient levels of CO or PM–10 would also be exempt from transportation conformity requirements, for similar reasons. Because the merit of exempting certain

[1] For PM–10, the areas which would be addressed in the supplemental notice are designated "unclassifiable." The Clean Air Act Amendments of 1990 designated areas meeting certain qualifications as nonattainment for PM–10 by operation of redesignated to nonattainment, and for nonattainment areas to be redesignated to attainment. This rule refers to areas redesignated to attainment as "maintenance areas."

areas from conformity requirements will vary depending on the activities being regulated, the general conformity rule may propose different exemptions for applicability of conformity requirements in attainment areas than those for transportation conformity.

EPA intends to propose flexible, low-resource procedures and criteria for the attainment areas subject to the conformity requirements to demonstrate the conformity of transportation plans, TIPs, and projects.

B. Interim Period

1. Background

As discussed in the NPRM, there exists an "interim period" which lasts until EPA approves SIPs with control strategies demonstrating attainment and reasonable further progress, or maintenance. Once these control strategy SIPs are approved, conformity of plans and TIPs shall be demonstrated by comparing the emissions expected from the transportation system when the transportation plan and TIP are implemented to the emissions "budget" established in the SIP. However, during the interim period, section 176(c)(3)(A)(iii) of the Clean Air Act allows positive conformity determinations where transportation plans and TIPs contribute to annual emission reductions in ozone and CO nonattainment areas.

Although the interim period discussed in the Clean Air Act lasts only until the conformity SIP revisions are approved, EPA is extending the interim requirements until the control strategy SIPs are submitted, because it would be impossible to apply the emissions budget test prior to that time. EPA is also establishing interim criteria in PM–10 and NO_2 nonattainment areas because Clean Air Act section 176(c)(1)(ii) clearly refers to the Federal activity avoiding increases in the frequency or severity of any standard. Interim criteria for PM–10 and NO_2 areas are discussed in section IV.D. of this preamble. EPA sees no way to ensure that activities will not contribute to violations short of requiring reductions in emissions.

For ozone and CO areas, the NPRM proposed a "build/no-build" test which requires a regional emissions analysis to demonstrate that the emissions from the transportation system in future years, if it included the proposed action and all other expected regionally significant projects, would be less than the emissions from the current transportation system in future years.

EPA received substantial public comment on the adequacy of the "build/no-build test" as a demonstration of contribution to annual emission reductions. In particular, conformity determinations being made according to this test are showing insignificant emission reductions, which commenters claim are not consistent with the need to achieve reasonable further progress as necessary to attain, as required by sections 182(b)(1) and 187(a)(7) and referenced by section 176(c)(3)(A)(iii) of the Clean Air Act. In addition, EPA itself expressed concern in the NPRM's preamble that there might be long delays before emissions budgets are approved.

2. Phase II of the Interim Period

Phase I of the interim period, which ends December 27, 1993, was covered by the EPA/DOT joint guidance of June 7, 1991. The final rule defines Phase II of the interim period as beginning on December 27, 1993.

The final rule retains the criteria which the NPRM proposed for Phase II of the interim period. In particular, regional analysis of transportation plans and TIPs in ozone and CO areas will have to satisfy the build/no-build test proposed in the NPRM and demonstrate emissions reductions from 1990 levels. EPA continues to believe, as stated in the NPRM preamble, that it is not appropriate for EPA to require specific annual emissions reductions before they have been established by the State in the reasonable further progress and attainment demonstrations ("control strategy SIP revisions"). EPA believes the States should be allowed to decide how much reduction to require from motor vehicles and how much to require from stationary sources. Commenters also expressed substantial support for this approach.

However, in order to achieve emission reductions that are more consistent with the SIP's emission reduction targets as soon as possible, EPA is ending Phase II with either the submission of the control strategy SIP revision or the Clean Air Act deadline for submission of the control strategy SIP revision, whichever is earlier. In contrast, the NPRM proposed that Phase II would last until approval of the control strategy SIP.

3. Transitional Period

When a State submits to EPA a control strategy SIP revision which has been endorsed by the Governor and subject to a public hearing, Phase II ends and the "transitional" period begins. The final rule defines the transitional period to be the time between submission of the control strategy SIP revision and EPA final action on the control strategy SIP (i.e., full approval or disapproval).

During the transitional period, transportation plans and TIPs are required to be consistent with the emissions budget in the submitted control strategy SIP. EPA believes that an MPO should observe the emission budgets established by the State for its area once the SIP has been endorsed by the Governor and submitted to EPA, rather than apply only the build/no-build test while waiting for EPA approval of the budget, because of concern about the potential length of the interim period and the need for reasonable further progress by 1996. EPA believes it is appropriate to require the transportation community to begin contributing its part to the motor vehicle emissions reduction plan adopted by the State immediately, even before EPA approval.

In order to ensure that the SIP emission budget does not loosen the interim requirement for contribution to annual emission reductions while awaiting EPA approval, areas must demonstrate satisfaction of the build/no-build test in addition to consistency with the submitted emissions budget. Because it is the "build" scenario which is compared with the emissions budget, two separate emissions analyses are not necessary to demonstrate both the build/no-build test and consistency with the emissions budget.

Submission of a control strategy SIP revision triggers a requirement for the transportation plan and TIP to be found to conform according to the transitional period criteria and procedures. For control strategy SIP revisions which are submitted after November 24, 1993, the conformity of transportation plans and TIPs must be determined according to the transitional period criteria within 12 months from the Clean Air Act deadline for submission. During this 12-month period, the existing plan and TIP are still valid, and projects from the existing plan and TIP may proceed, provided the NEPA process is completed and the project has been found to conform. However, if the transportation plan and TIP have not been demonstrated to conform according to the transitional period criteria within 12 months from the Clean Air Act deadline for control strategy SIP submission, the transportation plan and TIP lapse, and no projects may proceed except for projects which had already completed the NEPA process and had a project-level conformity determination; projects which are exempted by the conformity rule; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

Although existing transportation plans and TIPs remain valid for 12 months following the Clean Air Act deadline, new transportation plans and TIPs which are approved more than 90 days following submission of the control strategy SIP revision must be found to conform according to transitional period criteria and procedures. During the first 90 days following submission of the control strategy SIP revision, new transportation plans and TIPs may be found to conform according to the Phase II interim period criteria and procedures. However, the conformity status of these transportation plans and TIPs will lapse 12 months from the Clean Air Act deadline for submission if conformity is not redetermined according to the transitional period criteria and procedures.

The 90-day period is intended to accommodate MPOs which are close to completing a long-scheduled plan and TIP adoption at the time the SIP revision is submitted, to provide DOT time to review and concur in those (and any pending previous) MPO actions which it must review, and to provide time for all involved parties to obtain and understand the budget implications of the SIP revision.

The 12-month period to redetermine conformity according to the transitional period criteria and procedures is an outside limit; EPA hopes that most MPOs will revise their TIPs as necessary and redetermine conformity even earlier than within 12 months. A date certain is provided (rather than starting the 12 months on the date of submission) to avoid creating an incentive for delay of the SIP revision.

For areas which submitted a control strategy SIP revision before November 24, 1993, transportation plans and TIPs must be redetermined according to transitional period criteria and procedures by November 25, 1994, or they will lapse. Conformity determinations on new transportation plans and TIPs must be made according to the transitional period criteria beginning February 22, 1994. New transportation plans and TIPs may be found to conform according to Phase II interim period criteria until February 22, 1994, but these conformity determinations will lapse November 25, 1994 if they are not redetermined according to transitional period criteria and procedures.

At any time during the transitional period when the currently conforming transportation plan and TIP have not yet been found to conform according to the transitional period criteria and procedures, the State air agency must be consulted regarding any new regionally significant project which would increase single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes). The State air agency must be consulted on how the emissions from the implementation of the currently conforming transportation plan and TIP (estimated in the "build" scenario in the transportation plan and TIP's conformity determination) compare to the motor vehicle emissions budget in the SIP, or the projected motor vehicle emissions budget in the SIP under development. The State air agency may escalate to the Governor any unresolved disputes, as with any State air agency comments on a conformity determination.

Because SIPs must contain specific measures to achieve the planned emissions reductions, and in the case of transportation the MPO should have assisted in developing these measures, the rule's transitional period requirements should not impose any unanticipated or impossible burden on the MPO. In fact, EPA anticipates that many control strategy SIPs will be developed from an emissions analysis of the transportation plan and TIP which are in place at the time of SIP submission. Where the MPO's analysis of the plan and TIP was used for the SIPs emissions projection and there are no projects in the SIP which are not from the transportation plan and TIP, the rule states that the MPO and DOT can determine conformity of the transportation plan and TIP according to the transitional criteria without new emissions modeling and without having to apply the criteria for current planning assumptions and latest emissions models. If the MPO and DOT avail themselves of this option, however, the three-year limit for full redetermination of the plan and TIP is not reset.

As described more completely in the next section of this preamble, the rule provides that a SIP submittal is sufficient to start the transitional period even if it includes only commitments to implement some parts of the control strategy. The MPO and DOT may assume future implementation of the committal measures when testing the transportation plan and TIP against the new budget.

A SIP containing only commitments for some measures may occur if a State has devised a strategy for meeting an emission reduction or attainment requirement of the Clean Air Act, but it has not adopted all measures in the strategy in an enforceable form suitable for EPA approval. For example, certain VOC limits for consumer products may not have been adopted yet, or an inspection program for diesel trucks aimed at PM–10 reductions may not have been put in regulatory form yet. However, emission reductions for these measures may have been quantified and included in the total emission reductions for the strategy.

EPA's tolerance of committed measures when starting the transitional period is intended to allow the transportation community to proceed with its part of the strategy while the State works to complete full adoption of the committed measures. (The State may be under a sanctions clock or even under sanctions during some or all of this period.) This respect for commitments in SIP revisions for conformity purposes is distinct from the possibility of EPA conditionally approving committals under section 110(k)(4). Today's rule does not prejudge EPA action in regard to completeness or incompleteness findings, approvals, conditional approvals, partial approvals, or disapprovals of SIP revisions.

Once EPA has approved the control strategy SIP revision, the transitional period ends and the control strategy period begins. During the control strategy period, the regional test for transportation plans and TIPs requires only consistency with the motor vehicle emissions budget in the approved SIP. Conditional approval or approval of specific control measures without approval of the SIP as a whole as meeting the applicable Clean Air Act requirement does not terminate the transitional period. 4. Control Strategy SIP Revisions EPA Finds State Failed to Submit, Finds Incomplete, or Disapproves.

EPA believes it is reasonable to interpret the requirement to contribute to emission reductions as demanding some greater contribution where the State has failed to establish emission budgets in a timely fashion, and as the time remaining before the attainment deadline decreases. EPA believes that in the prolonged absence of a control strategy SIP which allocates the emission reductions required by the Clean Air Act among sources, allowing no new conformity determinations and postponing new commitments of funds will prevent uncontrolled emissions increases by delaying projects with emissions impacts until the State has established control strategies consistent with reasonable further progress and attainment. This will also provide incentive for the relevant actors within the State to agree on control strategies and emissions budgets for the SIP.

If the control strategy SIP revision is not submitted, no new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline. If EPA finds the submission to be incomplete, no new transportation plans or TIPs may be found to conform beginning 120 days after the incompleteness finding. In both cases, the conformity status of the existing transportation plan and TIP lapses 12 months after the date that the Clean Air Act requires submission of the control strategy SIP revision.

Where a control strategy SIP revision has not been submitted, no new transportation plans and TIPs may be found to conform 120 days after the Clean Air Act SIP deadline provided EPA has notified the State, MPO, and DOT that the State had failed to submit the SIP revision. EPA will strive to issue findings of failure to submit the required SIP revision within 60 days following the Clean Air Act deadline. Such a finding starts a non-discretionary sanctions clock under section 179(b) of the Clean Air Act and EPA will so notify the State. In the case of such a failure, EPA will also consider whether it is appropriate to propose and impose discretionary sanctions under section 110(m).

The conformity status of the transportation plan and TIP will lapse 120 days after EPA's final disapproval of the control strategy SIP revision wholly or in part because it lacks an adequate control strategy, and no new project-level conformity determinations may be made. Because such disapproval will be proposed as a rulemaking action before it is final, affected parties will be provided adequate notice.

EPA has already made findings of failure to submit or failure to submit complete control strategy SIP revisions for some CO nonattainment areas and some moderate PM–10 areas, as these revisions were due for certain areas on November 15, 1992 and November 15, 1991, respectively. The conformity status of transportation plans and TIPs in these areas will lapse one year from today, i.e., November 25, 1994, if the failure has not been remedied by then and acknowledged by a letter from the EPA Regional Administrator. Also, if EPA has already disapproved or in the next 120 days disapproves any submission that has been made, the conformity status of transportation plans and TIPs will lapse March 24, 1994. These delays are intended to give MPOs and others in these areas equitable notice of this rule's requirements and reasonable opportunity to adjust to them.

EPA believes that the restrictions just stated following a finding that a control strategy submittal is incomplete or following disapproval of such a submittal are inappropriate if the only reason for these findings is that the State has not completed legislation or rulemaking to put all of the measures in its otherwise adequate strategy into enforceable legal forms. A State may submit a SIP revision (or may have already submitted one prior to today) to EPA which contains certain emission reduction measures in adopted rule or other legally enforceable form which are by themselves clearly inadequate to meet the relevant emission reduction requirement of the Clean Air Act (for example, the 15 percent rate-of-progress requirement for moderate and above ozone nonattainment areas), but accompanied by commitments to complete adoption of additional specifically identified measures which if implemented would bring the total emission reduction to an approvable level (according to calculations in the SIP submittal).

EPA may find such a SIP submittal incomplete and so notify the State, with an explicit statement that EPA nevertheless considers the revision to meet the description just given. In this case, the transitional period would continue. The consequences described above for failure to submit or for incompleteness (limited period for further conformity determinations, lapse of the plan and TIP) will not ensue on the timeframe described there. Rather, the MPO and DOT may treat the submittal as if it were complete and still being evaluated by EPA for substantive approvability, and continue to make conformity findings for new plans and TIPs and for projects using transitional criteria. However, EPA is concerned that the MPO not rely on the budget indefinitely if the State in fact does not complete adoption of the measures to which it committed or other equivalent measures. Therefore, the rule provides for the plan and TIP to lapse 12 months after the date of the EPA incompleteness finding, or 12 months from today in the case of an incompleteness finding made prior to today. This lapse will be avoided if the State remedies the failure and the EPA Regional Administrator recognizes that action by letter.

If the conformity status of the transportation plan and TIP lapse, no new project-level conformity determinations may be made until a control strategy SIP revision is submitted (thereby starting the transitional period). Also, although non-federal projects do not require conformity determinations, recipients of Federal aid may not approve or adopt regionally significant non-federal projects in the absence of a conforming plan and TIP (see section IV.L. of this preamble). Only projects which are exempted by the conformity rule, projects which have completed all plan, TIP, and project conformity determinations, and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds may proceed.

5. Future SIP Revisions

For many ozone nonattainment areas, post-1996 reasonable further progress demonstrations and attainment demonstrations are required to be submitted by November 15, 1994. This constitutes a deadline for a control strategy implementation plan, and the requirements described above apply even if the 1996 reasonable further progress demonstration has been submitted or approved. For example, the conformity status of transportation plans and TIPs will lapse as described above if States fail to submit the post-1996 reasonable further progress and attainment demonstration within 120 days of this deadline. Similarly, the requirements of the transitional period will apply as described above once the post-1996 reasonable further progress and attainment demonstration is submitted.

Subsequent SIP revisions which adjust the control strategy and do not have a specific deadline established by the Clean Air Act trigger conformity redeterminations within an 18-month time period, as originally proposed in the NPRM. The transitional period requirements do not apply in the case of such SIP revisions.

C. Emissions Budgets

After SIPs which demonstrate reasonable further progress and attainment are submitted, conformity determinations will involve demonstrating consistency with the SIP's motor vehicle emissions budget. Section 176(c)(2)(A) of the Clean Air Act specifically requires conformity determinations to show that "emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan." SIP demonstrations of reasonable further progress, attainment, and maintenance contain these emissions estimates and "necessary emission reductions." The emissions budget is the mechanism EPA has identified for carrying out the demonstration of consistency.

While other mechanisms exist to show that Federal actions do not cause or contribute to a violation of an ambient standard for a regional pollutant—such as duplication of the SIP's dispersion modeling for the transportation network represented by the transportation plan or TIP—the Clean Air Act specifically requires an emissions-based comparison between the transportation plan/TIP and the SIP. EPA believes that with respect to regional-scale pollutants, such a comparison also suffices as the required showing that violations will not be caused or exacerbated, since the air quality analysis in the SIP can be relied upon to show that the SIP emission level is acceptable in this regard.

1. What Is a Motor Vehicle Emissions Budget?

Motor vehicle emissions budgets are the explicit or implicit identification of the motor vehicle-related portions of the projected emission inventory used to demonstrate reasonable further progress milestones, attainment, or maintenance for a particular year specified in the SIP. The motor vehicle emissions budget establishes a cap on emissions which cannot be exceeded by predicted highway and transit vehicle emissions.

SIPs for some nonattainment areas will not have budgets because there is no Clean Air Act requirement for a SIP revision demonstrating attainment, reasonable further progress, or annual emission reductions. The rule provides for such areas in § 51.464, "Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment."

Other SIPs submitted to EPA prior to today's rule which demonstrate attainment, reasonable further progress, or annual emissions reductions do have budgets as defined in the rule, although they may not have their emissions budgets explicitly labeled because the requirement for a comparison to an emissions budget is established in this rule and may not have been fully appreciated by the State. In such cases, the attainment or maintenance highway and transit mobile source inventory serves the purpose of a motor vehicle emissions budget (see "Locating the Motor Vehicle Emissions Budget in the SIP," below). EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13557, April 16, 1992) did indicate EPA's intent to require the use of SIP motor vehicle emissions budgets for conformity demonstrations. In future SIPs, explicit identification of the emissions budget is strongly preferred in order to reduce misinterpretation.

The SIP necessarily defines an emissions budget for the attainment year in an attainment demonstration, for the maintenance period in a maintenance plan, and for certain milestone years. The SIP may also set budgets for interim years as necessary to demonstrate attainment, and the SIP may explicitly provide for a NO_x budget on the dates for which ozone nonattainment areas are required to have VOC milestones.

The emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a different budget is defined or until a SIP revision modifies the budget. For example, an emissions budget for a milestone year remains in effect until the next milestone year, when another emissions budget supersedes it. The attainment demonstration establishes an emissions budget for the attainment year, and that budget remains in effect until the area is redesignated and EPA approves a maintenance plan, which may establish a different emissions budget. When a required SIP revision which should add additional budget years is late or disapproved, the conformity status of the transportation plan and TIP will subsequently lapse, and the existing budget ceases to apply for the purposes of demonstrating conformity.

The emissions budget included in the attainment demonstration may be different than that included in the maintenance demonstration since the geographic and temporal distribution of emissions may change between the two modeling efforts. Also, a State may choose to shift the balance between motor vehicles and other sources, provided such a shift is consistent with continuing maintenance.

At the State's option, a SIP may contain an early demonstration of maintenance following the attainment date, with a different motor vehicle emissions budget in each year. In all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration and any interim requirements of the Clean Air Act.

In general, all pollutants and associated precursors for which an area is designated nonattainment or subject to a maintenance plan approved under Clean Air Act section 175A and which are associated with highway and transit vehicles should be explicitly identified in the emission budget and included in the SIP. Conformity determinations must demonstrate consistency with the motor vehicle emissions budget for each pollutant and precursor identified in the SIP.

However, in some nonattainment and maintenance areas, the SIP may demonstrate that highway and transit vehicle emissions are an insignificant contributor to the nonattainment problem, for example, CO or PM–10 violations near industrial sources. For areas with control strategy SIPs which have already been submitted and which demonstrate that motor vehicle emissions (including exhaust, evaporative, and reentrained dust emissions) are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of that pollutant. If the control strategy SIP demonstrates that motor vehicle emissions of a precursor are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of the precursor. In the future, the SIP must explicitly state that no regional emissions analysis of a particular pollutant or precursor is necessary for attainment, and therefore is not necessary for conformity.

All highway and transit related source categories that contribute to the nonattainment problem should be identified and included in the motor vehicle emissions budget, including exhaust, evaporative, and reentrained dust emissions (including emissions from antiskid and deicing materials, where treated as mobile source emissions by the SIP). States vary in whether they treat vehicle refueling emissions as mobile or stationary area sources. If the SIP is silent or ambiguous on intent regarding refueling emissions, these emissions should not be considered to be part of the motor vehicle emissions budget and the regional emissions estimates for a plan, TIP or project should not include them. It is more common to include refueling emissions in a non-mobile source category, and MPOs do not have control over refueling emissions.

2. Emissions Budget Test

A regional analysis must estimate the emissions which would result from the transportation system if the transportation plan and TIP were implemented, and compare these emissions to the motor vehicle emissions budget identified in the SIP. If the emissions associated with the transportation plan and TIP are greater than the motor vehicle emissions budget, the transportation plan and TIP do not conform. This may occur even

though all transportation measures in the SIP are being properly implemented; for example, if population and VMT growth are higher than predicted when the SIP was developed, motor vehicle emissions may exceed the SIP's budget for such emissions.

Under no circumstances may motor vehicle emissions predicted in a conformity determination exceed the motor vehicle, pollutant-specific emissions budget. If actual emissions of pollutants are lower than their SIP emissions budgets, or if the emissions budgets themselves are lower than actually necessary to demonstrate attainment, maintenance, or other milestones, the motor vehicle emissions budget may be increased only if the State submits a SIP revision which changes the various emissions budgets. Such a SIP revision must meet all applicable Clean Air Act requirements, including those of section 110(l). Conformity determinations may not trade emissions among SIP budgets for pollutants, precursors, or highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes mechanisms for such trading.

Today's final rule requires transportation plans and TIPs to demonstrate consistency with the SIP's motor vehicle emissions budget by performing a regional emissions analysis. This emissions analysis must include emissions from the nonattainment or maintenance area's entire existing transportation network (as described in the rule), in addition to all proposed regionally significant Federal and non-federal highway and transit projects. The regional emissions analysis must estimate total projected emissions for certain future years (including the attainment year), and may include the effects of any emission control programs which are already adopted by the enforcing jurisdiction (such as vehicle inspection and maintenance programs and reformulated gasoline and diesel fuel). In the transitional period, the effects of emission control programs which are committed to in the submitted SIP may also be included.

When performing the regional emissions analysis for the purpose of the budget test, attention must be paid to the season and time period for which the SIP defines the emissions budget, and the period used by the MPO and DOT to estimate regional emissions for a plan, TIP, or project. For example, reasonable further progress milestones for ozone areas are defined in the Clean Air Act based on annual emissions, but EPA interprets this to mean emissions when temperatures, congestion levels, and other conditions are typical of a day during the ozone season (a typical summer weekday), multiplied by 365 days, rather than actual annual emissions across all seasons. Further, EPA guidance in "Procedures for Emission Inventory Preparation Volume IV: Mobile Sources" (EPA 450/4–81–026d (revised), 1992) specifies a particular way to select temperature values for the emissions estimates. Also, SIPs may calculate emission reductions from fleet turnover using either July 1 of the milestone year, or November 15 (by interpolating between the July 1 and January 1 outputs of the emissions model). The MPO and DOT should duplicate the temperature, season, and time period inputs used in the SIP when estimating future emissions for comparison to the emissions budget, or must apply appropriate adjustments to avoid any distortion in the comparison.

Where a nonattainment area contains multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area. If a metropolitan planning area includes more than one air basin or nonattainment area, a conformity determination must be made for each air basin or nonattainment area. The conformity SIP revision must establish interagency consultation procedures which address how conformity determinations will be made in such circumstances.

3. Locating the Motor Vehicle Emissions Budget in the SIP

Existing SIPs may not all have an explicitly labeled motor vehicle emissions budget. EPA indicated in the General Preamble to Title I of the Clean Air Act Amendments of 1990 that the highway and transit vehicle related emissions included in the SIP would be considered to be the emissions budget. Without a clearly indicated intent in the SIP otherwise, the SIP's estimate of future highway and transit emissions used in the milestone or attainment demonstration is the motor vehicle emissions budget.

In general, the SIP will either (1) demonstrate that once the control strategies in the SIP are implemented, emissions from all sources will be less than the identified total emissions that would be consistent with attainment, maintenance, or other required milestone; or (2) demonstrate that emissions from all sources will result in achieving attainment prior to the attainment deadline or will result in ambient concentrations in the attainment deadline year which are lower than necessary to demonstrate attainment. In either case, the SIP demonstration will rely on a projection of emissions from each source category for the attainment year, maintenance period, or other milestone year. The projection of motor vehicle emissions is the motor vehicle emissions budget.

Where the estimate of emissions from all sources is less than required to demonstrate the milestone, attainment, or maintenance, the SIP may explicitly quantify the "safety margin" and include some or all of it in the motor vehicle emissions budget for purposes of conformity. Where the existing SIP is unclear, the State air agency and the appropriate EPA Regional Office should be consulted through the interagency consultation process to define the emission budget. Unless the SIP explicitly quantifies the "safety margin" and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the SIP's estimate of future highway and transit emissions.

If the attainment demonstration includes projections of emissions beyond the attainment year, these projections are not considered emissions budgets for the purposes of transportation conformity unless the SIP explicitly states such an intent. Where the attainment SIP does not establish explicit emissions budgets for years following the attainment year, emissions in analysis years later than the attainment year must be consistent only with the attainment year's emissions budget.

Like the attainment SIP, the maintenance plan contains a quantitative demonstration that the NAAQS can be met for a given period of time into the future. Section 175A of the Clean Air Act requires a maintenance plan to provide for maintenance for a period of ten years from its approval by EPA, but the Act does not specify any particular milestones within this period for which an analysis and demonstration must be made. At a minimum, the SIP should establish an emissions level that will demonstrate maintenance at the end of the ten-year period. EPA will be releasing more specific guidance regarding conformity to budgets in maintenance plans in the future. For areas that have been redesignated to attainment prior to this rule, the MPO and DOT should work with the EPA Regional Office through the interagency

consultation process to interpret the maintenance plan to define an emissions budget. EPA recommends amending maintenance plans to explicitly identify the motor vehicle emissions budget.

Some moderate PM–10 nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM–10 standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity. Until an attainment demonstration is submitted, these areas must satisfy the interim period criteria in order to demonstrate conformity.

The above discussion on locating the emissions budget in the SIP assumed a simple case in which the geographic boundary of the area to which the budget applies is the same as the nonattainment area boundary. This is the case for ozone nonattainment areas. The Clean Air Act explicitly defines reasonable further progress requirements in terms of the emissions inventory for the entire nonattainment area, and EPA believes that the best interpretation is that the Act also means to have the attainment budget also be defined for the nonattainment area per se. While ozone area SIPs may contain estimates of current and future emissions outside the nonattainment area, these are not budgets for purposes of conformity (unless the State in its conformity SIP revision chooses to go beyond the requirements of the rule).

For CO, PM–10, and NO_2 nonattainment areas, there are either no Clean Air Act requirements for reasonable further progress, or the requirements are not explicitly defined in terms of the nonattainment area inventory as a whole. Moreover, it may be possible for a SIP to demonstrate attainment for one of these pollutants based on an emissions and dispersion modeling domain that is either less or more than the nonattainment area. For example, an entire county may be designated nonattainment for CO, but the actual area of violations and the area analyzed in the SIP may be less than the entire county. CO, PM–10, and NO_2 modeling may also in some cases extend beyond the boundary of the designated nonattainment area, to capture the effect of transport from surrounding areas. If the geographic domain of an attainment demonstration and its emissions estimates are less than the CO, PM–10, or NO_2 nonattainment area and the SIP does not explicitly indicate an intent otherwise, EPA believes the budget applies to that domain. The MPO and DOT should analyze emissions from the transportation plan and TIP for the same area in a consistent manner. If the modeling domain extends beyond the nonattainment area, the budget applies for the portion within the nonattainment area boundary.

4. Revisions to the Emissions Budget

The emissions budget may be revised at any time through the standard SIP revision process, provided the SIP demonstrates that the revised emission budget will not threaten attainment and maintenance of the standard or any milestone in the required timeframe.

The State may choose to revise its SIP emissions budgets in order to reallocate emissions among sources or among pollutants and precursors. For example, if the SIP is revised to provide for greater control of stationary source emissions, the State may choose to increase the motor vehicle emissions budget to allow corresponding growth in motor vehicle emissions (provided the resulting total emissions are still adequate to provide for attainment/maintenance of the NAAQS and to satisfy all other applicable requirements of the Clean Air Act, including section 110(l)). Such a SIP revision must be approved by EPA before it can be used for the purposes of transportation conformity.

In cases where a SIP submitted prior to November 24, 1993 does not have an explicit emissions budget but quantifies a "safety margin" by which emissions from all sources are less than the total emissions that would be consistent with attainment, the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA. All other SIP revisions adjusting the highway and transit emissions budget must be approved by EPA before they are used for the purposes of transportation conformity.

EPA would allow early use of a SIP revision which reallocates part of the safety margin because some SIPs were developed before this rule and without awareness that in the absence of an explicit budget, the emissions projections would be used as the emissions budget for the purposes of conformity. Areas which submit SIPs with budgets after the publication of this rule will also be using the SIP's budget for conformity purposes before it is approved by EPA.

5. Subregional Emissions Budgets

The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard. The conformity determination must demonstrate consistency with each subregional emissions budget in the SIP. EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 discussed the possibility of subregional budgets (57 FR 13558, April 16, 1992).

6. Requirements for a SIP Control Strategy to Meet the Budgets

A SIP may not select a desired level of future highway and transit emissions and rely on the requirement for conformity findings by the MPO and DOT to achieve that level of emissions without specifying control measures which are expected to result in that emission level and demonstrating that each measure is enforceable and has adequate resources for implementation (see sections 110(a)(2) (A), (B), and (E) of the Clean Air Act). An approvable SIP must indicate how the State expects to be able to achieve each budgeted level (including any subregionally budgeted level) of emissions by the relevant date. The MPO will usually have been involved in estimating "baseline" future emissions (i.e., emissions in the absence of any new actions to control them), and in designing and estimating benefits for any new controls that are identified in the SIP.

Any type of transportation action affects emissions under some conditions, and therefore the SIP's demonstration of future emissions will in a sense rely on the full collection of those actions that were assumed. EPA believes that all actions which the SIP relies on to reduce travel, such as plans for expanded transit, HOV lanes, other high occupancy facilities or services, and other demand management measures which are reflected in the emissions analysis, do require enforceable commitments from the agencies who will undertake them. Generally, inclusion in the transportation plan and TIP in effect at the time of SIP submittal will be sufficient evidence of adequate resources.

D. NO_2 and PM–10 in the Interim Period

EPA proposed in the NPRM to allow no increase in NO_X and PM–10 emissions above 1990 levels in NO_2 and PM–10 nonattainment areas. As described in the preamble to the NPRM, EPA proposed this requirement rather than the build/no-build test proposed for ozone and CO areas because EPA is not certain what degree of VMT reduction might be needed to pass a build/no-build comparison, and because the Clean Air Act did not appear to require it. (The requirement for contribution to annual emission reductions only refers to ozone and CO areas.)

EPA received significant public comment that a 1990 ceiling on NO_X and PM–10 emissions would impose stringent VMT reduction requirements on many areas. In particular, because PM–10 emissions from reentrained dust are closely related to VMT levels, areas with significant emissions from reentrained dust may have to freeze or decrease VMT in order to demonstrate emissions below 1990 levels.

Therefore, in the final rule EPA allows NO_2 and PM–10 nonattainment areas to demonstrate conformity by either keeping emissions below 1990 (or some other baseline) levels, or by satisfying a build/no-build test. EPA believes that either of these demonstrations is sufficient to assure that there is no increase in the frequency or severity of existing violations during the interim period which can be attributed to the transportation plan, TIP, or project itself. The build/no-build test is consistent with the interim requirements for ozone and CO areas and sufficient to ensure that the transportation plan, TIP, or project is not itself causing a new violation or exacerbating an existing one. EPA is retaining the option of keeping emissions below 1990 (or some other baseline) levels because some commenters expressed support for this approach, and EPA believes some flexibility should be allowed in the absence of definitive information on the VMT reductions necessary for an area to meet either the build/no-build test or an emissions ceiling.

EPA noted in the preamble to the NPRM that there is no requirement for a 1990 inventory in PM–10 and NO_2 nonattainment areas, and invited comment on allowing other years to be used as the baseline. However, Clean Air Act section 172(c)(3) requires a "current" inventory of emissions. Since this will be 1990 in most cases, the final rule establishes 1990 as the baseline year, unless the conformity SIP revision defines it as the year of the baseline emissions inventory used in control strategy SIP development.

E. NO_x Reductions in Ozone Areas in the Interim Period

The NPRM did not propose to require demonstration of NO_x reductions in ozone nonattainment areas during the interim period with a build/no-build test. EPA received significant public comment that the Clean Air Act mandates such reductions. After reviewing the comments and the statute, EPA agrees that Clean Air Act section 176(c)(3)(A)(iii)'s reference to section 182(b)(1) requires a contribution to reductions in NO_x emissions during the interim period, as that section requires reductions in both VOC and NO_x as necessary to demonstrate attainment. Therefore, the final rule requires the build/no-build test in ozone nonattainment areas to be satisfied for both VOC and NO_x, unless the Administrator determines under section 182(f) of the Clean Air Act that additional reductions of NO_x would not contribute to attainment in any area.

F. Transportation Control Measures (TCMs)

1. Demonstration of Timely Implementation

Like the proposal, the final rule will allow the "timely implementation" criterion to be satisfied even if TCMs are behind the schedule in the SIP, i.e., even if a SIP milestone for TCM implementation has already passed or the plan or TIP in question will result in a future implementation milestone being missed. EPA received comment on both sides of this issue, and EPA continues to believe that this approach is a practical necessity to accommodate uncontrollable delays. However, because section 176(c)(2)(B) of the Clean Air Act requires "timely implementation" of TCMs, conformity may be demonstrated when TCMs are delayed only if all obstacles to implementation have been identified and are being overcome, and if State and local agencies with influence over approvals or funding are giving TCMs maximum priority.

EPA believes that the determination of "timely implementation" should focus on the prospective schedule for TCM implementation, and all past delays should be irrelevant. Therefore, it is permissible for the plan/TIP to project completion of a TCM implementation milestone which is later than the SIP schedule if the lateness is due to delays which have already occurred, or due to the time reasonably required to complete remaining essential steps (such as preparation of a NEPA document, design work, right-of-way acquisition, Federal permits, construction, etc.). It is also permissible to allow time for obtaining state or local permits if the project has not yet advanced to the point where a permit could have been applied for.

However, where implementation milestones have been missed or are projected to be missed, agencies must demonstrate that maximum priority is being given to TCM implementation. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation—for example, by increasing the funding rate—even though the timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of programmed funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed (within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA)) with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made. The burden of proof will be on the agencies making conformity determinations to demonstrate that the amount of time to complete remaining implementation steps will not exceed that specified in the SIP without good cause, and that where possible, steps will be completed more rapidly than assumed in the SIP in order to make up lost time.

The determination that obstacles to implementation are being overcome and maximum priority is being given to TCMs is a specific issue which the conformity SIP revisions' interagency consultation procedures must address.

Considerable comment was received regarding priority for TCMs and demonstration of timely implementation of TCMs. In response to comments that a part of § 51.394 "Priority" could be interpreted to weaken timely implementation of TCMs rather than promote it, EPA has deleted language

which required funding decisions to promote the timely implementation of transportation measures in the applicable implementation plan "to the extent that funds are available."

There was also significant comment regarding the relationship between TCM funding and timely implementation. Some commenters suggested that TCMs should be funded before obligations were made for any other TIP projects, or that TCM funds should in some way be set aside. EPA is also concerned that without explicit funding protection for TCMs, it is possible that TCMs in a conforming TIP may not actually have funds obligated. Timely implementation could then be demonstrated in the next TIP through additional promises to fund the TCMs in the upcoming TIP cycle, but no mechanism would force the MPO or project sponsor to obligate funds for TCMs in that TIP cycle once it has started.

After extensive consideration of this issue, EPA has concluded that the Federal transportation funding process does not offer practical opportunities to control the use of appropriated funds once they are apportioned or allocated. State DOTs and MPOs need flexibility in establishing the sequence in which projects are funded, due to unpredictable events in the timing of the project implementation process. This rules out requiring all TCMs to be obligated before other projects.

Furthermore, setting aside funds for TCMs poses special difficulties. A set-aside would in effect be a lower limit on obligations for all other projects. DOT informs EPA that it is not authorized to reduce States' obligation limits in this way. In addition, when TCMs are legitimately delayed for reasons beyond any agency's control, the obligation authority cannot be reserved. If a State will be unable to use its obligation authority by the end of the Federal fiscal year it must be released so DOT can redistribute it to other States that can use it. Any obligation authority not used by the end of the fiscal year lapses and is not available in subsequent years. Therefore, EPA believes it is not reasonable to impose extra controls on how MPOs and State DOTs spend Federal highway and transit funds, beyond the requirements for maximum priority for approval and funding and for timely implementation of TCMs. The ISTEA requirements for fiscally constrained transportation plans and TIPs also provide assurance that funds are reasonably available to implement TCMs as well as the other projects in the transportation plan and TIP.

2. SIP Revisions Due to TCM Delays

The preamble to the NPRM requested comment on whether a SIP revision should be required when a TCM falls behind its implementation schedule in the SIP. The final rule does not automatically require a SIP revision when a TCM falls behind the schedule in the SIP. However, plans and TIPs cannot be found in conformity unless the "timely implementation" criterion is satisfied. Therefore, if obstacles to TCM implementation are not being overcome because it is impossible to do so, if State and local agencies are not giving maximum priority to TCMs which are behind schedule, or if the original sponsor or the cooperative planning process decides not to implement the TCM or decides to replace it with another TCM, a SIP revision which removes the TCM will be necessary before plans and TIPs may be found in conformity. (In order to be approved by EPA, such a SIP revision must include substitute measures that achieve emissions reductions sufficient to meet all applicable requirements of the Clean Air Act, including section 110(l).) The interagency consultation procedures established by the conformity SIP revision must include a process to discuss whether delays in TCM implementation should be handled by submitting SIP revisions to remove or substitute TCMs.

This approach is generally consistent with the comments EPA received on this issue. Most commenters did not favor an automatic requirement for a SIP revision in the case of every TCM implementation delay, although many believed that SIP action might be appropriate in certain circumstances. Several commenters supported requiring the SIP to include substitute TCMs and funding sources which would be implemented to ensure that emission reduction goals are met if the implementation of other TCMs were delayed. Although the SIP may have automatic project and/or funding substitutes in the case of TCM delays, the final rule does not require this. In general, the Clean Air Act does not require individual measures to have automatic substitutes in case of non-implementation.

3. Retrospective Analysis of TCMs

Neither the proposal nor the final rule requires the determination of timely implementation to be based on retrospective analyses of TCM effectiveness or otherwise requires MPOs or DOT to affirmatively study and determine whether each TCM had its predicted effectiveness (unless the SIP explicitly includes such a requirement). However, the final rule does require any analysis supporting a conformity determination to reflect the latest available information regarding the effectiveness and actual implementation of the area's TCMs, in order to satisfy the criterion regarding use of the latest planning assumptions.

EPA believes that the transportation community should be held responsible through the conformity process for implementing TCMs which the State committed to in the SIP. However, EPA does not believe it is appropriate to hold the transportation community responsible for achieving the emission reduction goals predicted for each TCM, especially given the difficulty in predicting TCM effectiveness or even measuring project-specific benefits once TCMs are implemented. Because any shortfall in emissions reductions is reflected in future conformity determinations through use of the latest planning assumptions, and because conformity is ultimately based on a comparison with an emissions budget, EPA believes that the conformity process adequately addresses the issue of TCM effectiveness. Shortfalls in emissions reductions from TCMs will either be offset by other measures in the transportation plan and TIP so that the motor vehicle emissions budget is still met, or the transportation plan and TIP will not be in conformity. In addition, serious and above ozone areas are required to track aggregate VMT and vehicle emissions under section 182(c)(5)(A) of the Clean Air Act and overall emissions under section 182(g). CO areas above 12.7 parts per million must also track aggregate VMT each year. Conformity determinations are required to use the latest planning assumptions.

4. TCMs in the Absence of a Conforming Transportation Plan and TIP

Individual projects may not be funded, accepted, or approved unless there is a currently conforming transportation plan and TIP. EPA received public comment indicating that TCMs in the SIP should be able to proceed even in the absence of a conforming transportation plan and TIP, because the commenters considered them to be consistent with the purpose of the SIP.

The final rule would not allow TCMs to proceed without a conforming transportation plan and TIP. Clean Air Act sections 176(c)(2) (C) and (D) clearly require conforming transportation plans and TIPs to exist in order to find projects in conformity. EPA does not believe that Clean Air Act section

176(c)(1)'s very general definition of conformity as meaning conformity to the purpose of the SIP overrules this more specific requirement. According to the final rule, only exempt projects may proceed without a conforming plan and TIP, because these projects are emissions neutral or constitute a de minimis exception to the requirement for a conforming transportation plan and TIP to be in place.

Although it may appear intuitively counterproductive to delay transportation projects which benefit air quality just because an area is unable to develop a conforming transportation plan and TIP, the underlying philosophy of the conformity requirement for transportation plans and TIPs is that transportation actions must be planned and evaluated for emissions effects in the aggregate and for the long term. Allowing project-by-project approvals in the absence of a conforming transportation plan and TIP is contrary to this philosophy. If TCMs proceed outside the context of the transportation plan and TIP, there is no assurance that the alternatives analysis has been properly conducted and that the effect of the TCM on the flow within the network has been properly accounted for.

Furthermore, EPA believes that because many compromises and trade-offs among involved parties may be required to develop a conforming transportation plan and TIP or to revise the SIP so that this is possible, it is important for all constituencies to have a stake in their development. Allowing TCMs to proceed without a conforming transportation plan and TIP may undermine the cooperative transportation planning process.

G. Enforceability

Several commenters remarked that project-level mitigation or control measures which are relied upon to demonstrate conformity should be enforceable. EPA agrees that some mechanism is necessary to ensure that the project design concept and scope (including any mitigation or control measures) which is assumed in a conformity analysis is actually implemented during the construction of the project and operation of the resulting facility or service.

The final rule requires that before a project may be found in conformity, there must be written enforceable commitments from the project sponsor and/or operator that necessary project-level mitigation or control measures will be implemented as part of the construction and operation of the project. Specifically, the rule refers to project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM–10 or CO impacts, or which are included in the project design concept and scope which was used in the supporting plan, TIP, and/or project-level conformity analyses as a condition for making conformity determinations.

Normal project design elements (dimensions, lane widths, materials, etc.) are not mitigation measures. But the mitigation measures would include, for example, construction practices to control fugitive dust. Mitigation measures would also include certain operating policies such as differential SOV/HOV pricing strategies and high-occupancy vehicle designation, unless they are shown not to be critical to the conformity determination. For these cases, the commitment may be either to a specific operating policy, or to an interactive process to determine the operating policy which produces a certain effect (i.e., the effect assumed in the conformity analysis). For example, a project sponsor/operator could commit to either a certain toll, or to a process of setting a toll which results in a given level of average daily traffic on the facility.

Actual other projects that are assumed in a current project's conformity analysis to be completed and operational at a future date—such as parallel non-SOV service—are not considered to be mitigation or control measures for the current project and would not require written commitments. The requirement to use the latest planning assumptions will ensure that conformity analyses reflect the current plans for implementation of such other projects. In combination with the requirement for fiscal constraint and improved metropolitan planning procedures, EPA believes this is adequate assurance that these other projects or their equivalent will be implemented.

If the regional emissions analysis supporting a plan or TIP conformity determination includes project-level mitigation or control measures in a project's design concept and scope, but written commitments from the project sponsor/operator are not obtained prior to the project-level conformity determination, the project must be considered to be "not from a conforming plan and TIP." The project will therefore need to be included in a new regional emissions analysis which may not assume implementation of the mitigation or control measures.

In addition to requiring that written commitments to mitigation measures be obtained from project sponsors prior to making a positive conformity determination, the final rule also requires that project sponsors must comply with such commitments once made. Pursuant to these final rules, EPA can enforce mitigation commitments directly against project sponsors under section 113 of the Clean Air Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act. Once a State conformity SIP revision requiring written commitments to mitigation measures is approved by EPA, such commitments can also be enforced directly against project sponsors by States and citizens under section 304 of the Clean Air Act, which provides for citizen enforcement of requirements under an applicable implementation plan relating to transportation control measures or air quality maintenance.

The concern was raised to EPA that direct enforcement against non-federal parties could violate the prohibition against indirect source review programs in Clean Air Act section 110(a)(5). However, EPA concludes that this prohibition is not relevant to the requirement that project sponsors comply with mitigation commitments. EPA is not promulgating a generally applicable requirement for review of all indirect sources. Rather, EPA is enabling Federal agencies to make positive conformity determinations under Clean Air Act section 176(c) based on voluntary commitments by project sponsors to complete mitigation measures. Project sponsors are not obligated to make such commitments. Where they volunteer to do so to facilitate Federal conformity determinations, EPA is requiring them to live up to such commitments. Without such a requirement, EPA could not allow positive conformity determinations based on mitigation measures prior to actual construction of mitigation measures.

If at a later time (only during the budget period, which extends to or beyond the attainment date) the MPO or project sponsor believes the mitigation measure is no longer necessary for conformity, the project operator may be relieved of its obligation if it shows in a regional emissions analysis of the transportation plan/TIP that the emissions budget(s) can still be met without the mitigation measure, and if it shows that no hot spots will be caused or worsened by not implementing the mitigation measure. The MPO and DOT must confirm that the conformity determinations for the transportation plan, TIP, and project would still be

valid if the mitigation measure is not implemented.

If the mitigation measure was not included in the project design concept and scope which was modeled for the purpose of the transportation plan and TIP conformity determination, the project sponsor or operator would not have to perform a regional emissions analysis in order to be relieved of its obligation. The MPO and DOT could confirm that the conformity determinations for the transportation plan and TIP are valid without further emissions analysis. However, a hot-spot analysis would be necessary in order to demonstrate that the project-level conformity determination is valid even without the mitigation measure.

H. Time Limit on Project-Level Determinations

Several commenters expressed concern that by proposing in the "Applicability" section that projects with a completed NEPA document and a project-level conformity determination may proceed unless there has been a significant change in design concept and scope or a supplemental environmental document for air quality reasons, the proposal would have allowed too many projects to proceed without an updated conformity analysis. Upon reflection, EPA believes that it is appropriate to respect prior determinations for projects which have received final approval, provided there have been no significant changes in project design concept and scope and major steps have been taken to advance the project. However, EPA believes that it is reasonable to require a new conformity determination if there is no ongoing activity that would be delayed during the redetermination process and if several years have elapsed since the original determination, during which emissions models and planning assumptions may have changed.

EPA wants to balance two conflicting goals: (1) To maintain a stable and efficient transportation planning process by avoiding costly reanalysis and project redesign, and (2) to protect air quality by taking into account changes to the real world or to our understanding of it (e.g., changes to the transportation network, the planned transportation network, planning assumptions, or models). By proposing to allow projects which have final approval to proceed, and by proposing to require only one project-level conformity determination, EPA intended to avoid disrupting the implementation process for projects which are underway. To protect air quality by considering new information and changed circumstances, the NPRM relied on DOT's process for reevaluating NEPA documents and determining if supplemental NEPA documents are necessary. However, this process does not have clear consultation procedures or criteria for determining when supplemental analysis is necessary.

Therefore, the final rule allows implementation to continue for only those projects which have a completed NEPA document and project-level conformity determination, and which have had one of the following major steps within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of right-of-way; or approval of the plans, specifications and estimates. The rule would require a new finding of project-level conformity if the State seeks DOT authorization for a new step or phase of a project which has not had one of these major steps within the past three years. Thus, in contrast to the proposal, project-level conformity determinations lapse automatically under certain circumstances rather than lapsing through a DOT determination that a supplemental NEPA document is necessary. DOT's NEPA regulations require reevaluation of NEPA documents for projects which have not had major action for three years; the conformity process will ensure that the effects of new planning assumptions and emissions models are explicitly and affirmatively considered with the benefit of interagency consultation.

Under the EPA/DOT interim guidance issued June 7, 1991 and under the NPRM, projects which had received a conformity determination but had been inactive for more than three years were allowed to be included in the "Baseline" (no-build) scenario, and were also included in the "Action" (build) scenario. Consequently, they did not influence the outcome of the build/no-build comparison even if the actual effect of their completion would be to increase emissions. For the same reasons that EPA believes such inactive projects should receive new project-level conformity determinations before being reactivated, EPA believes that there should be one cycle of plan and TIP analysis in which the project is treated as a newly proposed project. Accordingly, the rule requires that for the first instance after today in which the MPO and DOT apply a build/no-build test to the plan and TIP, the project should appear in the build but not in the no-build scenario, if the project remains in the plan or TIP. In subsequent plan and TIP conformity determinations, the project will appear in both scenarios regardless of how much longer it remains inactive or whether it experiences a new period of inactivity. The project's effects will always be accounted for in the budget test during the transitional or control strategy period, as long as the project has not been removed from the transportation plan.

The requirement to redetermine project-level conformity is independent of the requirement to include the project in the build scenario for one plan and TIP conformity determination. The project may be considered to come from a currently conforming transportation plan and TIP for the purposes of a project-level conformity determination even if the project has not yet been removed from the no-build scenario. This would not relieve the MPO of the responsibility to include the project's emissions only in the build scenario in the next plan and TIP redetermination. However, the MPO and the project sponsor should consult on whether it is desirable to approve the project before it has been analyzed with its emissions included in the build scenario only, since completing the project might reduce options for the rest of the transportation system.

Once a reactivated project with a lapsed project-level determination has been properly analyzed as part of a TIP, the redetermination of project-level conformity will depend upon the consideration of hot spots. In all cases, once a project-level determination has lapsed, a new finding of project-level conformity must be made. However, under certain circumstances, a redetermination of conformity for a project with respect to hot spots may be based on the analysis performed for the previous conformity determination. For example, if there have been changes since the previous analysis to the emissions models, planning assumptions, or current facts or assumptions regarding the transportation network or traffic volumes, it may still be possible to demonstrate that the hot-spot criterion is satisfied by making approximate calculations and judgments about the effect of the latest information on the previous analysis. If the previous analysis predicts a concentration which is not close to the ambient air quality standard and the changes in emissions models or planning assumptions are not significant, it may be possible to demonstrate conformity without a complete reanalysis. Such decisions about models and methodologies for hot-spot analyses are the subject of interagency consultation.

Although EPA wants the effects of new planning assumptions and

emissions models to be considered in project-level redeterminations, EPA does not intend the conformity process to force the development of supplemental NEPA documents. Under NEPA, supplemental documents are not necessary for every project which has not had major steps within three years. Supplemental NEPA documents should only be prepared when there are significant changes as defined by the responsible Federal agency. By allowing certain conformity determinations to be made on the basis of previous analyses, EPA hopes that rigorous reanalyses will not need to be performed in all cases.

I. Interagency Consultation

1. Minimum Standards

Like the proposal, the final rule requires the conformity SIP revision to establish detailed interagency consultation procedures. The rule lists topics which the procedures must address, such as frequency of meetings, without establishing minimum standards. The conformity SIP revision shall determine such specifics and identify the agencies to be involved in the interagency consultation process—in particular, the local transportation agencies (such as county-level implementing agencies) and local air agencies. Commenters suggested examples of specific requirements States may choose to include, such as consultation on the unified planning work program; early notification announcing the initiation of major work efforts; establishment of oversight committees involving all significant, interested parties; forms of announcement of comment periods; interagency notice of public hearings; specific consultation requirements for plans and TIPs which DOT returns to the MPO or State DOT for additional conformity findings; and availability of the MPO's summary and analysis of comments. Because EPA believes that each State should have the flexibility to design the most effective and appropriate consultation process, EPA is not specifically requiring States to include these measures. However, EPA encourages adoption of extensive, effective consultation procedures that will resolve problems as early in the process as possible and that will facilitate the development of approaches to maximize air quality and mobility.

Until the conformity SIP revision is approved by EPA, the consultation requirements of the final rule may be satisfied if reasonable opportunity for interagency consultation is provided.

2. Consequences of Failure to Follow Consultation Procedures

The preamble to the notice of proposed rulemaking asked for comment on what should be the consequences of failure to follow the consultation procedures established in the conformity SIP revision. The final rule establishes as a criterion for determining conformity that the MPO must follow the consultation procedures established by the SIP. Thus, failure to follow the consultation procedures established in the conformity SIP revision would be a violation of the SIP and would also undermine the validity of the conformity determination. The final rule's approach is consistent with the majority of commenters, who believed that the validity of a conformity determination should depend on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures.

3. Role of State Air Agencies in Conformity Determinations

EPA received many comments regarding the role of State air agencies in determining conformity. EPA believes that a well-defined conflict resolution process provides security to all parties and thus facilitates the informal negotiation and collaboration which is essential to cooperative planning. A well-defined process will also expedite the resolution of disagreements and help prevent the transportation planning process from falling behind schedule if consensus is not achieved.

Therefore, the final rule provides that conflicts among State agencies and between State agencies and MPOs must be escalated to the Governor if they cannot be resolved by State agency heads. The State air agency may delay an MPO or State DOT's conformity determination if interagency consultation has been pursued to the level of the head or chair of both agencies, and if the air agency escalates unsolved issues to the Governor within 14 calendar days. Once the State air agency has appealed, the Governor's concurrence must be obtained for the final conformity determination. If no appeal is made during the 14-day waiting period after the State DOT or MPO has notified the State air agency head of the resolution of its comments, the MPO or State DOT may finalize its conformity determination. The Governor may delegate his or her role in the process, but not to the head or staff of the State or local air agency, State DOT, State transportation commissions or boards, or MPO. The start of the 14-day clock and the form(s) of escalation are to be defined in the consultation procedures established by the SIP revision.

EPA is authorized to address consultation procedures by Clean Air Act section 176(c)(4)(B)(i), and EPA believes that this conflict resolution process is necessary to ensure a meaningful consultation process.

Although the rule does not specify a concurrence role for State air agencies, a State may choose to provide one when it establishes consultation procedures in its conformity SIP revision.

4. EPA Role in Conformity Determinations

The proposal solicited comment on whether EPA should be required to concur on conformity determinations or on the choice of models and methodologies. The final rule does not require EPA concurrence, and the Clean Air Act gives no direct authority to do so. However, the consultation procedures in the conformity SIP revision must address a process for response to the significant comments of involved agencies, including EPA.

5. Interagency Consultation Requirements in DOT's Metropolitan Planning Regulations

In addition to the consultation requirements established by the conformity SIP revision, DOT's metropolitan planning regulations (23 CFR part 450) impose consultation requirements on the MPOs. These regulations specifically require in nonattainment and maintenance areas an agreement between the MPO and the regional air quality agency which describes their respective roles and responsibilities for air quality-related transportation planning. Furthermore, these regulations require that in cases where the metropolitan planning area does not include the entire nonattainment or maintenance area, there must be an agreement between the State DOT, State air agency, other affected local agencies, and the MPO describing the process for cooperative planning and analysis for all projects outside the metropolitan planning area but within the nonattainment or maintenance area. This agreement must indicate how the total transportation-related emissions from the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity.

J. Frequency of Conformity Determinations

1. Grace Periods Following Triggers for Redetermination

Several comments were received regarding the 18-month grace period for redetermination of the transportation plan following the promulgation of the final rule or EPA approval of certain SIP revisions. Some commenters expressed the need for longer or more flexible grace periods, while others believed that the grace periods should be shorter in order to rapidly accommodate new requirements. EPA continues to believe that 18 months is an appropriate balance between the need for conformity determinations to reflect updated information and the need to maintain a stable transportation planning process. Often (if not always) the emissions budget in a newly-approved SIP will have already been used to demonstrate conformity of the existing plan and TIP months earlier through the "transitional period" requirements of the final rule, making the 18-month trigger redundant for budget purposes, although still important for assessing timely implementation of TCMs.

It should be emphasized that any new conformity determination following promulgation of the final rule or approval of a SIP revision involving the motor vehicle emissions budget or TCMs must be made according to the new requirements or the new SIP provisions. The 18-month time period is only a grace period before the conformity status of existing plans must be re-evaluatedin the context of the new requirements. DOT must make conformity determinations on existing plans according to the requirements of today's rule within 18 months, or the conformity status of existing plans will lapse, and no further conformity determinations on projects may be made. MPOs must act before DOT. These determinations may coincide with the periodic adoption of a new transportation plan or TIP, or with a transportation plan and TIP determination otherwise required by the rule (for example, one made to show conformity to a submitted emissions budget).

It should also be emphasized that any conformity determination made after the effective date of the final rule must be made according to the requirements of the final rule, even if the conformity SIP revision has not yet been approved. Once the conformity SIP revision has been approved, conformity determinations must also follow the requirements it establishes. The 18-month time period before transportation plans must have a new conformity determination satisfying the requirements of the final rule is not in any way tied to the deadline for submission of a conformity SIP revision.

2. TIP Amendments

The NPRM proposed that each TIP amendment requires a conformity determination, unless the amendment merely adds or deletes exempt projects. The final rule requires notification to other agencies of such plan and TIP revisions to be an interagency consultation procedure which must be established in the conformity SIP revision. Notification is not expected to occur before the fact, unless the conformity SIP revision requires it.

Some commenters expressed concern that not every TIP amendment involves regionally significant projects or changes in project design concept and scope which are significant. EPA believes that in such cases, no new regional emissions analysis would be required if the MPO and DOT make a finding that the previous analysis is still valid. That is, if the only changes to the TIP involve either projects which are not regionally significant and which were not or could not be modeled in a regional emissions analysis, or changes to project design concept and scope which are not significant, the MPO or DOT could document this and use data from the previous regional emissions analysis to demonstrate satisfaction of the criteria which involve regional analysis. EPA said in the preamble to the NPRM that when a conformity determination is based on a previous analysis and no new transportation or air quality modeling is otherwise required, EPA would not require new modeling solely to incorporate revised planning assumptions (although use of the latest information is always recommended). Therefore, EPA believes that conformity determinations on minor TIP amendments do not necessarily require new regional emissions analysis, although a positive conformity finding must be made and the regional emissions criteria must be satisfied by documenting the appropriateness of relying on the previous analysis.

One commenter also stated that full-blown conformity determinations should not be required if a project is moved between TIP years, but its completion date is still within the same year, or changes by more than a year but not enough to affect a milestone year. Under DOT's metropolitan transportation planning regulations, moving a project from the second or third year of the TIP does not require a TIP amendment, and therefore, a conformity determination would not be required. When a project in the first year of the TIP is delayed, the DOT regulations allow a project to be moved up from the second or third year using the ISTEA project selection procedures or other project selection procedures agreed to by the MPO, State, and transit operator. Furthermore, EPA believes that for conformity determinations on TIP amendments, the demonstration of timely implementation of TCMs should focus on the changes to the TIP which impact TCM implementation. A new status report on implementation of TCMs is not necessarily required for TIP amendments; the status report from the previous conformity determination may be relied on if by its nature the TIP amendment does not affect TCM implementation.

3. SIP Revisions as Triggers

Some commenters also stated that a full-blown conformity determination should not be required every time EPA approves a SIP revision which adds, deletes, or modifies a TCM. In order to be approved, such a SIP revision would have to demonstrate that the added, deleted, or modified TCM is still consistent with attainment, maintenance, or other Clean Air Act milestones. EPA believes that an MPO or DOT could rely on the regional analysis used in the SIP revision to make its conformity determination, if the MPO or DOT makes a finding that the SIP analysis meets this rule's requirements for how regional emissions analyses are performed.

In the preamble to the NPRM, EPA requested comment on whether the trigger for conformity redetermination following a SIP revision should be submission of the SIP revision to EPA, or EPA approval of the SIP revision. EPA received significant comment advocating each of these approaches. In general, the final rule follows the NPRM's approach of using EPA approval of the SIP revision as the triggering event. Section 176(c) of the Clean Air Act refers to conformity to the "applicable implementation plan," and the applicable implementation plan is a SIP which is approved by EPA.

In the context of the interim and transitional period requirements, the final rule does establish a regional emissions test which requires consistency with the motor vehicle emissions budget in the submitted SIP, even before it is approved. EPA requires use of a submitted SIP in this case because EPA believes a SIP emissions budget, even if it is not yet approved is

the best way to determine "contribution to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7)," in the absence of an approved SIP, as required by section 176(c)(3)(a)(iii) of the Clean Air Act. Even in this case, EPA does not consider the submitted control strategy SIP, or any other SIP which is not yet approved, to be an "applicable implementation plan."

Although EPA is in most cases not adopting the option of triggering conformity determinations with SIP submission, EPA believes the final rule's interim and transitional period criteria and procedures do address the concern of many commenters that the State's control strategy should be used as soon as possible for the purposes of conformity.

4. Additional Triggers

EPA believes the proposed triggers achieve an appropriate balance between maintaining the stability of the transportation planning process and considering new information as expeditiously as possible. Some commenters supported additional triggers, such as changes in assumptions about assumed transit ridership (due to changes in fare structure or the transit network), funding availability, or land use scenarios. EPA believes that these changes are unpredictable, and using them as triggers for new conformity determinations would be disruptive to the transportation planning process. However, the final rule requires such changes to be explicitly recognized in all future conformity determinations, in order to satisfy the criterion which requires use of the latest planning assumptions.

5. Lapsing of Transportation Plan and TIP Conformity Determinations

The final rule clarifies that if transportation plan and TIP conformity determinations are not made within the three-year timeframe for periodic redetermination or within the grace period following a trigger, the conforming status of the transportation plan and TIP will lapse. In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. Also, although non-federal projects do not require conformity determinations, recipients of Federal highway and transit funds may not approve or adopt regionally significant non-federal projects in the absence of a conforming transportation plan and TIP (see section IV.L. of this preamble). Thus, without a conforming transportation plan and TIP, only the following projects may proceed: projects which are exempted by the conformity rule; projects which have completed all transportation plan, TIP, and project conformity determinations; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

K. Fiscal Constraint

The NPRM included language from ISTEA on fiscal constraint for transportation plans and TIPs. EPA received several comments on this issue. In response to one comment, EPA has clarified that only transportation plans and TIPs which are fiscally constrained according to the requirements of DOT's metropolitan planning regulations (which implement ISTEA) may be found to conform.

Several other comments concerned how the ISTEA language on fiscal constraint should be interpreted. EPA believes that the conformity requirements on fiscal constraint must be consistent with those that DOT establishes, and references DOT's metropolitan planning regulations at 23 CFR part 450 on this subject.

The metropolitan planning regulations require the transportation plan to include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (local, State, Federal, and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. Cost and revenue projections shall be based on data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

The metropolitan planning regulations at 23 CFR 450 also require the TIP to be financially constrained and include a financial plan that demonstrates which projects can be implemented using current sources and which projects are to be implemented using proposed new sources (while the existing transportation is being adequately operated and maintained). Only projects for which construction and operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23 U.S.C. and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included in the first two years of the TIP must be limited to those for which funds are available or committed.

"Available" funds means funds derived from an existing source of funds dedicated to or historically used for transportation purposes which the financial plan (in the TIP approved by the MPO and the Governor) shows to be available to fund projects. In the case of State funds which are not dedicated to or historically used for transportation purposes, only those funds that the Governor has control of may be considered "committed" funds. In this case, approval of the TIP by the Governor will be considered a commitment of funds. For local or private sources of funding not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing/letter of intent by the responsible official or body having control of the funds will constitute a commitment. Where the use of State, local or private funds not dedicated to or historically used for transportation purposes is proposed and a commitment as described above cannot be made, this funding source should be treated as a new funding source and must be demonstrated to be a "reasonably available new source."

With respect to Federal funding sources, "available" or "committed" shall be taken to mean authorized and/or appropriated funds the financial plan shows to be available to the area. Where the transportation plan or TIP period extends beyond the current authorization period for Federal program funds, "available" funds may include an extrapolation based on current/past authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis, including Section 3 and "demo funding," any funding

beyond that currently authorized and targeted to the area should be treated as a new source and must be demonstrated to be a "reasonably available new source."

For periods beyond years 1 and 2 of the TIP in nonattainment and maintenance areas, for TIPs in other areas, and for the transportation plan, funding must be "reasonably available," but need not be currently available or committed. Hence, new funding sources may also be considered. New funding sources are revenue sources that do not currently exist or that require some steps (legal, executive, legislative, etc.) before a jurisdiction, agency, or private party can commit such revenues to transportation. Simply identifying new funding sources without identifying strategies for ensuring their availability will not be acceptable. Under the regulations, the financial plan must identify strategies for ensuring their availability. It is expected that the strategies, particularly for new funding sources requiring legislation, voter approval or multi-agency actions, would include a specific plan of action that describes the steps that will be taken to ensure that the funds will be available within the timeframe shown in the financial plan.

The plan of action should provide information such as how the support of the public, elected officials, business community, and special interests will be obtained, e.g., comprehensive and continuing program to make the public and others aware of the need for new revenue sources and the consequences of not providing them. Past experience (including historical data) with obtaining this type of funding, e.g., success in obtaining legislative and/or voter approval for new bond issues, tax increases, special appropriations of funds, etc. should be included. Where efforts are already underway to obtain a new revenue source, information such as the amount of support (and/or opposition) for the measure(s) by the public, elected officials, business community, and special interests should be provided.

For innovative financing techniques, the plan of action should identify the specific actions that are necessary to implement these techniques, including the responsible parties, steps (including the timetable) to be taken to complete the actions and extent of commitment by the responsible parties for the necessary actions.

Following are examples of specific cases where new funding sources should not generally be considered to be "reasonably available": (1) Past efforts to enact new revenue sources have generally not been successful; (2) the extent of current support by the public, elected officials, business community, and/or special interests indicates passage of a pending funding measure is doubtful; or (3) there is no specific plan of action for securing the funding source and/or other information that demonstrates a strong likelihood that funds will be secured.

Since the financial plans will be included in the metropolitan transportation plans and TIPs, the public and other interested parties will have an opportunity to review and comment on the financial plans through the public involvement process required under the metropolitan planning regulations. Similarly, agencies involved in the conformity process will have an opportunity to review and comment on the financial plans through the interagency consultation procedures established by the conformity SIP revision, which must contain a process for circulating draft documents (including plans and TIPs) for comment prior to approval.

L. Non-federal Projects

The NPRM proposed that non-federal projects (i.e., projects which receive no Federal funding and require no Federal approval but which are adopted or approved by an entity that receives Federal transportation funds for other projects) do not require conformity determinations. However, to ensure that the transportation sector overall contributes to emissions reductions in the interim period as required, and because Federal and non- federal projects eventually share the same SIP motor vehicle emissions budget, the NPRM proposed to require the regional emissions analyses for conformity determinations on transportation plans and TIPs to include all known regionally significant non-federal projects. The final rule retains these two features but differs from the proposal as described below.

1. Requirements For Adoption or Approval of Projects By Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act

EPA received significant public comment on the issue of conformity's applicability to non-federal projects. The final rule does not require non-federal projects to have a conformity determination (i.e., a finding that the project satisfies all the rule's criteria and procedures, including hot-spot analysis and regional analysis). EPA continues to believe, as described in the NPRM, that the better reading of the Clean Air Act does not apply all of these aspects of conformity to non-federal projects.

However, upon consideration of public comments, EPA believes that the NPRM's solitary requirement to account for known regionally significant non-federal projects does not fully comply with the best reading of Clean Air Act Section 176(c)(2)(C). Section 176(c)(2)(C) says explicitly that "a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 U.S.C. or the Urban Mass Transportation Act * * * only if it comes from a conforming transportation plan and TIP," or (to paraphrase) if a regional emissions analysis demonstrates that the plan and TIP would still conform if the project were included.

EPA has decided that "transportation project" in Section 176(c)(2)(C) of the Clean Air Act is best interpreted as meaning any transportation project, rather than only Federally funded or approved projects. The statutory language does not limit the phrase "transportation project" in any way. Accordingly, the final rule requires that before adopting or approving a regionally significant non-federal transportation project, recipients of title 23 U.S.C. or Federal Transit Act funds must determine either that the project was included in a conforming plan and TIP, or was included in the original regional emissions analysis supporting the plan or TIP's adoption, or that a new regional emissions analysis including the plan, TIP, and project demonstrates that the plan and TIP would still conform if the project were implemented.

DOT would have no responsibility for ensuring that recipients of Federal funds make the proper determinations before they adopt or approve regionally significant non-federal projects. However, failure of a recipient of Federal funds to determine that a regionally significant non-federal project is included in a conforming plan and TIP (or regional emissions analysis of a plan and TIP) would be a violation of the SIP and of the Clean Air Act Section 176(c)(2)(C).

EPA's interpretation of "transportation project" to mean any transportation project rather than only Federally funded or approved projects, can be applied to every other use of "transportation project" throughout Section 176(c), without contradicting any aspect of EPA's rule and without requiring conformity determinations on such projects. This is because section 176(c)(1) of the Clean Air Act, which defines conformity, requires conformity

determinations only for transportation projects which are adopted, accepted, or funded by an MPO or DOT.

Although Section 176(c)(2)(C) refers to "projects" in general, EPA is limiting its requirement regarding approval or adoption by recipients of Federal funds to regionally significant projects. Section 176(c)(2)(C) requires projects to either come from a conforming plan and TIP, or meet the Section 176(c)(2)(D) requirement that a regional emissions analysis demonstrate that the plan and TIP would still conform if the project were implemented. By their nature, projects which are not regionally significant would meet at least the terms of Section 176(c)(2)(D), or they would fail to meet these terms by at most a de minimis amount. These projects either cannot be incorporated into the transportation network demand model, are emissions neutral, or their effect is implicitly captured in the modeling of regionally significant projects (through the universal practice of assuming that the amount of off-network travel is a function of the travel predicted to occur on regionally significant facilities that are represented in the network model). Consequently, EPA is exempting from this requirement those non-federal projects which are not regionally significant.

Recipients of title 23 U.S.C. or Federal Transit Act funds include recipient agencies at any level of State, county, city, or regional government. Private landowners or developers, and contractors or grant recipients (including local government agencies) which are only paid for services or products created by their own employees, are not considered recipients of funds. That is, if an agency receives title 23 U.S.C. or Federal Transit Act funds and then uses the funds to pay private landowners or developers, contractors, or grant recipients, the private entities/contractors/grant recipients are not thereby considered recipients of Federal funds for the purposes of this requirement, and their other non-federal projects would not be subject to this requirement. Furthermore, projects which do not involve any participation by recipients of Federal funds are not subject to this requirement.

The requirement regarding approval or adoption of regionally significant non-federal projects by recipients of funds does apply when recipients of funds approve regionally significant projects which they are not implementing themselves. This includes approvals to connect regionally significant privately built roads to public roads, and/or transfer of ownership to a public entity.

Although the Clean Air Act refers to adoption or approval of projects, the line separating tentative planning from actual implementation of non-federal projects may not always be clear. The specific step considered to be adoption or approval may depend on what other steps exist in a recipient's process. The SIP must designate what action by each affected recipient constitutes adoption or approval. EPA believes that adoption/approval is never later than the execution of a contract for site preparation or construction. Adoption/approval will often be earlier, for example, when an elected or appointed commission or administrator takes a final action allowing or directing lower-level personnel to proceed.

Although MPOs do not necessarily have an adoption or approval role, if an MPO does adopt or approve any highway or transit project, regardless of funding source, a full project-level conformity determination which satisfies all the requirements of today's rule is required.

2. Disclosure and Consultation Requirements for Non-federal Projects

Upon consideration of public comment, EPA concluded that the NPRM's solitary requirement to account for known regionally significant projects does not adequately protect against situations in which a project sponsor does not inform the MPO of its intent to undertake a project because it anticipates objection from others in the transportation planning process. Or, a sponsor may consider its thought processes too preliminary to constitute an intention or plan. Also conceivable are situations in which the MPO purposely does not include a known project in the emissions modeling because of the anticipated difficulty it would cause for the transportation plan and TIP's regional emissions conformity test. In these situations, emissions increases from non-federal projects could not be simultaneously offset, and projects could be irreversibly committed before transportation planning participants realized the need to offset their impacts.

The final rule addresses these situations by (1) making disclosure of regionally significant non-federal projects a requirement of the conformity SIP's consultation provisions; (2) explicitly stating that disclosure is required even if the project sponsor has not made a final decision; (3) requiring MPOs to include all disclosed or otherwise known regionally significant non-federal projects in the regional emissions analysis; (4) requiring MPOs to specifically respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and (5) requiring recipients of Federal funds to determine that their regionally significant non-federal projects satisfy the requirements of section 176(c)(2)(C) of the Clean Air Act before the projects are adopted or approved (i.e., determine that the projects are included in a conforming transportation plan or TIP or are included in a regional emissions analysis of the plan and TIP). These five requirements are directly imposed as Federal regulation; they must also be established as conformity SIP provisions. Failure to observe the consultation requirements (items 1 through 4, discussed above) would be a violation of the SIP.

The final rule requires the conformity SIP to establish a mechanism which ensures that other recipients of Federal funds disclose to the MPO on a regular basis their plans for construction of regionally significant non-federal projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered). Changes in such plans must be disclosed immediately. The final rule also requires consultation between the MPO and project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects for which the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope which is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope.

3. Response to Comments

Although EPA does not agree with the commenters who believe the Clean Air Act requires conformity determinations for non-federal projects, EPA believes that the final rule addresses many of these commenters' practical concerns. Because the final rule prohibits the implementation of regionally significant non-federal projects until their emissions impacts are accounted for in the regional emissions analysis, the integrity of the transportation planning process is preserved. There is no opportunity to escape or delay the conformity implications of a project by shifting its funding from Federal to non-federal sources, and a formal

mechanism will be established to ensure that plans for regionally significant non-federal projects are disclosed to the MPO. In this way, the impacts of non-federal projects will be considered at the same time as the impacts of Federal projects, and Federal projects (or non-federal projects by other sponsors) will not be forced to offset the emissions of non-federal projects in later transportation plans and TIPs, after the non-federal projects have already been built.

Furthermore, in the absence of a conforming transportation plan and TIP, project sponsors will not be able to adopt or approve new regionally significant non-federal projects. This ensures that all participants in the transportation planning process are involved in the effort to develop a conforming transportation plan and TIP, and that regionally significant non-federal projects are not proceeding without necessary emissions offsets from other transportation projects.

The final rule's approach is also consistent with the comments EPA received regarding the potential burden of making conformity determinations for non-federal projects. The final rule does not impose any significant additional substantive burden on MPOs or project sponsors beyond that of the NPRM, because the NPRM also required the impacts of regionally significant non-federal projects to be accounted for in the regional emissions analysis of the plan and TIP. DOT's proposed rule on metropolitan planning (58 FR 12064, March 2, 1993) requires the transportation plan to include regionally significant non-federal projects, and requires the TIP to include for informational purposes all regionally significant projects to be funded with non-federal funds.

V. Discussion of Comments

A. Applicability

1. Incomplete Data, Transitional, and "Not Classified" Areas

Because incomplete data and transitional ozone areas and CO "not classified" areas are designated nonattainment, the NPRM's conformity requirements applied to them. EPA received significant public comment that these areas should be exempt from conformity requirements.

EPA believes that section 176(c)(1)(B) of the Clean Air Act, which requires that no activity may "cause or contribute to any new violation of any standard in any area, or increase the frequency or severity of any existing violation of any standard in any area" requires that conformity requirements apply to all nonattainment areas. However, as with attainment areas (as described above), EPA agrees that the burden of determining conformity according to the requirements proposed in the NPRM may outweigh the incremental protection it provides to air quality in incomplete data, transitional, and "not classified" nonattainment areas, given that these areas already may be at little risk of experiencing violations of ambient standards.

As described above, EPA will be issuing in the near future a supplemental notice of proposed rulemaking which proposes criteria and procedures to apply conformity to attainment areas. EPA intends that this proposal will offer flexible, low-resource criteria and procedures for certain attainment areas which must make conformity determinations. In this supplemental proposal EPA will also consider how to amend the requirements for incomplete data, transitional, and "not classified" areas so that the analysis requirements for these areas more closely correspond to the potential risk of NAAQS violations in these areas.

2. Length of the Maintenance Period

The NPRM proposed that the maintenance period lasts indefinitely. Several commenters recommended that the maintenance period be finite. Three-year, five-year, and twenty-year maintenance periods were suggested.

The final rule limits the length of the maintenance period to twenty years, unless the applicable implementation plan specifies a longer maintenance period. Because the maintenance plan required by section 175A of the Clean Air Act must address twenty years, EPA believes that conformity determinations are required for at least that time. If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years. In the absence of intent in the maintenance plan to extend the maintenance period, EPA believes it is appropriate for the maintenance period to coincide with the period addressed by the maintenance plan. Once the maintenance period ends, maintenance areas will be subject to the forthcoming rule addressing conformity in attainment areas as applicable, and will therefore be protected from falling back into nonattainment.

3. Statewide Transportation Plans and Statewide Transportation Improvement Programs (STIPs)

The NPRM proposed that transportation plans, TIPs, and transportation projects must be found to conform. Some commenters stated that conformity should also apply to statewide transportation plans and STIPs, which are newly required by ISTEA and DOT's statewide planning regulations at 23 CFR part 450.

The final rule requires conformity determinations only for metropolitan transportation plans and TIPs developed under 23 CFR part 450. EPA believes that STIPs are not TIPs as the latter term is meant in Clean Air Act section 176(c), and that conformity therefore does not apply to them directly. However, this exclusion does not in any way reduce the protection afforded by the conformity process. DOT's statewide planning regulations require that the Governor may not adopt a metropolitan transportation plan or TIP into the statewide transportation plan or STIP unless the metropolitan plan or TIP has been found to conform. Because not all areas of a State are required to perform conformity analyses, EPA believes that it is more practical to ensure conformity by making conformity determinations at the metropolitan level, before incorporation into the statewide plan or STIP, and that the Clean Air Act requires nothing more.

Furthermore, regional emissions analyses for the purposes of conformity are to be conducted under this rule only for each nonattainment area or area subject to a maintenance plan under Clean Air Act section 175A, not on a statewide basis. Therefore, there is no advantage to analyzing for conformity groups of projects aggregated at the State level. EPA believes that DOT's statewide planning regulations provide adequate assurance that the statewide plan and STIP include only projects from conforming metropolitan plans and TIPs.

4. Other Transportation Modes

The NPRM for this rule applied conformity only to actions by FHWA and FTA. EPA received some public comment on whether the transportation conformity regulations should apply to other modes of transportation, such as railroads, airports, and ports.

The final transportation conformity rule applies its criteria and procedures only to FHWA and FTA actions. EPA believes that the special "transportation" provisions in Clean Air Act sections 176(c)(2) and 176(c)(3) clearly are addressed only to

transportation plans, programs, and projects developed under title 23 U.S.C. and the Federal Transit Act, which do not address projects involving railroads, airports, and ports. However, the general conformity rule covers all other Federal actions, including those associated with railroads, airports, and ports.

As some commenters pointed out, there is no planning authority for these activities vested in the MPO under ISTEA. Although ISTEA emphasizes intermodal planning, MPOs have only a coordination responsibility. In general, MPOs are not comprehensive transportation or land use agencies. Airport, rail, and shipping systems are covered by separate Federal law, and the TIP is not the appropriate tool for controlling these activities.

However, EPA also agrees with some commenters that the State may develop an appropriate mechanism for dealing with other transportation modes, either through the transportation or general conformity process.

5. Highway and Transit Operational Actions

The NPRM's proposed definition of "transit project" specifically did not encompass transit operational actions such as route changes, service schedule adjustments, or fare changes (58 FR 3788). The NPRM also did not intend conformity to apply to changes in road or bridge tolls (58 FR 3773). EPA invited comment on what type of limited application of conformity to these types of actions might be appropriate and received a substantial response from the public on this issue.

The final rule does not consider highway and transit operational actions such as route, schedule, fare, or toll changes to be a "transportation project" subject to conformity. However, as described in the NPRM, any changes of this sort must be included in the background modeling assumptions for subsequent conformity determinations. The final rule further clarifies this by requiring that changes to transit operating policies and assumed transit ridership be documented in the conformity determination in order to demonstrate use of the latest planning assumptions.

Although EPA acknowledges that certain operational actions may be significant, EPA was unable to identify a defensible threshold above which conformity determinations should be required or triggered, nor a legal rationale for requiring conformity review of such activities. EPA believes that it is not practical or appropriate for all operational actions to be found to conform before they are implemented, or for these actions to trigger conformity determinations. As described in the preamble to the NPRM, FTA is specifically prohibited from becoming involved in local decisions such as fares, routes, and schedules, so section 176(c) does not seem to directly apply to such actions. Furthermore, changes in such policies are frequent, and transit operators need the flexibility to respond quickly to local needs. Requiring conformity for these types of actions would be unnecessarily burdensome, especially because transportation models cannot measure the impacts of most individual route and schedule changes. Using changes in operational policies to trigger new determinations of plans and TIPs also seems impractical because operational changes are frequent and unpredictable.

6. Multiple Stage Projects

Some commenters requested clarification of how EPA intends to treat projects with multiple stages. The NPRM and the final rule define "highway project" to consist of all required phases necessary for implementation. NEPA requires projects to have logical termini and independent utility. Therefore, project-level conformity determinations are made on entire projects as defined by NEPA, not stages of them. NEPA termini must be included in the regional analysis and project-level analysis before the project may be found to conform. If only some of the project's stages are included in the conforming TIP, the project may still be found to conform provided the total project is included in the regional emissions analysis.

Hot spots must be addressed separately for different project phases if there is significant delay between them, in order to prevent violations being caused for a period of years before later phases which would correct the violations are actually programmed and built.

7. Project-level Determinations

Some commenters requested clarification on the responsibilities for project-level determinations. Section 176(c) of the Clean Air Act requires transportation projects which are funded or approved by FHWA or FTA to be found to conform before they can be adopted or approved by an MPO or approved, accepted, or funded by DOT. MPOs do not necessarily adopt or approve projects, and are not required by the Clean Air Act to make project-level conformity determinations unless they perform a project-level adoption or approval role. Project-level conformity determinations are clearly necessary, however, in order for DOT to fund a project. EPA anticipates that if the MPO does not adopt or approve a project, the project sponsor (e.g., the State DOT) will make a project-level conformity determination of its own, or will at least perform the required analysis and recommend an affirmative determination, in order to facilitate DOT's conformity determination. This is similar to the way NEPA analyses are conducted, and EPA expects that most project-level conformity determinations will be made as part of the NEPA process.

8. Projects Which Are Not From a Conforming Transportation Plan and TIP

Regional analysis. Some commenters requested clarification on how conformity determinations are made for projects in rural nonattainment areas which are not associated with a metropolitan area, and in areas which are outside the MPO boundary but inside the boundary of a nonattainment or Clean Air Act section 175A maintenance plan area that is dominated by a metropolitan area ("donut areas").

The NPRM and the final rule require the conformity SIP revision to include in its interagency consultation procedures a process involving the MPO and State DOT for cooperative planning and analysis for determining conformity of projects in donut areas. Because an MPO must consider in its regional analysis of transportation plans and TIPs all highway and transit projects in the nonattainment or maintenance area, the MPO and State DOT may choose to actually include donut area projects in the transportation plan and TIP. In such cases, no further regional analysis of such projects would be necessary.

If projects in donut areas are not specifically included in the transportation plan and TIP, the project-level conformity determination would have to document that such projects were included in the original regional emissions analysis used to demonstrate conformity of the existing transportation plan and TIP. Another option is to perform a complete reanalysis in which the project is hypothetically assumed to be added to the transportation plan and TIP, and the combination is tested to see if it would satisfy all the conformity criteria for transportation plans and TIPs. If it would, the project may be found to conform. EPA notes that this reanalysis must use the latest planning assumptions and emissions models, which may have changed since the TIP was adopted. Of the three options, EPA

believes that all parties involved will be better served by pursuing the first or second option.

In isolated rural nonattainment areas (and other areas which do not contain a metropolitan planning area and which are not part of a nonattainment or maintenance Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area) there is no metropolitan transportation plan or TIP which requires a regional emissions analysis. The final rule provides that projects in such areas may satisfy the regional emissions conformity test if the projects in the nonattainment or maintenance area which are funded or approved by FHWA or FTA are grouped together and analyzed in a regional emissions analysis, together with all other regionally significant projects expected in the nonattainment or maintenance area. Projects need not be demonstrated to meet the regional emissions criteria on an individual basis; rather, one regional emissions analysis may be performed which includes them all. The statewide plan and STIP will provide one mechanism for identifying the projects which need to be regionally analyzed. Responsibilities for conducting such analysis shall be determined through the conformity SIP, but EPA anticipates that the State DOT will be primarily responsible for conformity analyses in such areas.

In isolated rural areas, non-federal projects may be considered to have been included in a regional emissions analysis of the transportation plan or TIP if they are grouped with Federal projects in the nonattainment or maintenance area in the statewide plan and STIP for the purposes of a regional emissions analysis.

Interim period. EPA proposed that during the interim period, projects not from a conforming transportation plan or TIP be afforded the same opportunity to demonstrate conformity that such projects have in the control strategy period. Specifically, projects not from a conforming transportation plan and TIP could be included in a regional emissions analysis of the projects together with those of the conforming plan and TIP in order to determine whether the plan and TIP would still conform to the SIP. This opportunity is provided for all projects without limitation in section 176(c)(2)(D) of the Clean Air Act. Some commenters indicated that this provision should not be applicable during the interim period, by which they mean the period prior to adoption (or approval) of an emissions budget.

Section 176(c)(3) of the Clean Air Act provides certain alternative methods for demonstrating conformity with respect to both plans and TIPs as well as projects during an interim period, defined as the period prior to the approval of the conformity SIP revision. However, the statute nowhere indicates that the provisions of section 176(c)(3) are the exclusive method of determining conformity during the interim period as the term is used in this rule and by the commenters. Section 176(c)(3) provides that during the interim period, conformity of projects "will be demonstrated" if certain tests are met. It does not say that conformity may only be demonstrated through those tests.

EPA concludes that while projects may take advantage of the provisions of section 176(c)(3) during the interim period, they may also demonstrate conformity under section 176(c)(2) where possible. Therefore, EPA is retaining in the final rule the provisions allowing the use of project-level determinations under section 176(c)(2)(D) during the interim period, with the applicable interim criteria in the final rule substituted for the statute's "emission reduction projections and schedules assigned to such plans and programs" as the benchmark against which conformity is measured.

9. Multiple Nonattainment Areas and MPOs

Some commenters requested clarification on how conformity determinations should be made if a metropolitan planning area includes multiple nonattainment areas, or if a nonattainment area includes multiple MPOs. In general, interagency relationships and responsibilities will be established by the conformity SIP revision. If a metropolitan planning area includes more than one nonattainment area, a conformity determination must be made for each nonattainment area. Emissions budgets established in the SIP(s) for the included nonattainment areas may not be combined or reallocated. Build/no-build tests must be applied separately in each nonattainment area. Where a nonattainment area includes multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area.

EPA also expects there to be agreements among agencies on how to make conformity determinations for multistate nonattainment areas.

B. Applicable Implementation Plans

The NPRM defined the "applicable implementation plan" to which conformity must be demonstrated as a SIP which has been approved by EPA or a Federal implementation plan which has been promulgated by EPA. EPA received some comments expressing concerns that in some areas, notably in California, the approved SIP is quite outdated, although there have been relatively recent SIP submissions which EPA has not yet approved. These commenters argued that it is most appropriate to determine conformity with the SIP submission, which represents the most recent SIP control strategies, rather than the approved SIP.

The final rule retains the NPRM's definition of "applicable implementation plan." EPA believes that it does not have the authority to require conformity to an implementation plan which has not been approved by EPA and therefore does not have the force of Federal law. (During the transitional period, EPA requires use of the submitted SIP to determine contribution to annual emission reductions, but does not consider the submitted SIP to be the "applicable implementation plan" to which transportation plans, TIPs, and projects must conform.) Because EPA does not believe that SIPs approved before 1990 have motor vehicle emissions budgets which are applicable for conformity purposes, TCMs are the relevant element of an old approved SIP. Areas with outdated SIPs have been required to demonstrate timely implementation of TCMs in the SIP at least since the June 1991 EPA/DOT interim conformity guidance. At that time, EPA urged areas to revise their SIPs to remove any TCMs which are outdated and no longer appropriate, to prevent failure to implement them from prohibiting conformity determinations. EPA continues to believe that because the statute requires that conformity be demonstrated with the approved SIP, any outdated elements of that SIP which areas are concerned would prohibit conformity determinations must be revised through the SIP process. EPA will strive to expedite its action on such SIP revisions.

C. Conformity SIP Revisions

EPA requested comment in the preamble to the NPRM regarding the legal form of the conformity SIP revision. Commenters asserted that States should not be required to formally adopt regulations embodying the conformity procedures. EPA has reviewed this issue and concludes that the appropriate form of the State conformity procedures depends upon the requirements of local law, so long as the selected form complies with all

Clean Air Act requirements for adoption, submittal to EPA, and implementation of SIPs.

Clean Air Act section 110(a)(2)(A) requires that all SIP measures be enforceable, and section 110(a)(2)(E) requires that States have adequate authority under local law to implement the SIP. Read together, these provisions require that the State have the authority under State law to compel compliance with the SIP conformity procedures by the persons or entities to which they apply, in whatever form the procedures may take.

For the most part, EPA believes that adopted regulations will be required at the State or local level to enable States to require MPOs, project sponsors, recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, and DOT to comply with the requirements of State conformity procedures. However, EPA understands that in some States, environmental board resolutions or air agency administrative orders could provide adequate authority. EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures.

Whatever the form, EPA expects the State procedures to mirror portions of the text of EPA's rule essentially verbatim to ensure compliance with Clean Air Act section 176(c), especially §§ 51.392 (definitions), 51.394 (applicability), and §§ 51.410 through 51.446 (criteria), except where the State chooses to make its procedures more stringent than the EPA rule, as provided by § 51.396 of today's rule.

EPA believes that, due to limitations on the waiver of sovereign immunity in the Clean Air Act, if a State wishes to apply more stringent conformity rules for the purpose of attaining air quality, it may do so only if the same requirements are imposed on non-federal as well as Federal actions. Differing State conformity rules may not cause a more significant or unusual obstacle to Federal agencies than non-federal agencies for the same type of action. Therefore, if a State determines that more stringent conformity criteria and procedures are necessary, these requirements must be imposed on all similar actions whether the sponsoring agency is a Federal or non-federal entity; non-federal entities include State and local agencies and private sponsors.

If a State elects to impose more stringent conformity requirements, they must not be so narrowly construed as to apply in practical effect only to Federal actions. For example, if a State decides that actions of employers with more than 500 employees require conformity determinations, and the Federal government is the only employer of this size in a particular jurisdiction, then this rule would be viewed as discriminatory and would not be permitted. Consequently, more stringent State conformity rules must not only be written to apply similarly to all Federal and non-federal entities, but they must be able to be implemented so that they apply in a nondiscriminatory way in practice. For a full discussion of the issue of State authority to impose more stringent conformity requirements, see the preamble to the general conformity final rule ("Determining Conformity of General Federal Actions to State or Federal Implementation Plans").

Some commenters requested clarification on whether attainment areas, which are not subject to the final rule, are required to submit conformity SIP revisions within 12 months of the promulgation of the final rule. The final rule does not require attainment areas to submit conformity SIP revisions. However, as indicated in the preamble section "Discussion of Major Issues," EPA intends to issue a supplementary notice of proposed rulemaking which would propose criteria and procedures to apply conformity to attainment areas. EPA intends to require conformity SIP revisions for attainment areas within 12 months following promulgation of a final rule establishing the criteria and procedures applying conformity to attainment areas.

This final rule does require a conformity SIP revision within 12 months following an attainment area's redesignation to nonattainment.

D. Public Participation

The NPRM referenced DOT's then as yet unreleased metropolitan planning regulations implementing ISTEA for public participation requirements. Until those regulations became effective, the NPRM proposed to require agencies to publish their proposed public participation procedures and allow 45 days for written comments. The NPRM also proposed to require MPOs to prepare a summary and analysis of written and oral comments before taking final action on conformity determinations, and to require additional opportunity for public comment if the transportation plan or TIP to be submitted to DOT is significantly different from the one made available for public comment.

EPA received substantial public comment on the issue of public participation. Although some commenters supported the NPRM's approach, some commenters believed that the conformity rule should establish minimum public participation requirements. These commenters suggested a range of minimum requirements, including comment periods, public hearings, and analysis of significant comments.

EPA believes that to facilitate cooperative air quality/transportation planning, the public participation requirements in the conformity rule must be consistent with the public participation procedures in the transportation planning process. Furthermore, EPA believes that DOT's metropolitan planning regulations are the appropriate mechanism for public participation requirements because they address the development of the transportation plan and TIP themselves, not just the conformity determinations.

The metropolitan planning regulations require the metropolitan transportation planning process in general to include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing public involvement in developing transportation plans and TIPs. The regulations require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised. In serious and above nonattainment areas, the regulations require a public comment period of at least 30 days before approval of plans, TIPs, and major amendments. In nonattainment area transportation management areas (TMAs), at least one formal public meeting must be held annually on the development of the transportation plan and the TIP. The regulations also require a summary and analysis of comments and additional opportunities for comment after significant changes, as proposed by the conformity NPRM. Public involvement processes must be periodically reviewed by the MPO for effectiveness, and DOT will review the procedures during certification reviews and as otherwise necessary.

The NPRM and the final rule require public participation on project-level conformity determinations only as otherwise required by law (e.g., as part of the NEPA process). EPA and DOT expect that project-level conformity determinations will be made as part of the NEPA process.

Because DOT's metropolitan planning regulations require MPOs to establish and publish their public participation procedures, and the conformity rule

requires that these procedures be followed before conformity may be determined, the conformity rule does not require public participation procedures to be part of the applicable implementation plan.

E. Plan Content

1. Plan Specificity

The NPRM proposed to require transportation plans adopted after January 1, 1995 in serious and above ozone and CO nonattainment areas to specifically describe the transportation system in certain horizon years, in sufficient detail to use a transportation network demand model. EPA received public comment that this provision requires too much specificity for a transportation plan. In particular, commenters were concerned that there is such uncertainty in 20-year forecasts that the plan and TIP will always be inconsistent in the out-years. Furthermore, some commenters stated that it is difficult to select "best guess" alternatives prior to corridor analyses, and doing so may prejudge alternatives.

The final rule retains the requirements for plan content and separate regional analysis requirements for "specific" plans, as proposed in the NPRM. EPA recognizes the limitations of long-range planning, and agrees that the long-range transportation plan should be a flexible planning document which does not foreclose consideration of alternatives. However, EPA wants the conformity demonstration for a transportation plan to show that the area can develop and model a transportation strategy that is consistent with the SIP's required emission reductions for milestone years, the attainment year, and maintenance in the following years. This demonstrates that an area has developed one transportation system scenario which is consistent with the SIP, and that the area is implementing those activities which must begin now in order to achieve a transportation system consistent with the SIP. The area is free to later choose different alternatives, provided the new transportation plan demonstrates that the new transportation system scenario is also consistent with the SIP (i.e., the revised transportation plan is found to conform).

EPA is emphasizing project-specific transportation plans for serious and above ozone and CO areas, because state-of-the-art transportation network demand modeling requires project detail to the extent that a regionally significant project affects the speed-capacity relationship, the connectivity of the network, and significant alternatives to the use of single-occupant vehicles. EPA recognizes that detailed descriptions of projects in the later years of the transportation plan represent assumptions about those future projects, and expects that project descriptions will be modified to reflect information from corridor analyses as areas periodically update their transportation plans. At the time of the project-level conformity determination, if the project's design concept and scope is significantly different from that in the currently conforming transportation plan and TIP, new regional analysis including the project is required.

As EPA explained in the preamble to the NPRM, the transportation system must be analyzed in the context of the transportation plan, because the TIP's timeframe is too short to account for everything in the years the SIP's emissions budgets are addressing. To show that a budget for a future year will be met, it will be necessary to account for all facilities and services expected to be operational in that year, even if they are not yet in the TIP because they do not yet need to be started. Where a specific plan is not required by this rule, one may be otherwise needed to meet the requirements of ISTEA. Wherever a non-specific plan is permissible under both the Clean Air Act and ISTEA, the TIP must show conformity to all future emission budgets, taking into account those projects included in the TIP, any other projects specifically included in the transportation plan, and regionally significant non-federal projects.

2. Timeframe of the Transportation Plan

Several commenters requested that transportation plans be required to cover at least 20 years. The NPRM proposed to require regional emissions analyses to estimate emissions in the last year of the transportation plan's forecast period.

ISTEA requires the metropolitan transportation plan to address a period of at least 20 years. The requirement for a 20-year forecast period is covered in the DOT metropolitan planning regulations.

F. Relationship of Plan and TIP Conformity With the National Environmental Policy Act (NEPA) Process

EPA received comments suggesting that transportation plans and TIPs should be subject to NEPA. DOT's metropolitan planning regulations already require an analysis of major transportation investments. Under this provision, an appropriate range of alternatives would be analyzed for various factors, including social, economic, and environmental effects. Pending completion of the analysis, either one particular alternative version of the project or the no-build alternative for the corridor in which the major investment is located would be evaluated as part of the plan and TIP conformity analysis. This corridor/subarea analysis of alternatives serves as input to the draft NEPA document.

No Federal approval action is taken on the transportation plan or TIP, and there is no specific Federal commitment to fund projects in the plan or TIP. Furthermore, since the financial plans for the plans and TIPs must include all sources of funds, including State, local, and private sources, it is likely that some of the projects included will never be proposed for Federal funding. In view of this, it is not appropriate to extend the NEPA process to transportation plans and TIPs. In any case, doing so would be an action under NEPA, not the Clean Air Act, and is beyond the scope of this rulemaking.

G. Latest Planning Assumptions

EPA proposed that conformity determinations must use the latest planning assumptions. In response to public comment, the final rule explicitly requires key assumptions to be specified and included in the draft documents and supporting materials used during the interagency and public consultation process.

Some commenters also expressed concern that conformity determinations may be using assumptions which are different from the SIP assumptions, because they are more recent. It should be expected that conformity determinations will deviate from the SIP's assumptions regarding VMT growth, demographics, trip generation, etc., because the conformity determinations are required by Clean Air Act section 176(c)(1) to use the most recent planning assumptions. The final rule does not require, as a commenter suggested, that the conformity determination require an assessment of the degree to which key assumptions in the transportation modeling process are deviating from those used in the SIP, and if the deviations are significant, require an evaluation of the impact of the deviation on the area's ability to reach the SIP's emissions target. EPA is not requiring this process because the conformity determinations themselves are intended to demonstrate that given the most recent planning assumptions and emissions models, the SIP's emissions reductions will be met. However, States may require such a process in their conformity SIP revisions.

The final rule does require that ambient temperatures be consistent with those used in the SIP, and allows other factors assumed in the SIP, such as the fraction of travel in a hot stabilized engine mode, to be modified in a conformity determination only under certain conditions.

H. Latest Emissions Model

EPA proposed to require a new version of the motor vehicle emissions model to be used in any conformity analysis begun three months after its release, unless EPA and DOT announce an extension of the grace period in the **Federal Register**.

EPA received comments stating that the grace period was both too long and too short, and requesting clarification on how the grace period would be extended. EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emission factors. EPA encourages all agencies to inform EPA of the impacts of new emissions models in their areas, and EPA may pause to seek such input before determining the length of the grace period.

EPA is concerned that the proposal would have considered analyses begun before a new model is released or during the grace period to satisfy the "latest emissions model" criterion indefinitely. Therefore, the final rule provides that a final environmental document may continue to use the previous version of the motor vehicle emissions model provided no more than three years have passed since the draft was issued.

MOBILE5a internally bearing the release date of March 26, 1993, including "MOBILE5 Information Sheet #2: Estimating Idle Emission Factors Using MOBILE5," is hereby announced by EPA to be the latest motor vehicle emissions model outside California. There will be a one-year grace period prior to required use of this model for CO hot-spot or regional analyses for conformity determinations, beginning November 24, 1993. Future revisions and their grace periods will be announced in the **Federal Register**. EPA also hereby announces that in California, EMFAC7F is the latest motor vehicle emissions model, and the three-month grace period for use of this model begins November 24, 1993.

I. TCMs

The NPRM proposed to require timely implementation of those TCMs in the SIP which are eligible for title 23 U.S.C. or Federal Transit Act funding. Some commenters stated that all TCMs should meet the timely implementation test, regardless of their source of funding. The final rule retains the provisions of the NPRM.

Clean Air Act section 176(c)(2)(B) requires TIPs to provide for timely implementation of TCMs, but does not define TCMs. The statute is therefore ambiguous with respect to which TCMs must be implemented, and EPA may take any reasonable interpretation of the definition of TCMs. *Chevron* v. *NRDC*, 467 U.S. 837 (1984). Since plans and TIPs can at the most "provide for" only those projects which are eligible for Federal funding, it is reasonable to define those TCMs required to be implemented by Clean Air Act section 176(c)(2)(B) to be only those SIP TCMs that are eligible for Federal funding.

J. Regional Emissions Analysis

1. Regionally Significant Projects

The NPRM defined "regionally significant" to mean a facility with an arterial or higher functional classification, plus any other facility that serves regional travel needs (such as access to and from the area outside of the region; to major activity centers in the region; or to transportation terminals) and would normally be included in the modeling for the transportation network.

EPA received comments indicating that "regionally significant" should be more clearly defined, perhaps by a quantifiable threshold. Some commenters believed that "regionally significant" should be defined by the State or air quality agency, that the definition should include only freeways, or that the definition should be based upon air quality impact.

The final rule includes a definition of "regionally significant project" which is substantially similar to that in the NPRM. EPA has been unable to determine a quantifiable threshold that would consistently and appropriately reflect the concept of "regionally significant" and believes it is appropriate to allow flexibility and professional judgment in the definition of "regionally significant."

In response to comment that "arterial" is not a DOT functional classification, the final rule specifies that regionally significant includes, at a minimum, all principal arterials. Although EPA believes that some minor arterials are regionally significant, EPA believes that requiring all minor arterials to be modeled on a network model could involve a significant change in current modeling practice. Therefore, the final rule makes the determination of regionally significant projects a topic of interagency consultation, and allows the definition of regionally significant to be expanded through this process. The interagency consultation process must specifically address which minor arterials are also regionally significant.

Some commenters pointed out that the NPRM's definition of "regionally significant" relied on highway terminology, and it was not clear that transit projects were also covered by the definition. Therefore, the final rule also defines any fixed guideway transit system or extension that offers an alternative to regional highway travel to be regionally significant.

2. Projects Included in the Regional Emissions Analysis

EPA proposed criteria which required regional emissions analysis of projects in the transportation plan and TIP and all other regionally significant projects expected in the nonattainment or maintenance area. Some commenters expressed concern about projects in the transportation plan and TIP which cannot normally be modeled with a transportation network demand model. The final rule clarifies that emissions from projects which are not regionally significant, but which have or affect vehicle travel, may be estimated in accordance with reasonable professional practice. For example, the regional emissions analysis may assume that VMT on local streets not represented in the network model is a certain percentage of network VMT, without explicitly considering the new local streets. In addition to projects that are not regionally significant, the benefits of TCMs that cannot be analyzed through the modeling process may be estimated in accordance with reasonable professional practice.

EPA proposed that the regional emissions analysis could not include for emissions reduction credit any TCMs which have been delayed beyond the schedule in the SIP, until implementation has been assured. In response to public comment, the final rule clarifies that if a TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the regional analysis may include that emission reduction credit.

The final rule also clarifies that during the control strategy and maintenance periods, control prog ns

which are external to the transportation system itself (e.g., tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, oxygenated or reformulated gasoline or diesel fuel) may be assumed in the regional emissions analysis only if the program has been adopted by a State or local government, if an opt-in to a Federally-enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, determine its effective date, or not implement the program.

The build/no-build test may assume the above programs, but the same assumptions must be made in both the "build" and "no build" case. During the transitional period, control measures or programs which are committed to in a SIP submission which is not yet approved by EPA may be assumed for emission reduction credit when demonstrating consistency with the SIP submission's motor vehicle emissions budget.

3. Modeling Procedures

EPA proposed several attributes which a transportation network demand model must possess. In some cases, EPA specifically did not require certain attributes unless the necessary information was available. Some commenters believed that EPA should commit to review the attributes which were not specifically required. EPA intends to continue to review progress in transportation modeling, and the public can also petition for future rulemaking.

Some commenters expressed concern that the cumulative effect of non-regionally significant projects is not accounted for in the regional emissions analysis. The NPRM and the final rule specifically say that reasonable methods shall be used to estimate vehicle travel on off-network roadways. EPA believes that one such method would be to consider VMT on non-regionally significant facilities to be some percentage of network VMT. The rule requires documentation of all key assumptions used in emissions analyses, so there will be opportunity for public review of how vehicle travel is considered.

EPA asked for comment on whether serious PM–10 nonattainment areas should be required to use transportation network demand models, as required for serious and above ozone and CO areas. Comments were received on both sides of the issue. The final rule does not require network models in PM–10 areas, because EPA believes that the resources involved in such modeling efforts may often exceed the benefits in PM–10 areas. In many PM–10 areas, regional PM–10 emissions are due to construction-related fugitive dust and re-entrained dust, for which transportation network demand models may not offer special advantages. Agencies in PM- 10 areas must consult with each other on how to model PM–10 emissions.

4. Build/no-build Test

Based on comments received on the interim period regional emissions test, EPA believes it is important to clarify that because both the "build" and "no-build" scenarios must make the same assumptions regarding fleet turnover, inspection and maintenance programs, reformulated gasoline, etc., emission reductions from these programs and control measures are factored out and the emission reductions from the transportation plans and programs themselves are isolated.

K. Hot-spot Criteria and Analysis

EPA proposed to require projects to demonstrate that they eliminate or reduce the severity and number of localized CO violations in CO nonattainment areas. In response to comment, EPA has clarified in the final rule that this criterion applies in the project area. That is, a project is responsible for eliminating or reducing CO violations in the area substantially affected by the project. If there are no localized CO violations and would not be any in the project area, the project satisfies this criterion.

Some commenters also requested clarification on the hot-spot criteria. EPA intends that the hot-spot analysis compare concentrations with and without the project based on modeling of conditions in the analysis year. The hot-spot analysis is intended to assess possible violations due to the project in combination with changes in background levels over time. Estimation of background concentrations may take into account the effectiveness of anticipated control measures in the SIP if they are already enforceable and creditable in the SIP.

EPA proposed to allow the hot-spot criteria to be satisfied without quantitative hot-spot analysis if a qualitative demonstration can be made based on consideration of local factors. EPA requested comment on cutoffs on project size, geography, or other characteristics above which quantitative modeling is always required. EPA s November 1992 "Guideline for Modeling Carbon Monoxide from Roadway Intersections" requires for the purposes of SIP development the quantitative modeling of all intersections that are Level-of-Service (LOS) D, E, or F or that will change to LOS D, E, or F because of increased traffic volumes related to a new project in the vicinity. EPA's guidance also requires modeling of the top three intersections in the area based on highest traffic volume and the top three intersections based on the worst LOS.

Therefore, the final rule requires that projects involving or affecting any such intersections must be quantitatively modeled using that EPA guidance. The final rule would still allow qualitative analysis for projects at other locations if it clearly demonstrates satisfaction of the hot-spot criteria.

EPA also requested comment on when quantitative PM–10 hot-spot modeling is required. The comments EPA received were generally consistent with the approach discussed in the preamble to the NPRM. Therefore, although the hot-spot criterion in general allows either qualitative or quantitative demonstrations (as discussed above), the final rule explicitly requires quantitative PM–10 hot-spot modeling for projects at sites within the area substantially affected by the project at which violations have been verified by monitoring, and at sites which have essentially identical roadway and vehicle emissions and dispersion characteristics (including sites near one at which a violation has been monitored). These sites shall be identified through interagency consultation. In PM–10 nonattainment and maintenance areas, new or expanded bus terminals and transfer points and commuter rail terminals which increase the number of diesel vehicles congregating at a single location will generally require quantitative hot-spot analysis, except in cases where it can be demonstrated, based on appropriate dispersion modeling for projects of similar size, configuration, and activity levels, that there is no threat of a violation of the PM–10 standard. Conformity determinations on bus purchases (for replacements or minor expansions of the existing fleet) would not have to consider potential PM–10 hot-spot violations, as discussed in the preamble to the NPRM, because the incremental improvement in emissions spread over the service area of a metropolitan transit operator is considered to be a de minimis impact on air quality. Moreover, FTA has no control over how

these new, cleaner buses are to be deployed in local operations.

Several commenters were concerned about the technical capability to perform PM–10 hot-spot analysis. EPA will be releasing technical guidance on how to use existing modeling tools to perform PM–10 hot-spot analysis. The requirements for quantitative PM–10 hot-spot analysis will not take effect until the **Federal Register** has announced availability of this guidance. Also, FTA plans to issue guidance shortly on PM–10 hot-spot analysis for several common types of transit projects. This guidance will help project sponsors determine when quantitative hot-spot analysis is needed and how to perform the analysis.

EPA also requested comment on how to define "new" violations as opposed to relocated violations. Commenters did not propose any such clarification, and no language on this subject has been added to the final rule. EPA continues to believe that a seemingly new violation may be considered to be a relocation and reduction of an existing violation only if it were in the area substantially affected by the project and if the predicted design value for the "new" site would be less than the design value at the "old" site without the project—that is, if there would be a net air quality benefit.

Although no comment was received on the subject, problems may arise with respect to projects which dispersion modeling predicts to have a range of air quality effects in the "area substantially affected by the project." A project may, for example, reduce existing concentrations at several receptors while increasing concentrations at others.

EPA plans to issue guidance which would clarify the concept of "the area substantially affected by the project" and allow conformity demonstrations to distinguish between new and relocated violations. For example, while EPA believes that a "new" violation within the same intersection as an existing violation could be considered a relocation, whether a new violation miles from the existing violation should likewise be considered to be "relocated" as a result of changed traffic patterns is a question EPA will seek to address in this post-rule guidance. Interested parties are invited to provide their views to EPA for consideration.

L. Exempt Projects

EPA proposed a list of projects which, because they had no emissions impact, were considered to be neutral or de minimis and therefore should be exempt from conformity requirements. EPA received no comments opposing an exempt project list, but received a number of comments suggesting both additions and deletions to it.

EPA agrees with commenters that emergency truck pullovers, directional and informational signs, and transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities) are emissions neutral, and the final rule exempts these types of projects. Transportation enhancement activities are defined by ISTEA as "provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff."

The final rule also exempts repair of damage from natural disasters, civil unrest, or terrorist acts, except for projects involving substantial functional, locational, or capacity changes. Finally, the final rule also exempts specific activities which do not involve or lead directly to construction, such as planning and technical studies, grants for training and research programs, planning activities conducted pursuant to titles 23 and 49 U.S.C., and Federal-aid systems revisions. These activities do not contribute to emissions, and they do not fall under the definition of construction or a project under 23 U.S.C. 101(a).

Because intersection signalization projects which are systemwide may have regional emissions impacts, EPA has clarified that only intersection signalization projects at individual intersections are exempt from regional emissions analysis. As proposed in the NPRM, however, all intersection signalization projects in CO and PM–10 areas are required to have a determination regarding their localized air quality impacts.

The final rule clarifies that in PM–10 nonattainment and maintenance areas, rehabilitation of buses and purchase of new buses to replace existing vehicles or for minor expansions of the fleet are exempt projects only if they are in compliance with the SIP's control measures involving such projects (if any). For example, if the SIP specifies that new buses will be alternatively fueled, purchases of diesel buses would not be exempt.

EPA agrees with commenters that deletion of ridesharing and vanpooling promotion activities would have emissions impacts. However, deletion of these activities would not be exempt under the NPRM or final rule because it is not "continuation of ridesharing and vanpooling promotion activities at current levels."

Some commenters asserted that operating assistance to transit agencies should not be exempt. EPA believes that operating assistance should remain exempt because FTA has no control over how operating assistance is used locally, and because increases or decreases in operating assistance at the Federal level may be balanced by new sources of revenue at the State and local level. To the extent that the local cooperative planning process influences the level of operating assistance, the increase or decrease in operating assistance is necessarily offset by changes in capital assistance for transit in the same metropolitan area. Therefore, the net effect on financing for transit should be neutral. However, the final rule does require conformity determinations to use and document the latest assumptions regarding transit operating policies and assumed transit ridership.

A number of commenters proposed exempting other types of projects from the conformity requirements, notably travel demand management actions whose air quality effects cannot be accurately assessed in a regional modeling context. The objective in implementing a program or project involving travel demand management is to achieve measurable reductions in congestion and vehicle emissions within a corridor or at a specific site; thus, it is not appropriate to exempt such programs or projects from conformity requirements. The final rule does state that if the effects of these projects cannot be discerned through traditional regional travel demand modeling, other accepted methods of quantifying their effects are encouraged.

Some commenters requested clarification of projects on the exempt list. EPA intends that intersection channelization include left-turn/right-turn slots and continuous left turn lanes, as well as those lanes/movements that are physically separated. Advance land acquisitions (23 CFR part 712 or 23 CFR part 771) are a parcel or limited number of parcels which are acquired to protect a property from imminent development and increased costs which would tend to limit a choice of

transportation alternatives, or are acquired to alleviate particular hardship to a property owner at his or her request. This is only allowed in emergency or extraordinary cases, and only after the State department of transportation has given official notice to the public that a preferred highway or transit location has been selected, held a public hearing, or provided an opportunity for a public hearing.

VI. Environmental and Health Benefits

This rule will help ensure that the implementation plan achieves its goal of attaining air quality standards. The environmental and health benefits of attaining the national ambient air quality standards are attributable to the strategies contained in the implementation plan rather than to this rule directly.

VII. Economic Impact

The primary impact of this rule involves the increased requirements for MPOs to perform regional transportation and emissions modeling and document the regional air quality impacts of transportation plans and programs. Because conformity requirements have existed in some form since 1977, the framework for consultation and TCM tracking has already been established.

The impact of this rule on MPOs may vary widely depending on the pollutant for which an area is in nonattainment, the classification of the nonattainment area, the population of the area, and the technical capabilities already developed in the area.

A DOT survey in September 1992 of MPOs in 98 ozone nonattainment areas indicated that during Phase I of the interim period, most MPOs are spending less than $50,000 for a conformity determination on the transportation plan and TIP. Of the 68 MPOs responding, 76% are spending less than $50,000, 21% are spending between $50,001 and $100,000, and 3% are spending between $100,001–250,000. MPOs serving populations over one million had clearly higher conformity costs than MPOs serving smaller populations.

Conformity determinations are required whenever a transportation plan or TIP is adopted or amended. DOT's metropolitan planning regulations at 23 CFR part 450 require transportation plans to be reviewed and updated at least every three years in nonattainment and maintenance areas, and they require TIPs to be updated at least every two years.

The conformity rule also requires periodic redetermination of conformity for transportation plans and TIPs at least every three years. However, because DOT's metropolitan planning regulations require new transportation plans and TIPs at least that often, the conformity rule's provisions for periodic redetermination should not impose any new burden.

Finally, the conformity rule requires a conformity determination for the transportation plan within 18 months after EPA approves a SIP revision which affect TCMs or the motor vehicle emissions budget.

Transportation projects also require conformity determinations. In ozone and NO_2 nonattainment areas, the conformity requirements are satisfied provided the project is included in a current, conforming transportation plan and TIP. If the project is not included in the transportation plan and TIP, a regional emissions analysis including the transportation plan, TIP, and project must be performed. In CO and PM–10 nonattainment areas, project-level conformity determinations also require a hot-spot analysis. This analysis of localized impacts is performed as part of the existing NEPA process.

There are approximately 300 ozone, CO, NO2, and PM–10 nonattainment areas. Because some areas are in nonattainment for more than one pollutant, there are about 250 individual nonattainment areas which are required to perform conformity determinations. EPA expects that areas will determine conformity for TIPs annually, and in general, areas will determine conformity for transportation plans once every three years.

If it is assumed that the ozone areas surveyed by DOT in September 1992 are representative of all nonattainment areas, the estimated total annual conformity costs for the nation's transportation plans and TIPs is $16,625,000. This is a preliminary estimate based on the requirements contained in the interim conformity guidance EPA and DOT are solicity further information from MPO's which will be used in the preparation of the information collection request (see VIII. B. Reporting and Recordkeeping Requirements) subsequent to the publication of this rule.

These estimates do not necessarily reflect the costs which will result from this final rule. On one hand, these may be overestimates of the costs, because determinations will probably become less expensive as the MPOs gain experience. For example, for future determinations it may be possible to perform the modeling with fewer runs. On the other hand, these estimates do not reflect the more specific requirements of this rule and may therefore underestimate the cost of determinations in the control strategy period. EPA welcomes reports from MPOs on the costs of making conformity determinations on plans and TIPs according to the requirements of this rule.

Because ISTEA and other CAA provisions also directly or indirectly require increased modeling, it is difficult to entirely separate the costs attributable to the conformity requirements alone. For example, ISTEA assigns more responsibility to the MPOs and shifts the planning focus to intermodalism and congestion management. This will require more sophisticated transportation modeling. The VMT tracking and forecasting requirements in sections 182 and 187 of the CAA will also promote the use of transportation demand network models in some nonattainment areas.

In addition, although the conformity requirements may prompt additional data collection and model development, these costs cannot be solely attributed to conformity. It is an ongoing responsibility of MPOs to review and upgrade their analysis capabilities to reflect the most recent understanding of travel demand and transportation forecasting. Resource constraints during the 1980's prevented many MPOs from updating their analysis procedures, so conformity is in many cases simply raising the priority of modeling improvements.

Metropolitan planning is eligible for funds under ISTEA. In addition, EPA has attempted to minimize the costs of conformity in several ways. First, EPA is establishing flexible methodological requirements for regional analyses in areas which do not use network models in order to accommodate the varying technical capabilities of MPOs. In addition, by designating projects which are exempt from conformity determinations or regional analyses, EPA is allowing project sponsors to conserve their analysis resources. Finally, EPA has attempted to minimize the frequency of conformity redetermination by requiring periodic redetermination only every three years (which is the longest period allowed by the Clean Air Act), by limiting the number of triggers for redetermination, and by allowing grace periods before the use of new emissions models and following an area's reclassification.

VIII. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency

must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* DOT will be preparing an information collection request subsequent to the publication of this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation will affect Federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Recipients of title 23 U.S.C. or Federal Transit Act funds must determine that their highway and transit projects are included in a conforming transportation plan and TIP, or a regional emissions analysis including the project, transportation plan, and TIP must demonstrate that the transportation plan and TIP would still conform if the project were implemented. Because MPOs are responsible for performing regional emissions analysis which includes all such projects, and because DOT's metropolitan planning regulations at 23 CFR part 450 already require such projects to be included in the transportation plan, and in the TIP for informational purposes, this requirement does not pose a significant burden for small entities.

Potential delays in highway construction that may result from the need to make positive conformity determinations as required by this rule could appear to adversely affect small entities that may be relying upon future highway construction to provide them with certain benefits. However, any such delays would merely preserve the status quo, and would not limit any benefits currently available to small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Ozone.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671p.

2. Part 51 is amended by adding a new subpart T to read as follows:

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

Sec.

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 51.390 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 51.392 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 51.404.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause

a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

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 forum for cooperative transportation decision-making.

Milestone has the meaning given in section 182(g)(1) and section 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NOx budget if NOx reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following:

(1) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(2) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 51.448.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of 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 normally 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.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant

control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 51.448.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 51.394 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 51.460, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 51.450 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_x would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 51.396 Implementation plan revision.

(a) States with areas subject to this rule must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with these regulations. This revision is to be submitted by November 25, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in these regulations only if the State's conformity provisions apply equally to non-federal as well as Federal entities.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as the required conformity implementation plan revision is approved by EPA. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(c) To be approvable by EPA, the implementation plan revision submitted to EPA and DOT under this section shall address all requirements of this subpart in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of this subpart in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections:

§§ 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.460, and 51.462.

§ 51.398 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 51.400 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 51.460. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 51.460.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 51.460. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 51.402 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 shall include procedures for interagency consultation (Federal, State, and local) and resolution of conflicts.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(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 transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 51.460 and 51.462) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 51.418(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 51.454(d), projects located at sites in PM_{10} nonattainment areas 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; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 51.460.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 51.400; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 51.452.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* 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. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies 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 transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 51.404 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 51.402;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept,

design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 51.410 through 51.446.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 51.406 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 51.410 through 51.446 for projects not from a TIP before NEPA process completion.

§ 51.408 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 51.410 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 51.412 through 51.446 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 51.412 through 51.446 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan ...	§§ 51.412, 51.414, 51.416, 51.418(b).
TIP ...	§§ 51.412, 51.414, 51.416, 51.418(c).
Project (From a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.420, 51.422, 51.424, 51.426.
Project (Not from a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.418(d), 51.420, 51.424, 51.426.
Phase II of the Interim Period	
Transportation Plan ...	§§ 51.436, 51.442.
TIP ...	§§ 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§ 51.434, 51.440, 51.446.
Transitional Period	
Transportation Plan ...	§§ 51.428, 51.436, 51.442.
TIP ...	§ 51.430, 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§§ 51.432, 51.434, 51.440, 51.446.
Control Strategy and Maintenance Periods	
Transportation Plan ...	§ 51.428.
TIP ...	§ 51.430.
Project (From a conforming plan and TIP).	No additional criteria.
Project (Not from a conforming plan and TIP).	§ 51.432.

51.412 The conformity determination must be based on the latest planning assumptions.

51.414 The conformity determination must be based on the latest emission estimation model available.

51.416 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396.

51.418 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

51.420 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

51.422 The project must come from a conforming transportation plan and program.

51.424 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

51.426 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

51.428 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.430 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.432 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.434 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

51.436 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

51.438 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.440 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.442 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.
51.444 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.
51.446 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 51.412 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 51.414 through 51.446, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 51.402.

§ 51.414 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the **Federal Register** notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 51.416 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 is approved by EPA, the conformity determination must be made according to the procedures in §§ 51.402(a)(2) and 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 51.418 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 51.400.

§ 51.422 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 51.458(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 51.424 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a) or § 51.454(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.426 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 51.428 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met: (b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 51.452;

(4) For areas with a transportation plan that meets the content requirements of § 51.404(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), the

emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 51.430 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 51.404(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 51.452(c); and

(3) The regional analysis shall satisfy the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.432 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 51.404(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 51.452;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis

must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 51.428(b)(1), 51.428(b)(4), and 51.428(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 51.452(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.434 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.436 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.438 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.440 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A Transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 51.436 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.442 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either

paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.436(c), and the "Action" scenario, as defined in § 51.436(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 51.452. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 51.444 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 51.442(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.438(c), and the "Action" scenario, as defined in § 51.438(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 51.442(b)(3), and make the demonstration required by § 51.442(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within

the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 51.442(c) (1)–(3).

§ 51.446 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 51.442 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 51.442(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.448 Transition from the interim period to the control strategy period.

(a) *Areas which submit a control strategy implementation plan revision after November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 51.436 through 51.446) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 51.402(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 51.412 and 51.414 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 51.400(b)(4) or § 51.400(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 51.410 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 51.464 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the

requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 51.450 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 51.420 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 51.422;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and 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;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 51.432;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 51.440 (in ozone and CO nonattainment areas) or § 51.446 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 51.452 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 51.402. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 51.428 through 51.432, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 51.428 through 51.432 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 51.436 through 51.440 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which

emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 51.402 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 51.432, 51.440, and 51.446 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 51.432 shall be satisfied according to the procedures in § 51.432(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 51.440 and 51.446 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 51.450(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 51.432, 51.440, or 51.446 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) 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.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 51.454 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 51.402 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will

change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in § 51.402. In PM_{10} nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 51.458(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 51.458 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 51.428 through 51.432 and §§ 51.436 through 51.440 or used in the project-level hot-spot

analysis required by §§ 51.424 and 51.434.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 51.424, 51.428, and 51.430 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 51.402. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 51.428 and 51.430 and that the project still satisfies the requirements of § 51.424, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 51.460 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.
Mass Transit
Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles.[1]
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and track bed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.
Air Quality
Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.
Other
Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies.
Grants for training and research programs.
Planning activities conducted pursuant to titles 23 and 49 U.S.C.
Federal-aid systems revisions.
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.

TABLE 2.—EXEMPT PROJECTS—Continued

Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 51.462 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 51.464 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;

(2) Marginal ozone areas;

(3) Submarginal ozone areas;

(4) Transitional ozone areas;

(5) Incomplete data ozone areas;

(6) Moderate CO areas with a design value of 12.7 ppm or less; and

(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 51.436 through 51.440 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 51.428 through 51.432, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 51.428 through 51.432 apply in lieu of the procedures in §§ 51.436 through 51.440.

3. A new part 93 is added to read as follows:

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

Sec.

Authority: 42 U.S.C. 7401–7671p.

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 93.100 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

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

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means

that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

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 forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following: submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 93.128.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of 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 normally 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.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 93.128.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the

purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 93.102 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 93.134, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 93.129 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_X would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 93.104 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.134. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.134.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 93.134. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 93.105 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 of this chapter will include procedures for interagency consultation (Federal, State, and local), and resolution of conflicts.

(1) The implementation plan revision will include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States will provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures will include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures will also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(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 transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) 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 applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 93.131(d), projects located at sites in PM_{10} nonattainment areas 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; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 93.134.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.130.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model

development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* 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. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 of this chapter shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies 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 transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 93.106 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 93.109 through 93.127.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 93.107 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 93.109 through 93.127 for projects not from a TIP before NEPA process completion.

§ 93.108 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 93.110 through 93.127 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 93.110

through 93.127 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan ...	§§ 93.110, 93.111, 93.112, 93.113(b).
TIP ...	§§ 93.110, 93.111, 93.112, 93.113(c).
Project (From a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.114, 93.115, 93.116, 93.117.
Project (Not from a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.113(d), 93.114, 93.116, 93.117.
Phase II of the Interim Period	
Transportation Plan ...	§§ 93.122, 93.125.
TIP ...	§§ 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§ 93.121, 93.124, 93.127.
Transitional Period	
Transportation Plan ...	§§ 93.118, 93.122, 93.125.
TIP ...	§§ 93.119, 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§§ 93.120, 93.121, 93.124, 93.127
Control Strategy and Maintenance Periods	
Transportation Plan ...	§ 93,118.
TIP ...	§ 93.119.
Project (From a conforming plan and TIP).	No additional criteria.
Project (Not from a conforming plan and TIP).	§ 93.120.

93.110 The conformity determination must be based on the latest planning assumptions.

93.111 The conformity determination must be based on the latest emission estimation model available.

93.112 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396 of this chapter.

93.113 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

93.114 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

93.115 The project must come from a conforming transportation plan and program.

93.116 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

93.117 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

93.118 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.119 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.120 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.121 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

93.122 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

93.123 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.124 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.125 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.126 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.127 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.127, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 93.105.

§ 93.111 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model

for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the **Federal Register** notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 93.112 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396 of this chapter, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 of this chapter is approved by EPA, the conformity determination must be made according to the procedures in §§ 93.105(a)(2) and 93.105(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 93.113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 93.104.

§ 93.115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 93.106, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 93.133(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO

or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a) or § 93.131(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.117 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 93.118 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 93.130;

(4) For areas with a transportation plan that meets the content requirements of § 93.106(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 93.119 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 93.106(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the

transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 93.130(c); and

(3) The regional analysis shall satisfy the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.120 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 93.106(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 93.130;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 93.118(b)(1), 93.118(b)(4), and 93.118(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 93.130(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.121 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.122 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, compo- of the following (except that project listed in §§ 93.134 and 93.135 need be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions in NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.123 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is

contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.124 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 93.122 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.125 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.122(c), and the "Action" scenario, as defined in § 93.122(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 of this chapter defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 93.130. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 93.126 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 93.125(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.123(c), and the "Action" scenario, as defined in § 93.123(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 93.125(b)(3), and make the demonstration required by § 93.125(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 93.125(c) (1) through (3).

§ 93.127 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 93.125 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 93.125(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.128 Transition from the interim period to the control strategy period.

(a) Areas which submit a control strategy implementation plan revision after November 24, 1993. (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph

(a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be

consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 93.122 through 93.127) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 93.110 and 93.111 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 93.104(b)(4) or § 93.104(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 93.109 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 93.129 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 93.114 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 93.115;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and 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;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 93.120;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 93.124 (in ozone and CO nonattainment areas) or § 93.127 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 93.130 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing

emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 93.118 through 93.120, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 93.118 through 93.120 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 93.122 through 93.124 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 93.105 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit

alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 93.120, 93.124, and 93.127 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 93.120 shall be satisfied according to the procedures in § 93.120(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 93.124 and 93.127 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 93.129(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 93.120, 93.124, or 93.127 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) 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.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 93.131 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 93.105 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM–10 hot-spot analysis shall be determined through the interagency consultation process required in § 93.105. In PM–10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 93.133(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 93.132 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not

infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 93.133 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 93.118 through 93.120 and §§ 93.122–93.124 or used in the project-level hot-spot analysis required by §§ 93.116 and 93.121.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 93.116, 93.118, and 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 93.105. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 93.118 and 93.119 and that the project still satisfies the requirements of § 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 93.134 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.

TABLE 2.—EXEMPT PROJECTS—Continued

Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles[1].
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1].
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
- Planning and technical studies.
- Grants for training and research programs.
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 93.135 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

D

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 93.136 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;
(2) Marginal ozone areas;
(3) Submarginal ozone areas;
(4) Transitional ozone areas;
(5) Incomplete data ozone areas;
(6) Moderate CO areas with a design value of 12.7 ppm or less; and
(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 93.122 through 93.124 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 93.118 through 93.120, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration

and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 93.118 through 93.120 apply in lieu of the procedures in §§ 93.122 through 93.124.

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