

Volume 31, Number 23  
Pages 1931-2044  
December 1, 2006

SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

MISSOURI  
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2005 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

**SECRETARY OF STATE**

**ROBIN CARNAHAN**

Administrative Rules Division

James C. Kirkpatrick State Information Center  
600 W. Main  
Jefferson City, MO 65101  
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

EDITORS

BARBARA MCDUGAL

JAMES MCCLURE

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

PUBLISHING STAFF

WILBUR HIGHBARGER

JACQUELINE D. WHITE

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO  
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

**MISSOURI REGISTER**  
Office of the Secretary of State  
Administrative Rules Division  
PO Box 1767  
Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2005. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by e-mail at [rules@sos.mo.gov](mailto:rules@sos.mo.gov).

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



## IN THIS ISSUE:

### EMERGENCY RULES

**Department of Revenue**  
 Director of Revenue .....1935

### EXECUTIVE ORDERS .....1936

### PROPOSED RULES

**Department of Natural Resources**  
 Air Conservation Commission .....1941

**Department of Public Safety**  
 Missouri Gaming Commission .....1990

**Department of Revenue**  
 Director of Revenue .....1991

**Retirement Systems**  
 The Public School Retirement System of Missouri .....2001

### ORDERS OF RULEMAKING

**Department of Economic Development**  
 Public Service Commission .....2003

**Department of Elementary and Secondary Education**  
 Division of Administrative and Financial Services .....2016

**Department of Transportation**  
 Missouri Highways and Transportation Commission .....2016

### Elected Officials

State Auditor .....2017

### Retirement Systems

The County Employees' Retirement Fund .....2017

### Public Defender Commission

Office of State Public Defender .....2017

### Department of Health and Senior Services

Division of Regulation and Licensure .....2017

### IN ADDITIONS

#### Department of Insurance, Financial Institutions and

#### Professional Registration

Sovereign Immunity Limits .....2019

### DISSOLUTIONS .....2020

### SOURCE GUIDES

**RULE CHANGES SINCE UPDATE** .....2022

**EMERGENCY RULES IN EFFECT** .....2030

**EXECUTIVE ORDERS** .....2032

**REGISTER INDEX** .....2036

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
October 2, 2006 October 16, 2006	November 1, 2006 November 15, 2006	November 30, 2006 November 30, 2006	December 30, 2006 December 30, 2006
November 1, 2006 November 15, 2006	December 1, 2006 December 15, 2006	December 31, 2006 December 31, 2006	January 30, 2007 January 30, 2007
December 1, 2006 December 15, 2006	January 2, 2007 January 16, 2007	January 29, 2007 January 29, 2007	February 28, 2007 February 28, 2007
January 2, 2007 January 16, 2007	February 1, 2007 February 15, 2007	February 28, 2007 February 28, 2007	March 30, 2007 March 30, 2007
February 1, 2007 February 15, 2007	March 1, 2007 March 15, 2007	March 31, 2007 March 31, 2007	April 30, 2007 April 30, 2007
March 1, 2007 March 15, 2007	April 2, 2007 April 16, 2007	April 30, 2007 April 30, 2007	May 30, 2007 May 30, 2007
April 2, 2007 April 16, 2007	May 1, 2007 May 15, 2007	May 31, 2007 May 31, 2007	June 30, 2007 June 30, 2007
May 1, 2007 May 15, 2007	June 1, 2007 June 15, 2007	June 30, 2007 June 30, 2007	July 30, 2007 July 30, 2007
June 1, 2007 June 15, 2007	July 2, 2007 July 16, 2007	July 31, 2007 July 31, 2007	August 30, 2007 August 30, 2007
July 2, 2007 July 16, 2007	August 1, 2007 August 15, 2007	August 31, 2007 August 31, 2007	September 30, 2007 September 30, 2007
August 1, 2007 August 15, 2007	September 4, 2007 September 17, 2007	September 30, 2007 September 30, 2007	October 30, 2007 October 30, 2007
September 4, 2007 September 17, 2007	October 1, 2007 October 15, 2007	October 31, 2007 October 31, 2007	November 30, 2007 November 30, 2007

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

# Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2005), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Missouri Western State College Hearnes Learning Resources Ctr. 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library University of Missouri-Rolla 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Missouri Southern State University Spiva Library 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden Theological Seminary/ Webster University Eden/Webster Library 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library Central Missouri State University 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Southwest Missouri State University 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Southwest Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Maryville University Library 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	University of Missouri-Kansas City Miller Nichols Library 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
St. Charles City-County Library Middendorf-Kredell Branch 2750 Hwy K O'Fallon, MO 63366-7859 (636) 978-7997	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Central Methodist College Smiley Memorial Library 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

*circumstances creating the emergency. Emergency amendment filed October 25, 2006, effective January 1, 2007, expires June 29, 2007.*

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governor's of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

Calendar Year	Rate of Interest on Unpaid Amounts of Taxes
1995	12%
1996	9%
1997	8%
1998	9%
1999	8%
2000	8%
2001	10%
2002	6%
2003	5%
2004	4%
2005	5%
2006	7%
<b>2007</b>	<b>8%</b>

*AUTHORITY: section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 25, 2006, effective Jan. 1, 2007, expires June 29, 2007. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 41—General Tax Provisions**

**EMERGENCY AMENDMENT**

**12 CSR 10-41.010 Annual Adjusted Rate of Interest.** The department proposes to amend section (1).

*PURPOSE: Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2007 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2007.*

*EMERGENCY STATEMENT: The director of revenue is mandated to establish not later than October 22 annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the amendment informs the public of the established rate of interest to be paid on unpaid amounts of taxes for the 2007 calendar year. The director has followed procedures calculated to assure fairness to all interested persons and parties and has complied with protections extended by the Missouri and United States Constitutions. The director has limited the scope of the emergency amendment to the*

**T**he Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2005.

## EXECUTIVE ORDER 06-42

WHEREAS, Section 105.454(5), RSMo, requires the Governor to designate those members of his staff who have supervisory authority over each department, division or agency of the state government.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF MISSOURI, by virtue and authority vested in me by the Constitution and laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions or agencies:

Office of Administration	Ed Martin
Department of Agriculture	Chuck Pryor
Department of Conservation	Ed Martin
Department of Corrections	Jane Drummond
Department of Economic Development	John Russell
Department of Elementary and Secondary Education	Chuck Pryor
Department of Health and Senior Services	Jodi Stefanick
Department of Higher Education	Chuck Pryor
Department of Insurance	Todd Smith
Department of Labor and Industrial Relations	Todd Smith
Department of Mental Health	Jodi Stefanick
Department of Natural Resources	Chuck Pryor
Department of Public Safety	Jane Drummond
Department of Revenue	Ed Martin
Department of Social Services	Jodi Stefanick
Department of Transportation	Chuck Pryor
Missouri Housing Development Commission	Todd Smith
Boards Assigned to the Governor	Ed Martin
Unassigned Boards and Commissions	Ed Martin



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 20th day of October, 2006.

**Matt Blunt**  
Governor

**ATTEST:**

**Robin Carnahan**  
Secretary of State

**EXECUTIVE ORDER**  
**06-43**

TO ALL DEPARTMENTS AND AGENCIES:

This is to advise that state offices will be closed on Friday, November 24, 2006.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 24<sup>th</sup> day of October, 2006.

**Matt Blunt**  
**Governor**

**ATTEST:**

**Robin Carnahan**  
**Secretary of State**



**EXECUTIVE ORDER  
06-44**

WHEREAS, on July 21, 2005, Executive Order 05-20 established the Missouri Homeland Security Advisory Council; and

WHEREAS, the Missouri Homeland Security Advisory Council (the "Council") was charged with the task of reviewing and evaluating state and local homeland security plans and making recommendations for changes to better protect Missourians and with reviewing requests and providing recommendations on the appropriate use of Homeland Security grants funds from the federal government so that they are expended in a coordinated fashion ensuring the protection of the state as a whole; and

WHEREAS, on February 10, 2006, Executive Order 06-09 further directed the establishment of Regional Homeland Security Oversight Committees to work with and seek direction from the Council to help address homeland security categories at the local level; and

WHEREAS, at this time it is necessary to add another category with full member representation on Regional Homeland Security Oversight Committees.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby direct and order the following:

Elementary and secondary education shall be added as another category with full membership representation on the Regional Homeland Security Oversight Committees in order to make certain that schools are included and actively engaged in homeland security planning at the state and local level.

Executive Orders 05-20 and 06-09 shall remain effective as to all other provisions not specifically modified herein.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 26th day of October, 2006.

---

**Matt Blunt**  
Governor

**ATTEST:**

---

**Robin Carnahan**  
Secretary of State

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:  
**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 2—Air Quality Standards and Air Pollution  
Control Rules Specific to the Kansas City Metropolitan  
Area**

**PROPOSED AMENDMENT**

**10 CSR 10-2.390 Kansas City Area Transportation Conformity Requirements.** The commission proposes to amend the purpose, delete original sections (2) through (4) and (6) through (28), add new sections (1), (4) and (5) and renumber and amend original sections (1) and (5). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in

the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.mo.gov/regs/regagenda.htm](http://www.dnr.mo.gov/regs/regagenda.htm).

*PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401-7671), 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 Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the Kansas City attainment area. This amendment will make changes to the current rule requiring transportation plans, programs, and projects to conform to state air quality implementation plans. This amendment will adopt specific revisions to the Federal Transportation Conformity Rule as amended August 10, 2005. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users dated February 14, 2006.*

*PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 [et seq.]-7671), 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 Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the Kansas City [ozone maintenance] attainment area.*

**(1) Applicability.**

**(A)** After the United States Environmental Protection Agency (EPA) revokes the one (1)-hour ozone standard, if any Missouri portion of the Kansas City metropolitan area is redesignated as a nonattainment area for any transportation-related criteria pollutant, the provisions of this rule shall apply to the Missouri counties and the portions of Missouri counties located within the redesignated nonattainment area.

**(B)** This rule meets the requirements for state transportation conformity state implementation plans as provided in section 6011(f)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

**(C)** The Federal Transportation Conformity Rule is located at 40 Code of Federal Regulations (CFR) 93.100 through 93.129.

**[(1)](2) Definitions.** Definitions of certain terms specified in this rule may be found in 10 CSR 10-6.020.

*[(A) Terms used but not defined in this rule shall have the meaning given them by the Clean Air Act (CAA), Titles 23 and 49 United State Code (U.S.C.), other United States Environmental Protection Agency (EPA) regulations, other United States Department of Transportation (DOT) regulations, or other state or local air quality or transportation rules, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.*

*(B) Additional definitions specific to this rule are as follows:*

1. One (1)-hour ozone National Ambient Air Quality Standard (NAAQS)—the one (1)-hour ozone national ambient air quality standard codified at 40 CFR 50.9;

2. Eight (8)-hour ozone National Ambient Air Quality Standard (NAAQS)—the eight (8)-hour ozone national ambient air quality standard codified at 40 CFR 50.10;

3. Applicable implementation plan—defined in section 302(q) of the CAA, the portion (or portions) of the implementation plan for ozone, 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;

4. CAA—the Clean Air Act, as amended (42 U.S.C., 7401 et seq.);

5. Cause or contribute to a new violation for a project—

A. 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

B. 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;

6. Clean data—air quality monitoring data determined by EPA to meet the requirements of 40 Code of Federal Regulations (CFR) part 58 that indicate attainment of the national ambient air quality standards;

7. Consultation—in the transportation conformity process, one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

8. Control strategy implementation plan revision—the 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 (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment);

9. Design concept—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.;

10. Design scope—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.;

11. Donut areas—geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas;

12. DOT—the United States Department of Transportation;

13. EPA—the Environmental Protection Agency;

14. FHWA—the Federal Highway Administration of DOT;

15. FHWA/FTA project—for the purpose of this rule, 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;

16. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

17. FTA—the Federal Transit Administration of DOT;

18. Highway project—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—

A. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

B. 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

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

19. Horizon year—a year for which the transportation plan describes the envisioned transportation system according to section (6) of this rule;

20. Hot-spot analysis—an estimation of likely future localized carbon monoxide (CO) and particulate matter (PM<sub>10</sub>) pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. 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;

21. Increase the frequency or severity—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;

22. Isolated rural nonattainment and maintenance areas—areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions analysis of any metropolitan planning organization's (MPO's) metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas;

23. Lapse—the conformity determination for a transportation plan or transportation improvement program (TIP) has expired, and thus there is no currently conforming transportation plan and TIP;

24. Limited maintenance plan—a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth;

25. Maintenance area—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;

26. Maintenance plan—an implementation plan under a section 175A of the CAA, as amended;

27. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

28. Metropolitan planning organization (MPO)—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 Title 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. The Mid-America Regional Council is the MPO for the Kansas City metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

29. Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and  $PM_{10}$  nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment;

30. Motor vehicle emissions budget—that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions. For purposes of meeting the conformity test required under sections (18) and/or (19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Kansas State Implementation Plan;

31. National Ambient Air Quality Standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

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

33. NEPA process completion—for the purposes of this rule, with respect to FHWA or FTA, 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;

34. Nonattainment area—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;

35. Project—a highway project or transit project;

36. Protective finding—a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment;

37. Recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C.—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Title 49 U.S.C. 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;

38. Regionally significant project—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 highway and all fixed guideway transit facilities that offer an alternative to regional highway travel;

39. Safety margin—the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance;

40. Standard—a national ambient air quality standard;

41. Statewide transportation improvement program (STIP)—a staged, multi-year, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, transportation improvement programs (TIPs) and processes, developed pursuant to 23 CFR part 450;

42. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

43. Transit—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;

44. Transit project—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—

A. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

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

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

45. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 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 first sentence of this definition, 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 rule;

46. Transportation improvement program (TIP)—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;

47. Transportation plan—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;

48. *Transportation project*—a highway project or a transit project; and

49. *Written commitment*—for the purposes of this rule, a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgement that the commitment is an enforceable obligation under the applicable implementation plan.

(2) *Applicability*. After EPA revokes the one (1)-hour ozone standard, if any Missouri portion of the Kansas City metropolitan area is redesignated as a nonattainment area for any transportation-related criteria pollutant, the provisions of this rule shall apply to the Missouri counties and the portions of Missouri counties located within the redesignated nonattainment area.

(A) *Action Applicability*.

1. Except as provided for in subsection (2)(C) of this rule or section (26), conformity determinations are required for—

A. The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT;

B. The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT; and

C. 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, section (21) applies to such projects if they are regionally significant.

(B) *Emissions Applicability*.

1. The provisions of this rule apply with respect to emissions of the following criteria pollutant: ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>).

2. The provisions of this rule also apply with respect to emissions of the following precursor pollutants:

A. Volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas;

B. NO<sub>x</sub> in NO<sub>2</sub> areas; and

C. VOC and/or NO<sub>x</sub> in PM<sub>10</sub> areas if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of one (1) or both of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

3. The provisions of this rule apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the EPA regional administrator or the director of the state air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or

maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

4. The provisions of this rule apply to the Clay, Jackson and Platte Counties maintenance area for twenty (20) years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this rule shall apply for more than twenty (20) years.

(C) *Limitations*. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in section (14), except as provided by subsection (14)(B).

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three (3) years have elapsed since the most recent major step (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) occurred. 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 three (3) years have elapsed since the most recent major step to advance the project occurred.

(D) *Grace Period For New Nonattainment Areas*. For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this rule shall not apply with respect to that NAAQS for twelve (12) months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

(3) *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.

(4) *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) *Frequency of Conformity Determinations for Transportation Plans*.

1. Each new transportation plan must be demonstrated 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 the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in sections (26) and (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.F. The

conformity determination must be based on the transportation plan and the revision taken as a whole.

3. The MPO and DOT must determine the conformity of the transportation plan (including a new regional emission analysis) no less frequently than every three (3) years. If more than three (3) years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(C) Frequency of Conformity Determinations for Transportation Improvement Programs.

1. A new TIP must be demonstrated 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 section (26) or section (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.G.

3. The MPO and DOT must determine the conformity of the TIP (including a new regional emission analysis) no less frequently than every three (3) years. If more than three (3) years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, 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 one (1) of the following occurs: a significant change in the project's design concept and scope; three (3) years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

(E) Triggers for Transportation Plan and TIP Conformity Determinations. Conformity of existing transportation plans and TIPs must be redetermined within eighteen (18) months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT—

1. The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to subsection (18)(E) and can be used for transportation conformity purposes;

2. The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

3. The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget.]

[(5)](3) [Consultation.] General Provisions.

(A) Interagency Consultation Procedures (Federal Code Location: 40 CFR 93.105).

1. General. Procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation are described in [subsections (A) through (E) of this section] paragraphs (3)(A)1.–(3)(A)5. of this rule. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

[1.]A. The implementation plan revision required shall include procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation as described in [subsections (A) through (E) of this section] paragraphs (3)(A)1.–(3)(A)5. of this rule. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

[2.]B. MPOs and state departments of transportation will 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] subparagraph (3)(A)3.A. of this rule, before making conformity determinations.

[(B)]2. Interagency [C]consultation [P]procedures—[G]general [F]factors.

[1.]A. Representatives of the MPO and its regional transportation policy advisory committee, state transportation agencies, state and local air quality agencies, and regional air quality policy advisory organization designated by the state air quality agencies under the provisions of CAA section 174 shall participate in an interagency consultation process in accordance with this section with each other and with FHWA and FTA and EPA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any revisions to the preceding documents. Use of existing advisory committee structures will be the preferred mechanism for interagency consultation during the early stages of planning or programming processes. Expansion of representation will occur as necessary to assure that consulting agencies have the opportunity to receive background information as it is developed and share ideas and concerns early in the planning or programming process. Where consultation takes place outside of existing advisory committee structures, local government transportation interests will be represented by four (4) persons (representing transit and roadway interests from each state) appointed by the chairs of the regional transportation policy advisory committee and local government air quality interests will be represented by four (4) persons (at least one (1) from each state) appointed by the chairs of the regional air quality advisory organization. The air quality representation shall not duplicate representation from transportation agencies.

[2.]B. Roles and responsibilities of consulting agencies.

[A.](I) It shall be the affirmative responsibility of the agency(ies) with the responsibility for preparing the final document to initiate the consultation process by notifying other participants of the proposed planning or programming process for the development of the following planning or programming documents: the regional transportation plan and the regional TIP, including revisions, the unified planning work program, and any conformity determinations, with the MPO as the responsible agency; the statewide transportation plan and STIP for northern Clay and northern and western Platte Counties, with the state transportation agency as the responsible agency; and the state air quality implementation plans with motor vehicle emissions budgets and control strategies, including revisions, with the state air quality agency in cooperation with the MPO as the responsible agencies.

[B.](II) The adequacy of the consultation process for each type of document listed in [subparagraph (5)(B)2.A.] subparagraph (3)(A)2.B. of this rule shall be assured by the agency responsible for that document, by meeting the requirements of [parts (5)(B)2.A.(I)–(III)]subparts (3)(A)2.B.(II)(a)–(c) of this rule.

[(I)](a) The proposed planning or programming process must include at a minimum the following:

[(a)]I. The roles and responsibilities of each agency at each stage in the planning process, including technical meetings;

[(b)]II. The proposed organizational level of regular consultation;

[(c)]III. A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

*[(d)]IV.* The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas; and

*[(e)]V.* A process for responding to the significant comments of involved agencies.

*[(III)](b)* The time sequence and adequacy of the consultation process will be reviewed and determined for each type of planning or programming document by consensus of the consultation agencies at a meeting convened by the responsible agency for that purpose. These procedures shall subsequently become binding on all parties until such time as the procedures are revised by consensus of the consulting agencies.

*[(III)](c)* As a matter of policy, planning or programming processes must meet two (2) tests—

*[(a)]I.* Consultation opportunities must be provided early in the planning process. Early participation is intended to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the responsible agency during the formative stages of the plan or program. At a minimum, proposed transportation planning or programming processes must specifically include opportunities for the consulting agencies to confer upon the conformity analysis required to make conformity determinations for transportation plans and TIPs prior to consideration of draft documents by the regional air quality advisory organization, the regional transportation policy advisory committee or the state transportation agency for the transportation planning area outside of the metropolitan planning area for transportation planning. Air quality planning processes must specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget before the budget is considered by the regional air quality advisory organization, the regional transportation policy advisory committee, and the state air quality agency. Additionally, if TCMs are to be considered in transportation plans, TIPs or the state implementation plan, specific opportunities to consult upon TCMs by air quality and transportation agencies must be provided; and

*[(b)]II.* Additional consultation opportunities must be provided prior to any final action by any responsible agency listed in *[subparagraph (5)(B)2.A.] subparagraph (3)(A)2.B.* of this rule. Prior to formal action approving any plan or program, the consulting agencies must be given an opportunity to communicate their views in writing to the responsible agency. The responsible agency must consider the views of the consulting agencies and respond in writing to those views in a timely and complete manner prior to any final action on any plan or program. Such views and written response shall be made part of the record of any decision or action. Opportunities for formal consulting agency comment may run concurrent with other public review time frames. Participation or lack of participation by a consulting agency early in the planning or programming process has no bearing on their opportunity to submit formal comment prior to official action by the responsible agency.

*[3.]C.* Consultation on planning assumptions.

*[(A)](I)* Representatives of the conformity consulting agencies shall meet no less frequently than once per calendar year for the specific purpose of reviewing changes in transportation and air quality planning assumptions that could potentially impact the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations.

*[(B)](II)* It shall be the affirmative responsibility of each of the consulting agencies to advise the MPO of any pending changes in their planning assumptions. The MPO shall be responsible for convening a meeting to review planning assumptions in August of each year, unless an alternate date is agreed to by the consulting agencies, and at such other times as any of the consulting agencies proposes a change to any of these planning inputs. The purpose of the meeting(s) is to share information and evaluate the potential impacts of any proposed changes in planning assumptions, and to inform each other regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions.

*[(C)](III)* If any consulting agency proposes to undertake a data collection, planning or study process to evaluate a planning assumption that may have a significant impact on the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, all of the consulting agencies shall be given an opportunity to provide advisory input into that process. Examples of data, planning or study topics that may be of interest in this context include (but are not limited to):

*[(I)](a)* Estimates of vehicle miles traveled;

*[(III)](b)* Estimates of current vehicle travel speeds;

*[(III)](c)* Regional population and employment projections;

*[(IV)](d)* Regional transportation modeling assumptions;

*[(V)](e)* The methodology for determining future travel speeds;

*[(VI)](f)* The motor vehicle emissions model; and

*[(VII)](g)* The methodology for estimating future vehicle miles traveled.

*[(D)](IV)* Whenever a change in air quality or transportation planning assumptions is proposed that may have a significant impact on the SIP motor vehicle emissions inventory, motor vehicle emissions budget and/or conformity determinations, the agency proposing the change must provide all of the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least thirty (30) days to evaluate the impact of a proposed change in planning assumptions prior to final action by the agency proposing the change. (In the case of an EPA motor vehicle emissions model change, this would occur as part of the federal rulemaking process.)

*[4.]D.* It shall be the affirmative responsibility of the responsible agency to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request. In addition, it shall be the affirmative responsibility of the responsible agency to supply the following information for inclusion in a notebook maintained within the offices of each of the conformity consulting agencies and at local public libraries. The MPO shall be responsible for distribution of information to the libraries. Copies of the following information shall be provided to all of the other consulting agencies and additional copies as the MPO prescribes shall be provided to the MPO for placement in public libraries in the Kansas City region—

*[(A)](I)* The full text of any transportation or air quality document specified in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule and undergoing public comment pending final action by the responsible agency. Copies for distribution to local libraries must be delivered to the MPO at least three (3) business days prior to the beginning of the public comment period;

*[(B)](II)* Summary of planning and programming processes for transportation plans, TIPs and SIPs identified in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule, after approval by consensus of the consulting agencies; and

*[(C)](III)* Reasonably understandable summaries of final planning and programming documents for the general public. This summary information must be accompanied by a complete list of all supporting information, reports, studies, and texts which provide background or further information, along with the location of the documents and instructions on how they can be accessed. Summaries of final documents shall be provided to the other consulting agencies and to the MPO within fourteen (14) days of final approval by the responsible agency. Summaries of the following documents are specifically required:

*[(I)](a)* Regional unified planning work program;

*[(III)](b)* Official projections of regional population and employment;

*[(III)](c)* Regional transportation plan;

*[(IV)](d)* State transportation plans for areas within the



air quality planning area but outside of the metropolitan planning area for transportation;

*[(V)](e)* Regional transportation improvement program;

*[(VI)](f)* State transportation improvement program for areas within the air quality planning area but outside of the metropolitan planning area for transportation;

*[(VII)](g)* State air quality plan and emissions inventories, including motor vehicle emissions budgets; and

*[(VIII)](h)* The most recent analysis upon which a transportation/air quality conformity determination was made for a transportation plan or TIP.

*[(C)]3.* Interagency *[C]*/consultation *[P]*/procedures: *[S]*/specific *[P]*/processes. Interagency consultation procedures shall also include the following specific processes:

*[1.]A.* An interagency consultation process in accordance with *[subsection (5)(B)] paragraph (3)(A)2.* of this rule involving the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, the state transportation and air quality agencies, EPA, FHWA and FTA shall be undertaken for the following:

*[A.](I)* Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

*[B.](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. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)3.] subparagraph (3)(A)2.C.* of this rule regarding changes in planning assumptions;

*[C.](III)* Evaluating whether projects otherwise exempted from meeting the requirements of *[this rule (see sections (26) and (27))]* **40 CFR 93.126 and 93.127** should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule in the context of the transportation planning and TIP programming processes;

*[D.](IV)* Developing a list of TCMs to be included in the applicable implementation plan. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule in the context of the state air quality implementation plan development process;

*[E.](V)* Making a determination, as required by *[paragraph (13)(C)1.] 40 CFR 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 be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule in the context of the transportation planning and TIP programming processes. 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;

*[F.](VI)* Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in *[section (26) or section (27)] 40 CFR 93.126 or 40 CFR 93.127.* This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule in the context of the transportation planning and TIP programming processes. The MPO shall notify all conformity consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the

consulting agencies to determine their agreement or disagreement that the projects are exempt under *[section (26) or section (27) of this rule]* **40 CFR 93.126 or 40 CFR 93.127;**

*[G.](VII)* Determining whether the project is included in the regional emissions analysis supporting the current conforming TIP's conformity determination, even if the project is not strictly included in the TIP for purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] (3)(A)2.* of this rule in the context of the TIP programming process;

*[H.](VIII)* Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)3.] subparagraph (3)(A)2.C.* of this rule regarding planning assumptions;

*[I.](IX)* Determining the definition of reasonable professional practice for the purposes of *[section (22)] 40 CFR 93.122.* This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)3.] subparagraph (3)(A)2.C.* of this rule regarding planning assumptions;

*[J.](X)* Determining whether the project sponsor or the MPO has demonstrated that the requirements of *[section (18)] 40 CFR 93.118* are satisfied without a particular mitigation or control measure, as provided in *[subsection (25)(D)] 40 CFR 93.125(d).* This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule in the context of the transportation planning and TIP programming processes; **and**

*[K. Identifying, as required by subsection (23)(B), projects located at sites in PM<sub>10</sub> 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<sub>10</sub> hot-spot analysis; and]*

*[L.](XI)* Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by *[paragraph (9)(L)2.] 40 CFR 93.109(l)(2).*

*[2.]B.* An interagency consultation process in accordance with *[subsection (5)(B)] paragraph (3)(A)2.* of this rule involving the MPO, the regional air quality advisory organization, the regional transportation policy advisory committee and the state air quality and transportation agencies for the following:

*[A.](I)* Evaluating events which will trigger new conformity determinations in addition to those triggering events established in *[section (4)] 40 CFR 93.104.* This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)3.] subparagraph (3)(A)2.C.* of this rule regarding planning assumptions when there is a significant change in any planning assumption (examples: new regional forecast of population and employment, actual vehicle miles traveled (VMT) estimates significantly different from planning projections, etc.); and

*[B.](II)* Consulting on emissions analysis for transportation activities which cross the borders of the MPOs or nonattainment or maintenance area or air basin. This process shall be initiated by the MPO and conducted in accordance with *[paragraph (5)(B)2.] subparagraph (3)(A)2.B.* of this rule.

*[3.]C.* Prior to establishing a metropolitan planning area for transportation planning that does not include the entire nonattainment or maintenance area, the interagency consultation process described in *[subsection (5)(B)] paragraph (3)(A)2.* of this rule shall be supplemented by a formal memorandum of agreement, incorporated in the applicable state implementation plan, executed by the MPO and the state air quality and transportation agencies for cooperative planning and analysis. This executed memorandum of agreement shall

specify procedures for determining conformity of all regionally significant transportation projects outside the metropolitan planning boundary for transportation planning and within the nonattainment or maintenance area.

**[A.](I)** The interagency consultation process established by the executed memorandum of agreement for such an area shall apply in addition to all other consultation requirements.

**[B.](II)** At a minimum, any memorandum of agreement establishing a state transportation planning area outside of the MPO metropolitan planning area for transportation planning, but within the nonattainment or maintenance area, shall provide for state air quality agency concurrence in conformity determinations for areas outside of the metropolitan planning boundary for transportation planning, but within the nonattainment or maintenance area. Such agreement shall also establish a process involving the MPO and the state transportation agency in cooperative planning and analysis for determining conformity of all projects outside the metropolitan planning area for transportation planning and within the nonattainment or maintenance area in the context of the total regional transportation system that serves the nonattainment or maintenance area.

**[4.](D)** An interagency consultation process shall be undertaken 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 Title 49 U.S.C., are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed. This process shall be initiated by the MPO and conducted in accordance with **[paragraph (5)(B)2.] subparagraph (3)(A)2.B.** of this rule in the context of the transportation planning and TIP programming processes. At a minimum, the disclosure procedures shall meet the requirements of **[subparagraph (5)(B)4.A.-C.] parts (3)(A)2.D.(I)-(3)(A)2.D.(III)** of this rule.

**[A.](I)** The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion when any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. The sponsor of any potential regionally significant project shall disclose to the MPO each project for which alternatives have been identified through the NEPA process, and, in particular, any preferred alternative that may be a regionally significant project. This information shall be provided to the MPO in accordance with the time sequence and procedures established under **[paragraph (5)(B)2.] subparagraph (3)(A)2.B.** of this rule for each transportation planning and TIP development process.

**[B.](II)** In the case of any such regionally significant project that has not been disclosed to the MPO and other agencies participating in the consultation process before action is taken to adopt or approve, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of **[section (21)] 40 CFR 93.121**.

**[C.](III)** For the purposes of **[paragraph (5)(C)4.] subparagraph (3)(A)3.D.** of this rule, the phrase adopt or approve of a regionally significant project means the first time any action neces-

sary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

**[5.](E)** This interagency consultation process shall be undertaken in accordance with subsection **[(5)(B)] (3)(A)** of this rule involving the MPO and other recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C. for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by **[paragraph (5)(C)4.] subparagraph (3)(A)3.D.** of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of **[section (22)] 40 CFR 93.122**. This process shall be initiated by the MPO and conducted in accordance with **[paragraph (5)(B)3.] subparagraph (3)(A)2.C.** of this rule as it relates to planning assumptions.

**[6.](F)** This interagency consultation process outlined in **[subsection (5)(B)] paragraph (3)(A)2.** of this rule involves the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, and the state transportation and air quality agencies shall be undertaken for 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). This process shall be initiated by the MPO and conducted in accordance with **[paragraph (5)(B)3.] subparagraph (3)(A)2.C.** of this rule as it relates to planning assumptions.

**[7.](G)** This process insures providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in **[paragraph (A)1.] subparagraph (3)(A)1.A.** of this **[section] rule**, including federal agencies.

**[(D)]4.** Resolving **[C]**conflicts.

**[1.](A)** Any conflict among state agencies or between state agencies and the MPO regarding a final action on any conformity determination by the MPO on a plan or program subject to these consultation requirements shall be escalated to the governor(s), if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

**[2.](B)** After the MPO has notified the state air quality agencies in writing of the disposition of all air quality agency comments on a proposed conformity determination, state air quality agencies shall have fourteen (14) calendar days from the date that the written notification is received to appeal such proposed determination of conformity to the governor of Missouri. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Kansas air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Kansas and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Kansas. The Missouri air quality agency shall provide notice of any appeal under this subsection to the MPO, and the state transportation agencies, and the Kansas air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

**[(E)]5.** Public **[C]**consultation **[P]**procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process. This process will provide 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 including part 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. The public shall be assured reasonable access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). In addition, these agencies must specifically respond in writing to all public comments stating 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 (for example, NEPA). The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses and modeling assumptions used to perform a conformity determination, in accordance with the provisions of [paragraph (5)(B)4.] **subparagraph (3)(A)2.D.** of this rule, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43.

**(B) Requirement to Fulfill Commitments to Control Measures (Federal Code Location: 40 CFR 93.122(a)(4)(ii)).** Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

**(C) Requirement to Fulfill Commitments to Mitigation Measures (Federal Code Location: 40 CFR 93.125(c)).** Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

**(4) Reporting and Record Keeping. (Not Applicable)**

**(5) Test Methods. (Not Applicable)**

*[(6) Content of Transportation Plans.*

*(A) Transportation Plans Adopted after January 1, 1997, in Serious, Severe, or Extreme Ozone Nonattainment Areas. If the metropolitan planning area contains an urbanized area population greater than two hundred thousand (> 200,000), 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, after consultation in accordance with section (5), may choose any years to be horizon years, subject to the following restrictions:*

*A. Horizon years may be no more than ten (10) years apart;*

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

*C. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and*

*D. The last horizon year must be the last year of the transportation plan's forecast period.*

*2. For these horizon years—*

*A. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use fore-*

*casts, in accordance with implementation plan provisions and the consultation requirements specified by section (5);*

*B. 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 that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and*

*C. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.*

*(B) Two (2)-Year Grace Period for Transportation Plan Requirements in Certain Ozone and CO Areas. The requirements of subsection (A) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two (2) years from the following:*

*1. The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (> 200,000) to serious or above;*

*2. The official notice by the Census Bureau that determines the urbanized area population of a serious or above or CO nonattainment area to be greater than two hundred thousand (> 200,000); or*

*3. The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (> 200,000) as serious or above.*

*(C) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of subsection (6)(A) of this rule 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 and must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of sections (9)–(19).*

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

*(7) 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 sections (9)–(19) for projects not from a TIP before NEPA process completion.*

*(8) 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 as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with section (5) of this rule.

*(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.*

(A) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in sections (10)–(19) as listed in Table 1 in subsection (9)(B) of this rule are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(B) Table 1 in this section indicates the criteria and procedures in sections (10)–(19) which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections (C) through (I) of this section explain when the budget, interim emissions, and hot-spot tests are required for each pollutant and NAAQS. Subsection (J) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection (K) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection (L) of this section addresses isolated rural nonattainment and maintenance areas. Subsection (D) of this section explains when budget and emission reduction tests are required for CO nonattainment and maintenance areas. Table 1 follows:

Table 1. Conformity Criteria

<i>All Actions at all Times—</i>	
Section (10)	Latest planning assumptions
Section (11)	Latest emissions model
Section (12)	Consultation
<i>Transportation Plan—</i>	
Subsection (13)(B)	TCMs
Section (18) and/or Section (19)	Emissions budget and/or interim emissions
<i>TIP—</i>	
Subsection (13)(C)	TCMs
Section (18) and/or Section (19)	Emissions budget and/or interim emissions
<i>Project (From a Conforming Plan and TIP)—</i>	
Section (14)	Currently conforming plan and TIP
Section (15)	Project from a conforming plan and TIP
Section (16)	CO and PM <sub>10</sub> hot spots
Section (17)	PM <sub>10</sub> and PM <sub>2.5</sub> control measures
<i>Project (Not From a Conforming Plan and TIP)—</i>	
Subsection (13)(D)	
TCMs	
Section (14)	Currently conforming plan and TIP

Section (16)	CO and PM <sub>10</sub> hot spots
Section (17)	PM <sub>10</sub> and PM <sub>2.5</sub> Control Measures
Section (18) and/or Section (19)	Emissions budget and/or interim emissions

(C) One (1)-Hour Ozone NAAQS Nonattainment and Maintenance Areas. This subsection applies when an area is nonattainment or maintenance for the one (1)-hour ozone NAAQS (i.e., until the effective date of any revocation of the one (1)-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In all one (1)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking;

2. In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the one (1)-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the one (1)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS;

3. An ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub> as required by section (19), if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the one (1)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 1990;

4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the one (1)-hour ozone NAAQS (usually marginal and below areas) must satisfy one (1) of the following requirements—

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision for the one (1)-hour NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (C)1. of this section); and

5. Notwithstanding paragraphs (C)1. and (C)2. of this section, moderate and above ozone nonattainment areas with three (3) years of clean data for the one (1)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the one (1)-hour ozone NAAQS must satisfy one (1) of the following requirements—

A. The interim emissions tests as required by section (19);

B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the one (1)-hour ozone NAAQS (subject to the timing requirements of paragraph (C)1. of this section); or

C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the one (1)-hour ozone NAAQS.

(D) Eight (8)-Hour Ozone NAAQS Nonattainment and Maintenance Areas without Motor Vehicle Emissions Budgets for the One (1)-Hour Ozone NAAQS for any Portion of the Eight (8)-Hour Nonattainment Area. This subsection applies to areas that were never designated nonattainment for the one (1)-hour ozone NAAQS and areas that were designated nonattainment for the one (1)-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This subsection applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the eight (8)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS.

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for  $\text{NO}_x$ , as required by section (19), if the implementation plan or plan submis-

sion that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for  $\text{NO}_x$ . The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for  $\text{NO}_x$  if the implementation plan submission contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 2002.

4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one (1) of the following requirements—

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision for the eight (8)-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (D)1. of this section).

5. Notwithstanding paragraphs (D)1. and (D)2. of this section, ozone nonattainment areas with three (3) years of clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—

A. The interim emissions tests as required by section (19);

B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (D)1. of this section); or

C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.

(E) Eight (8)-Hour Ozone NAAQS Nonattainment and Maintenance Areas with Motor Vehicle Emissions Budgets for the One (1)-Hour Ozone NAAQS that Cover All or a Portion of the Eight (8)-Hour Nonattainment Area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;

*B. The publication date of EPA's approval of such budget in the Federal Register; or*

*C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.*

2. Prior to paragraph (E)1. of this section applying, the following test(s) must be satisfied, subject to the exception in subparagraph (E)2E—

*A. If the eight (8)-hour ozone nonattainment area covers the same geographic area as the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission;*

*B. If the eight (8)-hour ozone nonattainment area covers a smaller geographic area within the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) for either—*

*(I) The eight (8)-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by section (5); or*

*(II) The one (1)-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the eight (8)-hour ozone NAAQS in such cases, these emissions reductions must come from within the eight (8)-hour nonattainment area;*

*C. If the eight (8)-hour ozone nonattainment area covers a larger geographic area and encompasses the entire one (1)-hour ozone nonattainment or maintenance area(s)—*

*(I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission; and*

*(II) The interim emissions tests as required by section (19) for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the case where separate one (1)-hour SIP budgets are established for each state of a multi-state one (1)-hour nonattainment or maintenance area;*

*D. If the eight (8)-hour ozone nonattainment area partially covers a one (1)-hour ozone nonattainment or maintenance area(s)—*

*(I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by section (5); and*

*(II) The interim emissions tests as required by section (19), when applicable, for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the*

*case where separate one (1)-hour SIP budgets are established for each state in a multi-state one (1)-hour nonattainment or maintenance area.*

*E Notwithstanding subparagraph (E)2.A., B., C., or D. of this section, the interim emissions tests as required by section (19), where the budget test using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the eight (8)-hour ozone standard, as determined through the interagency consultation process required by section (5).*

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for  $\text{NO}_x$ , as required by section (19), if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for  $\text{NO}_x$ . The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for  $\text{NO}_x$  if the implementation plan or plan submission contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 2002. Prior to an adequate or approved  $\text{NO}_x$  motor vehicle emissions budget in the implementation plan submission for the eight (8)-hour ozone NAAQS, the implementation plan for the one (1)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for  $\text{NO}_x$  if the implementation plan contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 1990.

4. Notwithstanding paragraphs (E)1. and (E)2. of this section, ozone nonattainment areas with three (3) years of clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—

*A. The budget test and/or interim emissions tests as required by sections (18) and (19) and as described in paragraph (E)2. of this section;*

*B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (E)1. of this section); or*

*C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.*

*(F) CO Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following:*

1. FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by section (16) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot-spot test required by subsection (16)(B).

2. In CO nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

3. Except as provided in paragraph (F)4. of this section, in CO nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

4. CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one (1) of the following requirements:

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (F)2. of this section).

(G)  $PM_{10}$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 of subsection (B) of this section that are required to be satisfied at all times, in  $PM_{10}$  nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

1. FHWA/FTA projects in  $PM_{10}$  nonattainment or maintenance areas must satisfy the hot-spot test required by subsection (16)(A).

2. In  $PM_{10}$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

3. In  $PM_{10}$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made—

A. If there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or

B. If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(H)  $NO_2$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in  $NO_2$  nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In  $NO_2$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In  $NO_2$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(I)  $PM_{2.5}$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in  $PM_{2.5}$  nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In  $PM_{2.5}$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In  $PM_{2.5}$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(J) Areas with Limited Maintenance Plans. Notwithstanding the other subsections of this section, an area is not required to satisfy the regional emissions analysis for section (18) and/or section (19) for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including the hot-spot requirements for projects in CO and  $PM_{10}$  areas.

(K) *Areas with Insignificant Motor Vehicle Emissions.* Notwithstanding the other subsections of this section, an area is not required to satisfy a regional emissions analysis for section (18) and/or section (19) for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including regional emissions analyses for section (18) and/or section (19) for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO and PM<sub>10</sub> areas in section (16) must also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

(L) *Isolated Rural Nonattainment and Maintenance Areas.* This subsection applies to any nonattainment or maintenance area (or 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. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

1. FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections (10), (11), (12), (16), and (17) and subsection (13)(D). Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of subsection (16)(B) ("Localized CO and PM<sub>10</sub> violations (hot spots)").

2. Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in subsections (C) through (K) of this section, with the following modifications—

A. When the requirements of sections (18) and (19) apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

B. In isolated rural nonattainment and maintenance areas that are subject to section (18), FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one (1) of the following requirements—

(I) Section (18);

(II) Section (19) (including regional emissions analy-

sis for NO<sub>x</sub> in all ozone nonattainment and maintenance areas, notwithstanding paragraph (19)(F)2.; or

(III) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

C. The choice of requirements in subparagraph (L)2.B. of this section and the methodology used to meet the requirements of part (L)2.B.(III) of this section must be determined through the interagency consultation process required in subparagraph (5)(C)1.G. through which the relevant recipients of Title 23 U.S.C. or Title 49 U.S.C. funds, the local air quality agency, the state air quality agency, and the state department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in subsection (5)(D), which applies for any state air agency comments on a conformity determination.

(10) *Criteria and Procedures—Latest Planning Assumptions.*

(A) Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in sections (11)–(19), must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of subsections (10)(B)–(F) of this rule using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in section (5). The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

(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. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO, and shall be subject to consultation in accordance with section (5).

(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 and other implementation plan measures which have already been implemented.

(F) Key assumptions shall be specified and included in the draft documents and supporting materials used for the inter-agency and public consultation required by section (5).

(11) *Criteria and Procedures—Latest Emissions Model.*

(A) The conformity determination must be based on the latest emission estimation model available. This criterion 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.

(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 (3) months and no more than twenty-four (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 replanning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three (3) months, EPA will announce the appropriate grace period in the Federal Register.

(C) Transportation plan and TIP 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. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three (3) years after the issuance of the draft environmental document.

(12) *Criteria and Procedures—Consultation.* Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan is fully approved by EPA, the conformity determination must be made according to paragraph (5)(A)2. and subsection (5)(E) and the requirements of 23 CFR part 450.

(13) *Criteria and Procedures—Timely Implementation of TCMs.*

(A) The transportation plan, TIP, or any 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.

(B) For transportation plans, this criterion is satisfied if the following two (2) 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 Laws, consistent with schedules included in the applicable implementation plan; and

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 Laws, 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 intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program; and

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.

(14) *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.

(A) Only one (1) 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 specified in section (4) of this rule.

(B) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subsection are satisfied.

(15) *Criteria and Procedures—Projects From a Plan and TIP.*

(A) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of subsection (9)(B) 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 subsection (15)(B) of this rule and from a conforming program if it meets the requirements of subsection (15)(C) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in subsection (15)(D) of this rule.

(B) A project is considered to be from a conforming transportation plan if one (1) of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy section (6) Content of Transportation Plans of this rule, 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 the project design concept and scope have not changed significantly from those which were described in the TIP; 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 subsection (25)(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.

(D) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

(16) *Criteria and Procedures—Localized CO and PM<sub>10</sub> Violations (Hot Spots).*

(A) This subsection applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) 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. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

(B) This subsection applies for CO nonattainment areas as described in paragraph (9)(D)1. 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 criteria is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

(17) *Criteria and Procedures—Compliance with PM<sub>10</sub> and PM<sub>2.5</sub> Control Measures.* The FHWA/FTA project must comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

(18) *Criteria and Procedures—Motor Vehicle Emissions Budget.*

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in subsections (9)(C) through (L). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in subsection (C) of this section are less than or equal to the motor vehicle emission budget(s) established in the applicable implementation plan or implementation plan submission.

(B) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the time frame of the transportation plan) for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten (10) years apart, as follows:

1. Until a maintenance plan is submitted—

A. Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

B. Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

2. When a maintenance plan has been submitted—

A. Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by section (5) shall determine what must be considered in order to make such a finding;

B. For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

C. If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

D. For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

(C) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in subsection (2)(B) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(D) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

1. Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of section (22) and subparagraph (5)(C)1.A.

2. The regional emissions analysis may be performed for any years in the time frame of the transportation plan provided they are not more than ten (10) years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in subsection (B) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(E) Motor Vehicle Emissions Budgets in Submitted Control Strategy Implementation Plan Revisions and Submitted Maintenance Plans.

1. Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

2. If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by section (19) must be satisfied.

3. If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy sections (14) and (15), which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

4. EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

A. The submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his or her designee) and was subject to a state public hearing;

B. Before the control strategy implementation plan or

maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

C. The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

D. The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

E. The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

F. Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see section (1) for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

5. Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

6. When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

(F) Adequacy Review Process for Implementation Plan Submissions. EPA will use the procedure listed in paragraph (F)1. or (F)2. of this section to review the adequacy of an implementation plan submission—

1. When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan—

A. EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

B. The public will have a minimum of thirty (30) days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the Internet and a copy is requested within fifteen (15) days of the date of the website notice, the comment period will be extended for thirty (30) days from the date that a copy of the implementation plan is mailed;

C. After the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under subparagraph (F)2.C. of this section.

D. EPA will establish a Federal Register notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the notice is published as established in the Federal Register notice, unless EPA is taking a final approval action on the SIP as described in subparagraph (F)2.C. of this section.

E. EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

F. If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in subparagraphs (F)1.A. through E or paragraph (F)2. of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (F)1. of this section, such a finding will become effective immediately upon the date of EPA's letter to the state.

G. If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in subparagraphs (F)1.A. through E or paragraph (F)2. of this section.

2. When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan—

A. EPA's Federal Register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

B. The publication of the notice of proposed rulemaking will start a public comment period of at least thirty (30) days.

C. EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in subparagraphs (F)1.C. through E of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication of EPA's approval in the Federal Register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

(19) Criteria and Procedures—Interim Emissions in Areas without Motor Vehicle Emissions Budgets.

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in subsections (9)(C) through (L). This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(B) Ozone Areas. The requirements of this paragraph apply to all one (1)-hour ozone and eight (8)-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met—

1. In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates

that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

B. The emissions predicted in the "Action" scenario are lower than—

(I) 1990 emissions by any nonzero amount, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions by any nonzero amount, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

2. In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

B. The emissions predicted in the "Action" scenario are not greater than—

(I) 1990 emissions, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

(C) CO Areas. This criterion may be met—

1. In moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

B. The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

2. In moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

B. The emissions predicted in the "Action" scenario are not greater than 1990 emissions.

(D) PM<sub>10</sub> and NO<sub>2</sub> Areas. This criterion may be met in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas; a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section, one (1) of the following requirements is met—

1. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

2. The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless a conformity plan 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.

(E)  $PM_{2.5}$  Areas. This criterion may be met in  $PM_{2.5}$  nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section, one (1) of the following requirements is met—

1. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

2. The emissions predicted in the "Action" scenario are not greater than 2002 emissions.

(F) Pollutants. The regional emissions analysis must be performed for the following pollutants:

1. VOC in ozone areas;

2.  $NO_x$  in ozone areas, unless the EPA administrator determines that additional reductions of  $NO_x$  would not contribute to attainment;

3. CO in CO areas;

4.  $PM_{10}$  in  $PM_{10}$  areas;

5. VOC and/or  $NO_x$  in  $PM_{10}$  areas if the EPA regional administrator or the director of the state air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the  $PM_{10}$  nonattainment problem and has so notified the MPO and DOT;

6.  $NO_x$  in  $NO_2$  areas.

7.  $PM_{2.5}$  in  $PM_{2.5}$  areas; and

8. Re-entrained road dust in  $PM_{2.5}$  areas only if the EPA regional administrator or the director of the state air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the  $PM_{2.5}$  nonattainment problem and has so notified the MPO and DOT.

(G) Analysis Years.

1. The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

2. For areas using subparagraphs (B)2.A., (C)2.A. and paragraphs (D)1., and (E)1. of this section, a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section would not be required for analysis years in which the transportation projects and planning assumption in the "Action" and "Baseline" scenarios are exactly the same. In such a case, subsection (A) of this section can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario for such analysis years.

(H) "Baseline" Scenario. The regional emissions analysis required by subsections (B) through (E) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The

"Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in section (26) and projects exempt from regional emissions analysis as listed in section (27) 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 year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(I) "Action" Scenario. The regional emissions analysis required by subsections (B) through (E) of this section must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in section (26) and projects exempt from regional emissions analysis as listed in section (27) 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 were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

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, 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.

(J) Projects not from a Conforming Transportation Plan and TIP. For the regional emissions analysis required by subsections (B) through (E) of this section, 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.

*(20) Consequences of Control Strategy Implementation Plan Failures.**(A) Disapprovals.*

1. If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

2. If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to section (18) of this rule or approves the submission, and conformity to the implementation plan revision is determined.

3. In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

*(B) Failure to Submit and Incompleteness.* In areas where EPA notifies the state, MPO, and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision, (either of which initiates the sanction process under CAA section 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

*(C) Federal Implementation Plans.* If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

*(21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or Title 49 U.S.C.*

*(A) Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:*

1. The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

2. The project is included in the regional emissions analysis for the currently conforming transportation plan and

TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose 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

3. A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (18) and/or (19) for a project not from a conforming transportation plan and TIP).

*(B) In isolated rural nonattainment and maintenance areas subject to subsection (9)(A), no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:*

1. The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

2. A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project was implemented (consistent with the requirements of sections (18) and/or (19) for projects not from a conforming transportation plan and TIP).

*(C) Notwithstanding subsections (A) and (B) of this section, in nonattainment and maintenance areas subject to subsection (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met for that pollutant/precursor and NAAQS:*

1. The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

2. The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

*(22) Procedures for Determining Regional Transportation-Related Emissions.**(A) General Requirements.*

1. The regional emissions analysis required by section (18) and section (19) of this rule for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include 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 section (5) of this rule. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (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 or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure 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 regulatory action in order to be implemented may not be included in the emissions analysis unless—

A. The regulatory action is already adopted by the enforcing jurisdiction;

B. The project, program, or activity is included in the applicable implementation plan;

C. The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of section (18) contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

D. EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or 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 (22)(A)3. of this rule, emission reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

A. Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

B. Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.

5. A regional emissions analysis for the purpose of satisfying the requirements of section (19) must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

6. The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation in accordance with subparagraph (5)(C)1.A. to 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.

7. Reasonable methods shall be used to estimate nonattainment or maintenance area vehicle miles traveled (VMT) on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(B) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas must meet the requirements of paragraphs (B)1. through 3. of this section if their metropolitan planning area contains an urbanized area population over two hundred thousand (200,000).

1. Beginning January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by subparagraph (5)(C)1.A. Network-based travel models must at a minimum satisfy the following requirements—

A. Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than ten (10) years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;

B. Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

C. Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

D. A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

E. Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. 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; and

F. Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

2. 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-based travel model.

3. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT 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. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of subparagraph (5)(C)1.A.

(C) Two (2)-Year Grace Period for Regional Emissions Analysis Requirements in Certain Ozone and CO Areas. The requirements of subsection (B) of this section apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two (2) years from the following:

1. The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) to serious or above;

2. The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than two hundred thousand (>200,000); or

3. The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) as serious or above.

(D) In all areas not otherwise subject to subsection (B) of this section, regional emissions analyses must use those procedures described in subsection (B) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to subsection (B) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(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.

(F)  $PM_{2.5}$  from Construction-Related Fugitive Dust.

1. For  $PM_{2.5}$  areas in which the implementation plan does not identify construction-related fugitive  $PM_{2.5}$  as a significant contributor to the nonattainment problem, the fugitive  $PM_{2.5}$  emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In  $PM_{2.5}$  nonattainment and maintenance areas with implementation plans which identify construction-related fugitive  $PM_{2.5}$  as a significant contributor to the nonattainment problem, the regional  $PM_{2.5}$  emissions analysis shall consider construction-related fugitive  $PM_{2.5}$  and shall account for the level of construction activity, the fugitive  $PM_{2.5}$  control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(G) Reliance on Previous Regional Emissions Analysis.

1. Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of section (18) Motor Vehicle Emissions Budget or section (19) Interim Emissions in Areas without Motor Vehicle Emissions Budgets of this rule without new regional analysis if the previous regional emissions analysis also

applies to the new plan and/or TIP. This requires a demonstration that—

A. The new plan and/or TIP contains all projects which must be started in the plan and TIP's time frames in order to achieve the highway and transit system envisioned by the transportation plan;

B. All plan and TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's and/or TIP's regional emissions at the time of the previous conformity determination;

C. The design concept and scope of each regionally significant project in the new plan and/or TIP is not significantly different from that described in the previous transportation plan; and

D. The previous regional emissions analysis is consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19), as applicable.

2. A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of section (18) or section (19) of this rule without additional regional emissions analysis if 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, the previous regional emissions analysis is still consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19) as applicable, and if the project is either—

A. Not regionally significant; or

B. Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

3. A conformity determination that relies on subsection (G) of this section does not satisfy the frequency requirements of subsection (4)(B) or (C).

(23) Procedures for Determining Localized CO and  $PM_{10}$  Concentrations (Hot-Spot Analysis).

(A) CO Hot-Spot Analysis.

1. The demonstrations required by section (16) must be based on quantitative analysis using air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section (5) and approved by the EPA regional administrator are used:

A. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

B. For projects affecting intersections that are 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 the project;

C. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

D. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance



area with the worst level-of-service, as identified in the applicable implementation plan.

2. In cases other than those described in paragraph (A)1. of this section, the demonstrations required by section (16) may be based on either—

A. Quantitative methods that represent reasonable and common professional practice; or

B. A quantitative consideration of local factors, if this can provide a clear demonstration that the requirements of section (16) are met.

(B)  $PM_{10}$  Hot-Spot Analysis.

1. The hot-spot demonstration required by section (16) must be based on quantitative analysis methods for the following types of projects:

A. Projects which are located at sites at which violations have been verified by monitoring;

B. Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

C. New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

2. Where quantitative analysis methods are not required, the demonstration required by section (16) may be based on a qualitative consideration of local factors.

3. The identification of the sites described in subparagraphs (B)1.A. and B. of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in section (5). 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.

4. The requirements for quantitative analysis contained in subsection (23)(B) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(C) General Requirements.

1. Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentrations must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

2. Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

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

4.  $PM_{10}$  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 implement such measures, as required by subsection (25)(A).

5. 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 (5) years or less at any individual site.

(24) 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) 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, unless the implementation plan establishes mechanisms for such trades.

(C) 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.

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

(25) 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 Title 49 U.S.C., 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 a conformity determination is made, 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 are included in the project design concept and scope which is used in the regional emissions analysis required by sections (18) Motor Vehicle Emissions Budget and (19) Interim Emissions in Areas without Motor Vehicle Emissions Budgets or used in the project-level hot-spot analysis required by section (16).

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

(C) Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.

(D) 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 applicable emission budget requirements of section (18) and interim emission requirements of section (19) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section (5). The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of sections (18) and/or (19), and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in subsection (5)(E) for conformity determination for projects.

(26) Exempt Projects. Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. 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 of this section is not exempt if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), 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. The state and the MPO must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

Table 2—Exempt Projects

#### Safety

Railroad/highway crossing  
Hazard elimination program  
Safer nonfederal-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 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<sup>1</sup>  
Purchase of office, shop, and operating equipment for existing facilities

Purchase of operating equipment for vehicles (e.g., radios, fare boxes, 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<sup>1</sup>

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

Emergency or hardship advance land acquisitions (23 CFR 710.503)

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

<sup>1</sup>Note—In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

(27) Projects Exempt From Regional Emissions Analyses. Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. 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 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), 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 follows:

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*

(28) *Traffic Signal Synchronization Projects.* Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this section. However, all subsequent regional emissions analyses required by sections (18) and (19) for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.]

*AUTHORITY:* section 643.050, RSMo 2000. Original rule filed Oct. 4, 1994, effective May 28, 1995. Amended: Filed May 1, 1996, effective Dec. 30, 1996. Amended: Filed June 15, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 14, 2003, effective Sept. 30, 2003. Amended: Filed April 1, 2005, effective Dec. 30, 2005. Amended: Filed Oct. 24, 2006.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing on this proposed amendment will begin at 9:00 a.m., February 1, 2007. The public hearing will be held at the Lewis and Clark State Office Building, 1101 Riverside Drive, 1st Floor, Lacharrette Conference Room, Jefferson City, MO 65101. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., February 8, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 5—Air Quality Standards and Air Pollution  
Control Rules Specific to the St. Louis Metropolitan  
Area**

**PROPOSED AMENDMENT**

**10 CSR 10-5.480 St. Louis Area Transportation Conformity Requirements.** The commission proposes to amend the purpose, delete original sections (2) through (4) and (6) through (28), add new sections (1), (4) and (5), and renumber and amend original sections (1) and (5). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.mo.gov/regs/regagenda.htm](http://www.dnr.mo.gov/regs/regagenda.htm).

*PURPOSE:* This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401-7671), and the related require-

ments 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 Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the St. Louis ozone and PM<sub>2.5</sub> nonattainment and carbon monoxide maintenance areas. This amendment will make changes to the current rule requiring transportation plans, programs, and projects to conform to state air quality implementation plans. This amendment will adopt specific revisions to the Federal Transportation Conformity Rule as amended August 10, 2005. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the **Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users** dated February 14, 2006.

*PURPOSE:* This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 [et seq.]-7671), 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 Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan, developed pursuant to section 110 and Part D of the CAA. This rule applies to the St. Louis ozone and PM<sub>2.5</sub> nonattainment and carbon monoxide maintenance areas.

**(1) Applicability.**

**(A) This rule applies to the St. Louis ozone and PM<sub>2.5</sub> nonattainment and carbon monoxide maintenance areas.**

**(B) This rule meets the requirements for state transportation conformity state implementation plans as provided in section 6011(f)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59, signed August 10, 2005.**

**(C) The Federal Transportation Conformity Rule (for reference) is located at 40 Code of Federal Regulations (CFR) 93.100 through 93.129.**

[(1)](2) Definitions. Definitions of certain terms specified in this rule may be found in 10 CSR 10-6.020.

[(A) Terms used but not defined in this rule shall have the meaning given them by the Clean Air Act (CAA), Titles 23 and 49 United States Code (U.S.C.), other United States Environmental Protection Agency (EPA) regulations, other United States Department of Transportation (DOT) regulations, or other state or local air quality or transportation rules, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

[(B) Additional definitions specific to this rule are as follows:

1. One (1)-hour ozone National Ambient Air Quality Standard (NAAQS)—the one (1)-hour ozone national ambient air quality standard codified at 40 CFR 50.9;

2. Eight (8)-hour ozone National Ambient Air Quality Standard (NAAQS)—the eight (8)-hour ozone national ambient air quality standard codified at 40 CFR 50.10;

3. Applicable implementation plan—defined in section 302(q) of the CAA, the portion (or portions) of the state implementation plan for ozone or carbon monoxide (CO), 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;

4. CAA—the Clean Air Act, as amended (42 U.S.C. 7401 et seq.);

5. Cause or contribute to a new violation for a project—

A. 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

B. 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;

6. Clean data—air quality monitoring data determined by EPA to meet the requirements of 40 Code of Federal Regulations (CFR) part 58 that indicate attainment of the national ambient quality standard;

7. Consultation—in the transportation conformity process, one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

8. Control strategy implementation plan revision—the 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 (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment);

9. Design concept—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.;

10. Design scope—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.;

11. Donut areas—geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas;

12. DOT—the United States Department of Transportation;

13. EPA—the Environmental Protection Agency;

14. FHWA—the Federal Highway Administration of DOT;

15. FHWA/FTA project—for the purpose of this rule, 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;

16. Forecast period—with respect to a transportation

plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

17. FTA—the Federal Transit Administration of DOT;

18. Highway project—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—

A. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

B. 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

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

19. Horizon year—a year for which the transportation plan describes the envisioned transportation system according to section (6) of this rule;

20. Hot-spot analysis—an estimation of likely future localized carbon monoxide (CO) and particulate matter (PM<sub>10</sub>) pollutant concentrations and a comparison of those concentrations to the national ambient air quality standard(s). 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;

21. Increase the frequency or severity—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;

22. Isolated rural nonattainment and maintenance areas—areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions analysis of any metropolitan planning organization's (MPO's) metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas;

23. Lapse—the conformity determination for a transportation plan or transportation improvement program (TIP) has expired, and thus there is no currently conforming transportation plan and TIP;

24. Limited maintenance plan—a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth;

25. Maintenance area—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;

26. Maintenance plan—an implementation plan under section 175A of the CAA, as amended;

27. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

28. *Metropolitan planning organization (MPO)*—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. 5303. It is the forum for cooperative transportation decision-making. The East-West Gateway Council of Governments is the MPO for the St. Louis metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

29. *Milestone*—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and  $PM_{10}$  nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment;

30. *Motor vehicle emissions budget*—that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions. For purposes of meeting the conformity test required under sections (18) and/or (19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Illinois State Implementation Plan;

31. *National Ambient Air Quality Standards (NAAQS)*—those standards established pursuant to section 109 of the CAA;

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

33. *NEPA process completion*—for the purposes of this rule, with respect to FHWA or FTA, 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;

34. *Nonattainment area*—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;

35. *Not classified area*—any carbon monoxide (CO) nonattainment area which EPA has not classified as either moderate or serious;

36. *Project*—a highway project or transit project;

37. *Protective finding*—a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment;

38. *Recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C.*—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Title 49 U.S.C. 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;

39. *Regionally significant project*—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;

40. *Safety margin*—the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance;

41. *Standard*—a national ambient air quality standard;

42. *Statewide transportation improvement program (STIP)*—a staged, multiyear, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, TIPs and processes, developed pursuant to 23 CFR part 450;

43. *Statewide transportation plan*—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

44. *Transit*—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;

45. *Transit project*—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—

A. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

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

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

46. *Transportation control measure (TCM)*—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 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 first sentence of this definition, 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 rule;

47. *Transportation improvement program (TIP)*—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;

48. *Transportation plan*—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;

49. *Transportation project*—a highway project or a transit project; and

50. *Written commitment*—for the purposes of this rule, a written commitment that includes a description of the

action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgement that the commitment is an enforceable obligation under the applicable implementation plan.

(2) *Applicability.*

(A) *Action Applicability.*

1. Except as provided for in subsection (2)(C) or section (26), conformity determinations are required for—

A. The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT;

B. The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by a MPO or DOT; and

C. 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, section (21) applies to such projects if they are regionally significant.

(B) *Geographic Applicability.* The provisions of this rule shall apply in the Franklin, Jefferson, St. Charles and St. Louis Counties and the City of St. Louis nonattainment area for transportation-related criteria pollutants for which the area is designated nonattainment.

1. The provisions of this rule apply with respect to the emissions of the following criteria pollutants: ozone, carbon monoxide (CO) (The provisions of this rule shall apply in St. Louis City and that portion of St. Louis County extending north, south and west from the St. Louis City/County boundary to Interstate 270 for CO emissions), nitrogen dioxide (NO<sub>2</sub>), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>).

2. The provisions of this rule also apply with respect to emissions of the following precursor pollutants:

A. Volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas;

B. NO<sub>x</sub> in NO<sub>2</sub> areas; and

C. VOC and/or NO<sub>x</sub> in PM<sub>10</sub> areas if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of one (1) or both of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

3. The provisions of this rule apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the EPA regional administrator or the director of the state air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

4. The provisions of this rule apply to the Franklin, Jefferson, St. Charles and St. Louis Counties and the City of

St. Louis nonattainment area for twenty (20) years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this rule shall apply for more than twenty (20) years.

(C) *Limitations.* In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in section (14), except as provided by subsection (14)(B).

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three (3) years have elapsed since the most recent major step (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) occurred. 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 three (3) years have elapsed since the most recent major step to advance the project occurred.

(D) *Grace Period for New Nonattainment Areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this rule shall not apply with respect to that NAAQS for twelve (12) months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

(3) *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.

(4) *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) *Frequency of Conformity Determinations for Transportation Plans.*

1. Each new transportation plan must be demonstrated 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 the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in sections (26) and (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E of this rule. The conformity determination must be based on the transportation plan and the revision taken as a whole.

3. The MPO and DOT must determine the conformity of

the transportation plan (including a new regional emissions analysis) no less frequently than every three (3) years. If more than three (3) years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(C) *Frequency of Conformity Determinations for Transportation Improvement Programs.*

1. A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT. The conformity determination must be completed in accordance with paragraph (5)(A)1. of this rule.

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 section (26) or section (27) and has been made in accordance with the notification provisions of subparagraph (5)(C)1E of this rule. Any new conformity determination for a TIP amendment must be completed in accordance with paragraph (5)(A)1. of this rule.

3. The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every three (3) years. If more than three (3) years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, 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 one (1) of the following occurs: a significant change in the project's design concept and scope; three (3) years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

(E) *Triggers for Transportation Plan and TIP Conformity Determinations.* Conformity of existing transportation plans and TIPs must be redetermined within eighteen (18) months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT—

1. The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to subsection (18)(E) and can be used for transportation conformity purposes;

2. The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

3. The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle budget.]

[(5)](3) [Consultation] **General Provisions.**

(A) **Interagency Consultation Procedures (Federal Code Location: 40 CFR 93.105).**

1. General. Procedures for interagency consultation (federal, state and local), resolution of conflicts, and public consultation are described in [subsections (A) through (F) of this section] paragraphs (3)(A)1.–(3)(A)6. of this rule. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

[1.]A. The implementation plan revision required shall include procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation as described in [subsections (A) through (E) of this section] paragraphs (3)(A)1.–(3)(A)6. of this rule. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

[2.]B. MPOs and state departments of transportation will 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] subparagraph (3)(A)3.A. of this rule, before making conformity determinations.

[(B)]2. Interagency [C]consultation [P]procedures—[G]general [F]factors.

[1.]A. Representatives of the MPO, state and local air quality planning agencies, state and local transportation agencies shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of the EPA, FHWA and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any revisions to the preceding documents.

[2.]B. The state air quality agency shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to the development of the applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to the development of the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. The MPO shall also be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to any determinations of conformity under this rule for which the MPO is responsible.

[3.]C. In addition to the lead agencies identified in [paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule, other agencies entitled to participate in any interagency consultation process under this rule include:

[A.](I) The Illinois Department of Transportation, the Missouri Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the Missouri Department of Natural Resources;

[B.](II) Local transportation agencies through the appointment of one (1) representative from local transportation agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local transportation agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois Department of Transportation shall jointly appoint the Illinois representative, and the MPO and Missouri Department of Transportation shall jointly appoint the Missouri representative;

[C.](III) Local air quality agencies through the appointment of one (1) representative from each of the two (2) local air quality agencies. The MPO and the Missouri Department of Natural Resources shall jointly appoint the local air quality agency representatives; and

[D.](IV) Local mass transit agencies through the appointment of one (1) representative from local mass transit agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local mass transit agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois

Department of Transportation shall jointly appoint the Illinois representative, and the MPO and Missouri Department of Transportation shall jointly appoint the Missouri representative;

*[E](V)* Nothing in this paragraph shall preclude the authority of the lead agency listed in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* to involve additional agencies in the consultation process which are directly impacted by any project or action subject to this rule;

*[F](VI)* Representatives appointed under *[subparagraphs (5)(B)3.B., C., D., or E] parts (3)(A)2.C.(II)–(3)(A)2.C.(V) of this rule* shall not come from an agency already represented as a consulting agency under this section.

*[4.]D.* It shall be the responsibility of the appropriate lead agency designated in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* to solicit early and continuing input from all other consulting agencies, to provide those agencies with all relevant information needed for meaningful input and, where appropriate, to assure policy-level contact with those agencies. The lead agency shall, at a minimum, provide opportunities for discussion and comment in accordance with the interagency consultation procedures detailed in this section. The lead agency shall consider the views of each other consulting agency prior to making a final decision, shall respond in writing to those views and shall assure that such views and response (or where appropriate a summary thereof) are made part of the record of any decision or action.

*[5.]E.* It shall be the responsibility of each agency listed in *[paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule* (other than the lead agency designated under *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule*) to confer with the lead agency and the other participants in the consultation process, to review and make relevant comment on all proposed and final documents and decisions in a timely manner and to attend consultation and decision meetings. To the extent requested by the lead agency or other agencies involved, or as required by other provisions of this rule, each agency shall provide timely input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and shall comply with any reasonable request to render such technical assistance to the lead agency as may be needed to support the development of the document or decision.

*[6.]F.* For documents or decisions subject to this rule for which the MPO is the designated lead agency, the MPO shall, through the regular meetings of its board of directors and committees, be the primary forum for discussion at the policy level. The MPO shall ensure that all consulting agencies are provided with opportunity to participate throughout the decision-making process including the early planning stages. The MPO shall modify or supplement its normal schedule of meetings, if needed, to provide adequate opportunity for discussion of the matters subject to this rule.

*[7.]G.* It shall be the responsibility of the lead agency designated under *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* to initiate the consultation process by notifying other consulting agencies of the following:

*[A.](I)* The decision(s) or document(s) for which consultation is being undertaken; and

*[B.](II)* The proposed planning or programming process for the development of the decision(s) or document(s). The proposed planning or programming process shall include at a minimum:

*[(I)](a)* The roles and responsibilities of each agency at each stage in the planning process, including technical as well as policy aspects;

*[(III)](b)* The organizational level of regular consultation;

*[(III)](c)* The proposed schedule of, or process for convening, consultation meetings, including the process and assignment of responsibilities for selecting a chairperson and setting meeting agendas;

*[(IV)](d)* The process for circulating or otherwise making

available all relevant materials in a timely fashion at each stage in the consultation process, and in particular for circulating or otherwise making available drafts of proposed documents or decisions before formal adoption or publication;

*[(V)](e)* The process and assignment of responsibility for maintaining an adequate record of the consultation process; and

*[(VI)](f)* The process for responding to the significant comments of involved agencies;

*[C.](III)* The consultation planning and programming process to be followed for each document or decision subject to this rule shall be determined by consensus among the consulting agencies and shall thereafter be binding on all parties until such time as it may be revised by consensus among the consulting agencies.

*[8.]H.* All drafts and supporting materials subject to consultation shall be provided at such level of detail as each consulting agency may need to determine its response. Any consulting agency may request, and the appropriate lead agency shall supply, supplemental information as is reasonably available for the consulting agency to determine its response.

*[9.]I.* The time allowed at each stage in the consultation process shall not be less than that specified by regulation or this rule, published by the lead agency in any document describing the consultation procedures to be followed under 23 CFR part 450, 40 CFR part 51 or this rule, or otherwise previously agreed by consensus of the consulting agencies. Where no such time has been specified, published or agreed to, the time shall be determined by consensus of the consulting agencies based upon the amount of material subject to consultation, the extent of prior informal or technical consultation and discussion, the nature of the decision to be made, and such other factors as are previously agreed by the consulting agencies. The time allowed for consultation shall be the same for all agencies being consulted, and any extension of time granted to one (1) agency shall also be allowed all other agencies.

*[10.]J.* Determining the adequacy of consultation opportunities.

*[A.](I)* Representatives of the consulting agencies listed in *[paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule* shall meet once each calendar year for the purpose of reviewing the sequence and adequacy of the consultation planning and programming processes established or proposed under *[paragraph (5)(B)7.] subparagraph (3)(A)2.G. of this rule* for each type of document or decision. Responsibility for convening this meeting shall rest with the appropriate lead agency designated in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule*.

*[B.](II)* In any year (other than the first after the adoption of this rule) in which there is an agreed upon consultation planning or programming process in effect and no consulting agency has requested any change to that process, the appropriate lead agency may propose that this process remain in effect. Upon notification of acceptance of this proposal by all consulting agencies, no further action by the lead agency shall be required and the meeting and review required under *[subparagraph (5)(B)10.A.] part (3)(A)2.J.(I) of this rule* need not take place for that year.

*[11.]K.* The consultation planning and programming processes proposed and agreed to under *[paragraph (5)(B)7.] subparagraph (3)(A)2.G. of this rule* shall comply with the following general principles:

*[A.](I)* Consultation shall be held early in the planning process, so as to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the lead agency during the formative stages of developing any document or decision subject to this rule;

*[B.](II)* For conformity determinations for transportation plan revisions or TIPs, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the analysis required to make conformity determinations. This consultation shall normally take place at the technical level, except to the extent agreed by consensus under *[paragraph*



*(5)(B)10.] subparagraph (3)(A)2.J. of this rule*, and shall take place prior to the consideration of draft documents or conformity determinations by the MPO;

*[C.](III)* For state implementation plans, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget. This consultation shall take place at the technical and policy levels, except to the extent agreed by consensus under *[paragraph (5)(B)10.] subparagraph (3)(A)2.J. of this rule*, and shall take place prior to the consideration of the draft budget by the state air quality agency;

*[D.](IV)* In addition to the requirements of *[subparagraphs (5)(B)11.B. and C.] parts (3)(A)2.K.(II)–(3)(A)2.K.(III) of this rule*, if TCMs are to be considered in transportation plans, TIPs or state implementation plans, specific opportunities to consult regarding TCMs by air quality and transportation agencies must be provided prior to the consideration of the TCMs by the appropriate lead agency; and

*[E.](V)* Additional consultation opportunities must be provided prior to any final action being taken by any of the lead agencies defined in *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* on any document or decision subject to this rule. Before taking formal action to approve any plan, program, document or other decision subject to this rule, the consulting agencies shall be given an opportunity to communicate their views in writing to the lead agency. The lead agency shall consider those views and respond in writing in a timely and appropriate manner prior to any final action. Such views and written response shall be made part of the record of the final decision or action. Opportunities for formal consulting agency comment may run concurrently with other public review time frames.

*[12.]L.* Consultation on planning assumptions.

*[A.](I)* The MPO shall convene a meeting of the consulting agencies listed in *[paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule* no less frequently than once each calendar year for the purpose of reviewing the planning, transportation and air quality assumptions, and models and other technical procedures in use or proposed to be used for the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget, and conformity determinations. This meeting shall normally take place at the technical level except to the extent agreed by consensus under *[paragraph (5)(B)10.] subparagraph (3)(A)2.J. of this rule*.

*[B.](II)* In all years when it is intended to determine the conformity of a transportation plan revision or TIP, the meeting required in *[subparagraph (5)(B)12.A.] part (3)(A)2.L.(I) of this rule* shall be held before the MPO commences the evaluation of projects submitted or proposed for inclusion in the transportation plan revision or TIP, and before the annual public meeting held in accordance with 23 CFR section 450.322(c). The MPO shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for conformity determinations. The state air quality agencies shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for developing the SIP motor vehicle emissions inventory, motor vehicle emissions budget and for estimating the emissions reductions associated with TCMs.

*[C.](III)* It shall be the responsibility of each of the consulting agencies to advise the MPO of any pending changes to their planning assumptions or methods and procedures used to estimate travel, forecast travel demand, or estimate motor vehicle emissions. Where necessary the MPO shall convene meetings, additional to that required under *[subparagraph (5)(B)12.A.] part (3)(A)2.L.(I) of this rule*, to share information and evaluate the potential impacts of any proposed changes in planning assumptions, methods or procedures and to exchange information regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions, methods or procedures.

*[D.](IV)* Whenever a change in air quality or transportation planning assumptions, methods or procedures is proposed that may have a significant impact on the SIP motor vehicle emissions inventory, motor vehicle emissions budget or conformity determinations, the agency proposing the change shall provide the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least thirty (30) days to evaluate the impact of the proposed change prior to final action by the agency proposing the change. To the fullest extent practicable, the time frame for considering and evaluating proposed changes shall be coordinated with the procedures for consultation on planning assumptions in *[subparagraphs (5)(B)12.A.–C.] parts (3)(A)2.L.(I)–(3)(A)2.L.(III) of this rule*.

*[13.]M.* A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the consultation purpose is identified in the public notice for the meeting and all consulting agencies are notified in advance of the meeting.

*[14.]N.* In any matter which is the subject of consultation, no consulting agency may make a final decision or move to finally approve a document subject to this rule until the expiry of the time allowed for consultation and the completion of the process notified under *[paragraph (5)(B)7.] subparagraph (3)(A)2.G. of this rule*. Notwithstanding the previous sentence, any consulting agency may make a final decision or move to finally approve a document subject to this rule if final comments on the draft document or decision have been received from all other consulting agencies. The lead agency designated under *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* shall, in making its decision, take account of all views expressed in response to consultation.

*[(C)]3.* Interagency *[C]*consultation *[P]*procedures—*[S]*specific *[P]*processes. Interagency consultation procedures shall also include the following specific processes:

*[1.]A.* An interagency consultation process in accordance with *[subsection (5)(B)] paragraph (3)(A)2.* of this rule involving the MPO, state and local air quality planning agencies, state and local transportation agencies, the EPA and the DOT shall be undertaken for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

*[A.](I)* Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

*[B.](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;

*[C.](III)* Evaluating whether projects otherwise exempted from meeting the requirements of *[this rule under sections (26) and (27)] 40 CFR 93.126 and 93.127* should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason;

*[D.](IV)* Making a determination, required by *[paragraph (13)(C)1.] 40 CFR 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 over other projects within their control. 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;

*[E.](V)* Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in *[section (26)] 40 CFR 93.126* or *[section (27)] 40 CFR 93.127*.

In any year when it is intended to prepare a transportation plan revision, TIP or TIP amendment that merely adds or deletes exempt projects, the MPO shall notify all consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under [section (26)] 40 CFR 93.126 or [section (27) of this rule] 40 CFR 93.127;

[F.](VI) Determining whether a project is considered to be 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 whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

[G.](VII) Advising on the horizon years to be used for conformity determinations, in accordance with [section (6) of this rule] 40 CFR 93.106;

[H.](VIII) Advising whether the modeling methods and functional relationships used in the model are consistent with acceptable professional practice and are reasonable for the purposes of emission estimation, as specified in [section (22) of this rule] 40 CFR 93.122;

[I.](IX) Reviewing the models, databases and other requirements specified in [section (23) of this rule] 40 CFR 93.123 and advising if there are grounds for recommending to the EPA regional administrator that these models, databases or requirements are inappropriate. In such an event, the consulting agencies shall propose alternative methods to satisfy the requirements for conformity in accordance with [section (23)] 40 CFR 93.123;

[J.](X) Determining what forecast of vehicle miles traveled to use in establishing or tracking motor vehicle emissions budgets, developing transportation plans, TIPs or applicable implementation plans, or in making conformity determinations;

[K.](XI) Determining whether the project sponsor or the MPO has demonstrated that the requirements of [sections (16)–(19)] 40 CFR 93.116–93.119 are satisfied without a particular mitigation or control measure, as provided in [section (25)] 40 CFR 93.125;

[L.](XII) Developing a list of TCMs to be included in the applicable implementation plan; and

[M. Identifying, as required by subsection (23)(B), projects located at sites in PM<sub>10</sub> 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<sub>10</sub> hot-spot analysis; and]

[N.](XIII) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by [paragraph (9)(L)2.] 40 CFR 93.109(1)(2);

[2.]B. An interagency consultation process in accordance with [subsection (5)(B)] paragraph (3)(A)2. involving the MPO, state and local air quality planning agencies and state and local transportation agencies for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

[A.](I) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in [section (4)] 40 CFR 93.104. Any of the consulting agencies listed in [paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule may request that the MPO initiate the interagency consultation process to evaluate an event which should, in the opinion of the consulting agency, trigger a need for a conformity determination. The MPO shall initiate appropriate consultation with the other consulting agencies in response to such request, and shall notify the consulting agencies and the requesting agency in writing of its proposed action in response to this evaluation and consultation; and

[B.](II) Consulting on the procedures to be followed in performing emissions analysis for transportation activities which cross the borders of the MPO's region or the St. Louis nonattainment area or air basin;

[3.]C. Consultation on nonfederal projects.

[A.](I) An interagency consultation process in accordance with [subsection (5)(B)] paragraph (3)(A)2. of this rule involving the MPO, state and local air quality agencies and state and local transportation agencies shall be undertaken 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 all those by recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C., are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

[B.](II) Notwithstanding the provisions of [subparagraph (5)(C)3.A.] part (3)(A)3.A.(I) of this rule, it shall be the responsibility of the sponsor of any such regionally significant project, and of any agency that becomes aware of any such project through applications for approval, permitting or funding, to disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project.

[C.](III) Any such regionally significant project that has not been disclosed to the MPO in a timely manner shall be deemed not to be included in the regional emissions analysis supporting the conformity determination for the TIP and shall not be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of [section (21) of this rule] 40 CFR 93.121.

[D.](IV) For the purposes of this section and of [section (21) of this rule] 40 CFR 93.121, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved;

[4.]D. This interagency consultation process involving the agencies specified in [paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by [paragraph (5)(C)3.] subparagraph (3)(A)3.C. of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of [section (22) of this rule] 40 CFR 93.122. This process shall be initiated by the MPO;

[5.]E. The MPO shall undertake an on-going process of consultation with the agencies listed in [paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO. This process shall, as far as practicable, be integrated with the cooperative development of the Unified Planning Work Program under 23 CFR section 450.314; and

[6.]F. This process insures providing final documents (including applicable implementation plans and implementation plan

revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in *[paragraph (A)1. of this section] subparagraph (3)(A)1.A. of this rule*, including federal agencies.

*[(D)]4.* Record *[K]*keeping and *[D]*distribution of *[F]*final *[D]*documents.

*[1.]A.* It shall be the responsibility of the lead agency designated under *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request.

*[2.]B.* It shall be the affirmative responsibilities of the lead agency designated under *[paragraph (5)(B)2.] subparagraph (3)(A)2.B. of this rule* to provide to the other consulting agencies copies of any final document or final decision subject to this rule within thirty (30) days of final action by the lead agency.

*[(E)]5.* Resolving *[C]*conflicts.

*[1.]A.* Conflicts among state agencies or between state agencies and the MPO regarding a final action on any conformity determination subject to this rule shall be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

*[2.]B.* It shall be the responsibility of the state air quality agency to provide timely notification to the MPO and other consulting agencies of any proposed conformity determination where the agency identifies a potential conflict which, if unresolved, would, in the opinion of the agency, justify escalation to the governor. To the extent that consultation is not otherwise required under this rule, the state air quality agency shall consult with the other agencies listed in *[paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule* in advance of escalating a potential conflict to the governor, and, if necessary, shall convene the meetings required under *[paragraph (5)(E)1.] subparagraph (3)(A)5.A. of this rule*.

*[3.]C.* When the MPO intends to make a final determination of conformity for a transportation plan, plan revision, TIP or TIP amendment, the MPO shall first notify the director of the state air quality agency of its intention and include in that notification a written response to any comments submitted by the state air quality agency on the proposed conformity determination. Upon receipt of such notification (including the written response to any comments submitted by the state air quality agency), the state air quality agency shall have fourteen (14) calendar days in which to appeal a proposed determination of conformity to the governor. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Illinois air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Illinois and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Illinois. The state air quality agency shall provide notice of any appeal under this subsection to the MPO, the state transportation agency and the Illinois air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

*[4.]D.* The governor may delegate the role of hearing any such appeal under this *[subsection] paragraph* and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the state air quality agency or any local air quality agency, the state department of transportation, a state transportation commission or board, any agency that has responsibility for only one (1) of these functions, or an MPO.

*[(F)]6.* Interagency *[C]*consultation *[P]*procedures—*[P]*public *[/]*involvement.

*[1.]A.* The MPO shall establish and implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for a transportation plan revision or a TIP. This process shall be consistent with the requirements of 23 CFR part 450, including sections 450.316(b)(1), 450.322(c) and 450.324(c).

*[2.]B.* The public involvement process may be fully integrated with the public involvement process for transportation plans and TIPs publicized under 23 CFR section 450.316(b)(1)(i) or may be established independently. In the case of an independent procedure, there shall be a minimum public comment period of forty-five (45) days before the public involvement process is initially adopted or revised. In either case, the following criteria shall apply:

*[A.](I)* The MPO shall provide timely information about the conformity process to interested parties and segments of the community potentially affected by conformity determinations or by programs and policies proposed to ensure conformity, and to the public in general;

*[B.](II)* The public shall be assured reasonable access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b);

*[C.](III)* The MPO shall ensure adequate public notice of public involvement activities and shall allow time for public review and comment at key decision points including, but not limited to, any proposed determination of conformity;

*[D.](IV)* The MPO shall demonstrate explicit consideration and response to public input received during the conformity determination process. When significant written and oral comments are received on a proposed determination of conformity as a result of the public involvement process, a summary, analysis and report on the disposition of comments shall be made part of the final conformity determination;

*[E.](V)* The MPO shall 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; and

*[F.](VI)* The MPO will, when imposing any charges for public inspections and copying, be consistent with the fee schedule contained in 49 CFR 7.43.

*[3.]C.* The MPO and other agencies involved in conformity determinations shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law.

*[4.]D.* At such times as the MPO proposes to adopt or revise the public involvement process under *[paragraph (5)(F)2.] subparagraph (3)(A)6.B. of this rule*, the MPO shall consult with the agencies listed in *[paragraph (5)(B)3.] subparagraph (3)(A)2.C. of this rule* on that public involvement process as it relates to conformity determinations. A minimum of forty-five (45) days shall be allowed for these agencies to respond. The MPO shall consider all comments made by the consulting agencies and shall provide each agency with a written statement of its response before moving to adopt the revised public involvement process.

*[5.]E.* In the first year after the adoption of this rule, if there is an approved public involvement process in force and the MPO has not proposed to revise that process, any consulting agency may request such a revision. The MPO shall consider this request and provide a written statement of its response to the requesting agency and other interested parties.

**(B) Requirement to Fulfill Commitments to Control Measures (Federal Code Location: 40 CFR 93.122(a)(4)(ii)).** Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(C) **Requirement to Fulfill Commitments to Mitigation Measures (Federal Code Location: 40 CFR 93.125(c)).** Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

**(4) Reporting and Record Keeping. (Not Applicable)**

**(5) Test Methods. (Not Applicable)**

*[(6) Content of Transportation Plans.*

*(A) Transportation Plans Adopted after January 1, 1997, in Serious, Severe, or Extreme Ozone Nonattainment Areas and in Serious Carbon Monoxide Nonattainment Areas. If the metropolitan planning area contains an urbanized area population greater than two hundred thousand (>200,000), 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, after consultation in accordance with section (5), may choose any years to be horizon years, subject to the following restrictions:*

*A. Horizon years may be no more than ten (10) years apart;*

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

*C. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and*

*D. The last horizon year must be the last year of the transportation plan's forecast period.*

*2. For these horizon years—*

*A. 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 the consultation requirements specified by section (5);*

*B. 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 that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and*

*C. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.*

*(B) Two (2)-Year Grace Period for Transportation Plan Requirements in Certain Ozone and CO Areas. The requirements of subsection (A) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two (2) years from the following:*

*1. The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) to serious or above;*

*2. The official notice by the Census Bureau that determines the urbanized area population of a serious or above or CO nonattainment area to be greater than two hundred thousand (>200,000); or*

*3. The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) as serious or above.*

*(C) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of subsection (6)(A) of this rule 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 and must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of sections (9)–(19).*

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

*(7) 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 sections (9)–(19) for projects not from a TIP before NEPA process completion.*

*(8) 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 as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with section (5) of this rule.*

*(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.*

*(A) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in sections (10)–(19) as listed in Table 1 in subsection (9)(B) of this rule are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.*

*(B) Table 1 in this section indicates the criteria and procedures in sections (10)–(19) which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections (C) through (I) of this section explain when the budget, interim emissions, and hot-spot test are required for each pollutant and NAAQS. Subsection (J) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection (K) of this section*

addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection (L) of this section addresses isolated rural nonattainment and maintenance areas. Subsection (D) of this section explains when budget and emission reduction tests are required for CO nonattainment and maintenance areas. Table 1 follows:

Table 1—Conformity Criteria

<i>All Actions at All Times—</i>	
Section (10)	Latest planning assumptions
Section (11)	Latest emissions model
Section (12)	Consultation
<i>Transportation Plan—</i>	
Subsection (13)(B)	TCMs
Section (18) and/or Section (19)	Emissions budget and/or interim emissions
<i>TIP—</i>	
Subsection (13)(C)	TCMs
Section (18) and/or Section (19)	Emissions budget and/or interim emissions
<i>Project (From a Conforming Plan and TIP)—</i>	
Section (14)	Currently conforming plan and TIP
Section (15)	Project from a conforming plan and TIP
Section (16)	CO and PM <sub>10</sub> hot spots
Section (17)	PM <sub>10</sub> and PM <sub>2.5</sub> control measures
<i>Project (Not From a Conforming Plan and TIP)—</i>	
Subsection (13)(D)	TCMs
Section (14)	Currently conforming plan and TIP
Section (16)	CO and PM <sub>10</sub> hot spots
Section (17)	PM <sub>10</sub> and PM <sub>2.5</sub> control measures
Section (18) and/or Section (19)	Emissions budget and/or interim emissions

(C) One (1)-Hour Ozone NAAQS Nonattainment and Maintenance Areas. This subsection applies when an area is nonattainment or maintenance for the one (1)-hour ozone NAAQS (i.e., until the effective date of any revocation of the one (1)-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In all one (1)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the one (1)-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the one (1)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the one (1)-hour ozone NAAQS.

3. An ozone nonattainment area must satisfy the interim emissions test for NO<sub>x</sub>, as required by section (19), if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the one (1)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in 1990.

4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the one (1)-hour ozone NAAQS (usually marginal and below areas) must satisfy one (1) of the following requirements—

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision for the one (1)-hour NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in paragraph (C)1. of this section.

5. Notwithstanding paragraphs (C)1. and (C)2. of this section, moderate and above ozone nonattainment areas with three (3) years of clean data for the one (1)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the one (1)-hour ozone NAAQS must satisfy one (1) of the following requirements—

A. The interim emissions tests as required by section (19);

B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the one (1)-hour ozone NAAQS (subject to the timing requirements of paragraph (C)1. of this section); or

C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the one (1)-hour ozone NAAQS.

(D) Eight (8)-Hour Ozone NAAQS Nonattainment and Maintenance Areas without Motor Vehicle Emissions Budgets for the One (1)-Hour Ozone NAAQS for any portion of the Eight (8)-Hour Nonattainment Area. This subsection applies to areas that were never designated nonattainment for the one (1)-hour ozone NAAQS and areas that were designated nonattainment for the one (1)-hour ozone NAAQS

but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This subsection applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking;

2. In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the eight (8)-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS;

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for  $\text{NO}_x$  as required by section (19), if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for  $\text{NO}_x$ . The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for  $\text{NO}_x$  if the implementation plan submission contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 2002;

4. Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the eight (8)-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one (1) of the following requirements—

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision for the eight (8)-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (D)1. of this section);

5. Notwithstanding paragraphs (D)1. and (D)2. of this section, ozone nonattainment areas with three (3) years of

clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—

A. The interim emissions tests as required by section (19);

B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (D)1. of this section); or

C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.

(E) Eight (8)-Hour Ozone NAAQS Nonattainment and Maintenance Areas with Motor Vehicle Emissions Budgets for the One (1)-Hour Ozone NAAQS that Cover All or a Portion of the Eight (8)-Hour Nonattainment Area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the eight (8)-hour ozone NAAQS for an area, according to subsection (2)(D). In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in such eight (8)-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In such eight (8)-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the eight (8)-hour ozone NAAQS is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking;

2. Prior to paragraph (E)1. of this section applying, the following test(s) must be satisfied, subject to the exception in subparagraph (E)2.E—

A. If the eight (8)-hour ozone nonattainment area covers the same geographic area as the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission;

B. If the eight (8)-hour ozone nonattainment area covers a smaller geographic area within the one (1)-hour ozone nonattainment or maintenance area(s), the budget test as required by section (18) for either—

(I) The eight (8)-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by section (5); or

(II) The one (1)-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the eight (8)-hour ozone NAAQS in such cases, these emissions reductions must come from within the eight (8)-hour nonattainment area;

C. If the eight (8)-hour ozone nonattainment area covers a larger geographic area and encompasses the entire one (1)-hour ozone nonattainment or maintenance area(s)—

(I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission; and

(II) The interim emissions tests as required by section (19) for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the case where separate one (1)-hour SIP budgets are established for each state of a multi-state one (1)-hour nonattainment or maintenance area;

D. If the eight (8)-hour ozone nonattainment area partially covers a one (1)-hour ozone nonattainment or maintenance area(s)—

(I) The budget test as required by section (18) for the portion of the eight (8)-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by section (5); and

(II) The interim emissions tests as required by section (19), when applicable, for either—the portion of the eight (8)-hour ozone nonattainment area not covered by the approved or adequate budgets in the one (1)-hour ozone implementation plan, the entire eight (8)-hour ozone nonattainment area, or the entire portion of the eight (8)-hour ozone nonattainment area within an individual state, in the case where separate one (1)-hour SIP budgets are established for each state in a multistate one (1)-hour nonattainment or maintenance area;

E. Notwithstanding paragraphs (E)2.A., B., C., or D. of this section, the interim emissions tests as required by section (19), where the budget test using the approved or adequate motor vehicle emissions budgets in the one (1)-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the eight (8)-hour ozone standard, as determined through the interagency consultation process required by section (5);

3. Such an eight (8)-hour ozone nonattainment area must satisfy the interim emissions test for  $\text{NO}_x$  as required by section (19), if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for  $\text{NO}_x$ . The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emis-

sions budget for  $\text{NO}_x$  if the implementation plan or plan submission contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 2002. Prior to an adequate or approved  $\text{NO}_x$  motor vehicle emissions budget in the implementation plan submission for the eight (8)-hour ozone NAAQS, the implementation plan for the one (1)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for  $\text{NO}_x$  if the implementation plan contains an explicit  $\text{NO}_x$  motor vehicle emissions budget that is intended to act as a ceiling on future  $\text{NO}_x$  emissions, and the  $\text{NO}_x$  motor vehicle emissions budget is a net reduction from  $\text{NO}_x$  emissions levels in 1990; and

4. Notwithstanding paragraphs (E)1. and (E)2. of this section, ozone nonattainment areas with three (3) years of clean data for the eight (8)-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the eight (8)-hour ozone NAAQS must satisfy one (1) of the following requirements—

A. The budget test and/or interim emissions tests as required by sections (18) and (19) and as described in paragraph (E)2. of this section;

B. The budget test as required by section (18), using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the eight (8)-hour ozone NAAQS (subject to the timing requirements of paragraph (E)1. of this section); or

C. The budget test as required by section (18), using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the eight (8)-hour ozone NAAQS.

(F) CO Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

1. FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot-spot test required by section (16) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by subsection (16)(B).

2. In CO nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

3. Except as provided in paragraph (F)4. of this section, in CO nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

4. CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

A. The interim emissions tests required by section (19); or

B. The state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by section (18) must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (F)2. of this section).

(G)  $PM_{10}$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 of subsection (B) of this section that are required to be satisfied at all times, in  $PM_{10}$  nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

1. FHWA/FTA projects in  $PM_{10}$  nonattainment or maintenance areas must satisfy the hot-spot test required by subsection (16)(A).

2. In  $PM_{10}$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

3. In  $PM_{10}$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made—

A. If there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or

B. If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(iii) and does not demonstrate attainment.

(H)  $NO_2$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in  $NO_2$  nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In  $NO_2$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In  $NO_2$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made when there is no approved

motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(I)  $PM_{2.5}$  Nonattainment and Maintenance Areas. In addition to the criteria listed in Table 1 in subsection (B) of this section that are required to be satisfied at all times, in  $PM_{2.5}$  nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

1. In  $PM_{2.5}$  nonattainment and maintenance areas the budget test must be satisfied as required by section (18) for conformity determinations made on or after—

A. The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

B. The publication date of EPA's approval of such a budget in the Federal Register; or

C. The effective date of EPA's approval of such a budget in the Federal Register, if such approval is completed through direct final rulemaking.

2. In  $PM_{2.5}$  nonattainment areas the interim emissions tests must be satisfied as required by section (19) for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(J) Areas with Limited Maintenance Plans. Notwithstanding the other subsections of this section, an area is not required to satisfy the regional emissions analysis for section (18) and/or section (19) for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including the hot-spot requirements for projects in CO and  $PM_{10}$  areas.

(K) Areas with Insignificant Motor Vehicle Emissions. Notwithstanding the other subsections of this section, an area is not required to satisfy a regional emissions analysis for section (18) and/or section (19) for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 of subsection (B) of this section is still required, including regional emissions analyses for section (18) and/or section (19) for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO and  $PM_{10}$  areas in section (16) must also be satisfied, unless EPA determines that the SIP also demonstrates that projects



will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

(L) *Isolated Rural Nonattainment and Maintenance Areas.* This subsection applies to any nonattainment or maintenance area (or 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. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

1. FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections (10), (11), (12), (16), and (17) and subsection (13)(D). Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of subsection (16)(B) ("Localized CO and PM<sub>10</sub> violations (hot spots)").

2. Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in subsections (C) through (K) of this section, with the following modifications—

A. When the requirements of sections (18) and (19) apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

B. In isolated rural nonattainment and maintenance areas that are subject to section (18), FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one (1) of the following requirements—

(I) Section (18);

(II) Section (19) (including regional emissions analysis for NO<sub>x</sub> in all ozone nonattainment and maintenance areas, notwithstanding paragraph (19)(F)2.); or

(III) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

C. The choice of requirements in subparagraph (L)2.B. of this section and the methodology used to meet the requirements of part (L)2.B.(III) of this section must be determined through the interagency consultation process required in subparagraph (5)(C)1.G. through which the relevant recipients of Title 23 U.S.C. or Title 49 U.S.C. funds, the local air quality agency, the state air quality agency, and the state department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the gov-

ernor consistent with the procedure in subsection (5)(D), which applies for any state air agency comments on a conformity determination.

(10) *Criteria and Procedures—Latest Planning Assumptions.*

(A) Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in sections (11)–(19), must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of subsections (10)(B)–(F) of this rule using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in section (5). The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

(B) Assumptions (including, but not limited to, vehicle miles traveled per capita or per household or per vehicle, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) 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. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO, and shall be subject to consultation in accordance with section (5).

(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 and other implementation plan measures 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 section (5).

(11) *Criteria and Procedures—Latest Emissions Model.*

(A) The conformity determination must be based on the latest emission estimation model available. This criterion 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.

(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 (3) months and no more than twenty-four (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 (3) months, EPA will announce the appropriate grace period in the Federal Register.

(C) Transportation plan and TIP 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. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three (3) years after the issuance of the draft environmental document.

(12) *Criteria and Procedures—Consultation.* Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan is fully approved by EPA, the conformity determination must be made according to paragraph (5)(A)2. and subsection (5)(E) and the requirements of 23 CFR part 450.

(13) *Criteria and Procedures—Timely Implementation of TCMs.*

(A) The transportation plan, TIP, or any 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.

(B) For transportation plans, this criterion is satisfied if the following two (2) 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 Laws, consistent with schedules included in the applicable implementation plan; and

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 Laws, 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 intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program; and

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.

(14) *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.

(A) Only one (1) 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 specified in section (4) of this rule.

(B) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subsection are satisfied.

(15) *Criteria and Procedures—Projects From a Plan and TIP.*

(A) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of subsection (9)(B) 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 subsection (15)(B) of this rule and from a conforming program if it meets the requirements of subsection (15)(C) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in subsection (15)(D) of this rule.

(B) A project is considered to be from a conforming transportation plan if one (1) of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy section (6) Content of Transportation Plans of this rule, 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 the project design concept and scope have not changed significantly from those which were described in the TIP; 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 subsection (25)(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.

(D) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

(16) *Criteria and Procedures—Localized CO and PM<sub>10</sub> Violations (Hot Spots).*

(A) This subsection applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) 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. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

(B) This subsection applies for CO nonattainment areas as described in paragraph (9)(D)1. 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 criteria is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of subparagraph (5)(C)1.A. and the methodology requirements of section (23).

(17) *Criteria and Procedures—Compliance with PM<sub>10</sub> and PM<sub>2.5</sub> Control Measures.* The FHWA/FTA project must comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

(18) *Criteria and Procedures—Motor Vehicle Emissions Budget.*

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in subsections (9)(C) through (L). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in subsection (C) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(B) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the time frame of the transportation plan) for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten (10) years apart, as follows:

1. *Until a maintenance plan is submitted—*

A. Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

B. Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

2. *When a maintenance plan has been submitted—*

A. Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by section (5) shall determine what must be considered in order to make such a finding;

B. For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

C. If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

D. For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

(C) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in subsection (2)(B) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(D) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

1. Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of section (22) and subparagraph (5)(C)1.A.

2. The regional emissions analysis may be performed for any years in the time frame of the transportation plan provided they are not more than ten (10) years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in subsection (B) of this

section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(E) Motor Vehicle Emissions Budgets in Submitted Control Strategy Implementation Plan Revisions and Submitted Maintenance Plans.

1. Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

2. If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by section (19) must be satisfied.

3. If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy sections (14) and (15), which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

4. EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

A. The submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his or her designee) and was subject to a state public hearing;

B. Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

C. The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

D. The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

E. The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

F. Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emis-

sions; any changes to established safety margins (see section (1) for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

5. Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

6. When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

(F) Adequacy Review Process for Implementation Plan Submissions. EPA will use the procedure listed in paragraph (18)(F)1. or (18)(F)2. of this section to review the adequacy of an implementation plan submission—

1. When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan—

A. EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy.

B. The public will have a minimum of thirty (30) days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the Internet and a copy is requested within fifteen (15) days of the date of the website notice, the comment period will be extended for thirty (30) days from the date that a copy of the implementation plan is mailed.

C. After the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under subparagraph (18)(F)2.C. of this section.

D. EPA will establish a Federal Register notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be fifteen (15) days from the date the notice is published as established in the Federal Register notice, unless EPA is taking a final approval action on the SIP as described in subparagraph (18)(F)2.C. of this section.

E. EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

F. If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in subparagraphs (18)(F)1.A. through E or paragraph (18)(F)2. of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all

cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (18)(F)1. of this section, such a finding will become effective immediately upon the date of EPA's letter to the state.

G. If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in subparagraphs (18)(F)1.A. through E or paragraph (18)(F)2. of this section.

2. When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan—

A. EPA's Federal Register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

B. The publication of the notice of proposed rulemaking will start a public comment period of at least thirty (30) days.

C. EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in subparagraphs (18)(F)1.C. through E of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication of EPA's approval in the Federal Register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

(19) *Criteria and Procedures—Interim Emissions in Areas without Motor Vehicle Emissions Budgets.*

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP satisfy the interim emissions test(s) as described in subsections (9)(C) through (L). This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(B) *Ozone Areas.* The requirements of this paragraph apply to all one (1)-hour ozone and eight (8)-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met—

1. In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

B. The emissions predicted in the "Action" scenario are lower than—

(I) 1990 emissions by any nonzero amount, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions by any nonzero amount, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

2. In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the

requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

B. The emissions predicted in the "Action" scenario are not greater than—

(I) 1990 emissions, in areas for the one (1)-hour ozone NAAQS as described in subsection (9)(C); or

(II) 2002 emissions, in areas for the eight (8)-hour ozone NAAQS as described in subsections (9)(D) and (E).

(C) *CO Areas.* This criterion may be met—

1. In moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

B. The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

2. In moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) through (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section—

A. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

B. The emissions predicted in the "Action" scenario are not greater than 1990 emissions.

(D) *PM<sub>10</sub> and NO<sub>2</sub> Areas.* This criterion may be met in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas; a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section, one (1) of the following requirements is met—

1. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

2. The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless a conformity plan defines the baseline emissions for a PM<sub>10</sub> 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.

(E) *PM<sub>2.5</sub> Areas.* This criterion may be met in PM<sub>2.5</sub> nonattainment areas if a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (F) of this section, one of the following requirements is met—

1. The emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline"

scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

2. The emissions predicted in the "Action" scenario are not greater than 2002 emissions.

(F) Pollutants. The regional emissions analysis must be performed for the following pollutants:

1. VOC in ozone areas;
2.  $\text{NO}_x$  in ozone areas, unless the EPA administrator determines that additional reductions of  $\text{NO}_x$  would not contribute to attainment;
3. CO in CO areas;
4.  $\text{PM}_{10}$  in  $\text{PM}_{10}$  areas;
5. VOC and/or  $\text{NO}_x$  in  $\text{PM}_{10}$  areas if the EPA regional administrator or the director of the state air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the  $\text{PM}_{10}$  nonattainment problem and has so notified the MPO and DOT;
6.  $\text{NO}_x$  in  $\text{NO}_2$  areas;
7.  $\text{PM}_{2.5}$  in  $\text{PM}_{2.5}$  areas; and
8. Re-entrained road dust in  $\text{PM}_{2.5}$  areas only if the EPA regional administrator or the director of the state air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the  $\text{PM}_{2.5}$  nonattainment problem and has so notified the MPO and DOT.

(G) Analysis Years.

1. The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

2. For areas using subparagraphs (B)2.A., (C)2.A. and paragraphs (D)1. and (E)1. of this section, a regional emissions analysis that satisfies the requirements of section (22) and subsections (G) and (J) of this section would not be required for analysis years in which the transportation projects and planning assumption in the "Action" and "Baseline" scenarios are exactly the same. In such a case, subsection (A) of this section can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "Action" scenario are not greater than the emissions predicted in the "Baseline" scenario for such analysis years.

(H) "Baseline" Scenario. The regional emissions analysis required by subsections (B) through (E) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in section (26) and projects exempt from regional emissions analysis as listed in section (27) 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 year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(I) "Action" Scenario. The regional emissions analysis required by subsections (B) through (E) of this section must

estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in section (26) and projects exempt from regional emissions analysis as listed in section (27) 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;
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, 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.

(J) Projects Not from a Conforming Transportation Plan and TIP. For the regional emissions analysis required by subsections (B) through (E) of this section, 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.

(20) Consequences of Controlled Strategy Implementation Plan Failures.

(A) Disapprovals.

1. If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding) the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

2. If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date

of disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to section (18) of this rule or approves the submission, and conformity to the implementation plan revision is determined.

3. In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(B) *Failure to Submit and Incompleteness.* In areas where EPA notifies the state, MPO, and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision, (either of which initiates the sanction process under CAA section 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

(C) *Federal Implementation Plans.* If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

(21) *Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or Title 49 U.S.C.*

(A) *Except as provided in subsection (B) of this section, no recipient of Federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:*

1. *The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;*

2. *The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose 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*

3. *A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (18) and/or (19) for a project not from a conforming transportation plan and TIP).*

(B) *In isolated rural nonattainment and maintenance areas subject to subsection (9)(A), no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient*

*finds that the requirements of one (1) of the following are met:*

1. *The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or*

2. *A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project was implemented (consistent with the requirements of sections (18) and/or (19) for projects not from a conforming transportation plan and TIP).*

(C) *Notwithstanding subsections (A) and (B) of this section, in nonattainment and maintenance areas subject to subsection (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met for that pollutant/precursor and NAAQS:*

1. *The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or*

2. *The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.*

(22) *Procedures for Determining Regional Transportation-Related Emissions.*

(A) *General Requirements.*

1. *The regional emissions analysis required by section (18) and section (19) of this rule for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include 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 section (5) of this rule. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (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 or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure 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 regulatory action in order to be implemented may not be included in the emissions analysis unless—*

A. *The regulatory action is already adopted by the enforcing jurisdiction;*

*B. The project, program, or activity is included in the applicable implementation plan;*

*C. The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of section (18) contains a written commitment to the project, program, or activity by the agency with authority to implement it; or*

*D. EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or 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 (22)(A)3. of this rule, emission reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from appropriate entities.*

*A. Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.*

*B. Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.*

*5. A regional emissions analysis for the purpose of satisfying the requirements of section (19) must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.*

*6. The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation in accordance with subparagraph (5)(C)1.A. to 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.*

*7. Reasonable methods shall be used to estimate nonattainment or maintenance area vehicle miles traveled (VMT) on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.*

*(B) Regional emissions analysis in serious, severe, and extreme ozone nonattainment and serious carbon monoxide areas must meet the requirements of paragraphs (B)1. through 3. of this section if their metropolitan planning area contains an urbanized area population over two hundred thousand (200,000).*

*1. Beginning January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by subparagraph (5)(C)1.A. Network-*

*based travel models must at a minimum satisfy the following requirements—*

*A. Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for base year that is not more than ten (10) years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;*

*B. Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;*

*C. Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;*

*D. A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses of speeds based on final assigned volumes;*

*E. Zone-to-zone travel impedances used to distributive trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. 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; and*

*F. Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.*

*2. 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-based travel model.*

*3. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT 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. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of subparagraph (5)(C)1.A.*

*(C) Two (2)-year Grace Period for Regional Emissions Analysis Requirements in Certain Ozone and CO Areas. The requirements of subsection (B) of this section apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two (2) years from the following:*

*1. The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) to serious or above;*

*2. The official notice by the Census Bureau that determines the urbanized area population of a serious or above*



ozone or CO nonattainment area to be greater than two hundred thousand (>200,000); or

3. The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than two hundred thousand (>200,000) as serious or above.

(D) In all areas not otherwise subject to subsection (B) of this section, regional emissions analyses must use those procedures described in subsection (B) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to subsection (B) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(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.

(F)  $PM_{2.5}$  from Construction-Related Fugitive Dust.

1. For  $PM_{2.5}$  areas in which the implementation plan does not identify construction-related fugitive  $PM_{2.5}$  as a significant contributor to the nonattainment problem, the fugitive  $PM_{2.5}$  emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In  $PM_{2.5}$  nonattainment and maintenance areas with implementation plans which identify construction-related fugitive  $PM_{2.5}$  as a significant contributor to the nonattainment problem, the regional  $PM_{2.5}$  emissions analysis shall consider construction-related fugitive  $PM_{2.5}$  and shall account for the level of construction activity, the fugitive  $PM_{2.5}$  control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(G) Reliance on Previous Regional Emissions Analysis.

1. Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of section (18) Motor Vehicle Emissions Budget or section (19) Interim Emissions in Areas without Motor Vehicle Emissions Budgets of this rule without new regional analysis if the previous regional emissions analysis also applies to the new plan and/or TIP. This requires a demonstration that—

A. The new plan and/or TIP contains all projects which must be started in the plan and TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan;

B. All plan and TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's and/or TIP's regional emissions at the time of the previous conformity determination;

C. The design concept and scope of each regionally significant project in the new plan and/or TIP is not significantly different from that described in the previous transportation plan; and

D. The previous regional emissions analysis is consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19), as applicable.

2. A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of section (18) or section (19) of this rule without additional regional emissions analysis if 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, the previous regional emissions analysis is still consistent with the requirements of section (18) (including that conformity to all currently applicable budgets is demonstrated) and/or section (19) as applicable, and if the project is either—

A. Not regionally significant; or

B. Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

3. A conformity determination that relies on subsection (G) of this section does not satisfy the frequency requirements of subsection (4)(B) or (C).

(23) Procedures for Determining Localized CO and  $PM_{10}$  Concentrations (Hot-Spot Analysis).

(A) CO Hot-Spot Analysis.

1. The demonstrations required by section (16) must be based on quantitative analysis using air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section (5) and approved by the EPA regional administrator are used:

A. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

B. For projects affecting intersections that are 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 the project;

C. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

D. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with the worst level-of-service, as identified in the applicable implementation plan.

2. In cases other than those described in paragraph (A)1. of this section, the demonstrations required by section (16) may be based on either—

A. Quantitative methods that represent reasonable and common professional practice; or

B. A quantitative consideration of local factors, if this can provide a clear demonstration that the requirements of section (16) are met.

(B)  $PM_{10}$  Hot-Spot Analysis.

1. The hot-spot demonstration required by section (16) must be based on quantitative analysis methods for the following types of projects:

A. Projects which are located at sites at which violations have been verified by monitoring;

B. Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

C. New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

2. Where quantitative analysis methods are not required, the demonstration required by section (16) may be based on a qualitative consideration of local factors.

3. The identification of the sites described in subparagraphs (B)1.A. and B. of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in section (5). 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.

4. The requirements for quantitative analysis contained in subsection (23)(B) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(C) General Requirements.

1. Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentrations must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

2. 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 future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

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

4. 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 implement such measures, as required by subsection (25)(A).

5. CO 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 (5) years or less at any individual site.

(24) 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) 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, unless the implementation plan establishes appropriate mechanisms for such trades.

(C) 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.

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

(25) 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 Title 49 U.S.C., 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 CO impacts. Before a conformity determination is made, 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 are included in the project design concept and scope which is used in the regional emissions analysis required by sections (18) Motor Vehicle Emissions Budget and (19) Interim Emissions in Areas without Motor Vehicle Emissions Budgets or used in the project-level hot-spot analysis required by section (16).

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

(C) Written commitments to mitigation measures must be obtained prior to a conformity determination, and project sponsors must comply with such commitments.

(D) 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 applicable hot-spot requirements of section (16), emission budget requirements of section (18) and interim emissions requirements of section (19) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section (5). The MPO and DOT must find that the transportation plan and TIP still satisfy applicable requirements of sections (18) and/or (19) and that the project still satisfies the requirements of section (16) and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in subsection (5)(F) for conformity determination for projects.

(26) *Exempt Projects.* Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. 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 of this section is not exempt if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), 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. The state and the MPO must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

Table 2—Exempt Projects

Safety

- Railroad/highway crossing
- Hazard elimination program
- Safer nonfederal-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 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<sup>1</sup>
- Purchase of office, shop, and operating equipment for existing facilities
- Purchase of operating equipment for vehicles (e.g., radios, fare boxes, 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<sup>1</sup>
- 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
- Emergency or hardship advance land acquisitions (23 CFR part 710.503)
- 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

<sup>1</sup>Note—In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

(27) *Projects Exempt From Regional Emissions Analyses.* Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO 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 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see subparagraph (5)(C)1.C.), 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 follows:

- 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

(28) *Traffic Signal Synchronization Projects.* Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this section. However, all subsequent regional emissions analyses required by sections (18) and (19) for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.]

*AUTHORITY:* section 643.050, RSMo 2000. Original rule filed Oct. 4, 1994, effective May 28, 1995. Amended: Filed May 1, 1996, effective Dec. 30, 1996. Amended: Filed June 15, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 14, 2003, effective Sept. 30, 2003. Amended: Filed April 1, 2005, effective Dec. 30, 2005. Amended: Filed Oct. 24, 2006.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing on this proposed amendment will begin at 9:00 a.m., February 1, 2007. The public hearing will be held at the Lewis and Clark State Office Building, 1101 Riverside Drive, 1st Floor, Lacharrette Conference Room, Jefferson City, MO 65101. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., February 8, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

## Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 12—Liquor Control

### PROPOSED AMENDMENT

**11 CSR 45-12.080 Hours of Operation.** The commission is amending the purpose and section (1).

*PURPOSE:* This rule is being amended to allow the commission to establish hours during which liquor may be offered for sale, sold or supplied consistent with the provisions of Chapter 311, RSMo.

*PURPOSE:* This rule establishes the time liquor may be served, offered for sale, sold or supplied.

(1) Any excursion liquor licensee may serve, offer for sale, sell or supply intoxicating liquor only during the times authorized by the commission. Intoxicating liquor may be served on an excursion gambling boat from 8:00 a.m. to 3:00 a.m. the following day. Intoxicating liquor may be served, **offered for sale, sold or supplied** in nongaming areas from 8:00 a.m. to 1:30 a.m. the following day, **unless the commission specifically approves other hours of operation.** Such hours approved by the commission shall be consistent with the provisions of Chapter 311, RSMo. A licensee shall submit, with its application, the proposed hours for approval by the commission.

*AUTHORITY:* sections 313.004, 313.805, RSMo 2000 and 313.840, RSMo [1994] Supp. 2005. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 7, 1995, effective Dec. 17, 1995, expired June 13, 1996. Amended: Filed Dec. 7, 1995, effective June 30, 1996. Amended: Filed March 18, 1996, effective Oct. 30, 1996. Amended: Filed Oct. 26, 2006.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m. on January 4, 2007, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

## Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 30—Bingo

### PROPOSED AMENDMENT

**11 CSR 45-30.280 Net Receipts from Bingo and Bank Account.** The commission is amending section (3).

*PURPOSE:* This rule is being amended to allow for debit transactions from the bingo checking account.

(3) All receipts from each bingo occasion, less the amount awarded as cash prizes for that occasion, shall be deposited in a special bingo checking account in a financial institution located in Missouri no later than the next business day following the date of the bingo occasion. Disbursements for reasonable and necessary expenses incidental to the conduct of bingo games must be paid from the special bingo checking account on preprinted, serially numbered checks. Checks must be payable to a specific payee. At no time may checks be made payable to "cash." **An organization may use a debit transaction instead of a check; however, each debit transaction must be reported with other disbursements from the bingo checking account on the quarterly report as required by 11 CSR 45-30.210.** All debit transactions must be documented with a receipt or other supporting documentation to ensure proper use of bingo proceeds.

*AUTHORITY:* section 313.065, RSMo 2000. Emergency rule filed June 21, 1994, effective July 1, 1994, expired Oct. 28, 1994. Emergency rule filed Oct. 19, 1994, effective Oct. 29, 1994, expired Feb. 25, 1995. Original rule filed July 11, 1994, effective Jan. 29, 1995. Amended: Filed Oct. 29, 1999, effective May 30, 2000. Amended: Filed Dec. 1, 2004, effective June 30, 2005. Amended: Filed Oct. 26, 2006.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*in the aggregate. This proposed amendment will result in an increase in the interest rate charged on delinquent taxes.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** *Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Public Safety, Missouri Gaming Commission, Bingo Division, PO Box 1847, 3417 Knipp Dr., Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. Private entities who feel there is cost which exceeds five hundred dollars (\$500) associated with this rule, are requested to submit the cost (estimated or actual, if available) with the comments. Public hearing is scheduled for 10:00 a.m. on January 4, 2007, in the Commission hearing room, 3417 Knipp Dr., Jefferson City, Missouri.*

*PRIVATE COST: This proposed amendment will cost private entities more than five hundred dollars (\$500) in the aggregate. This proposed amendment will result in an increase in the interest rate charged on delinquent taxes. The actual number of affected taxpayers is unknown. See detailed fiscal note for further explanation.*

**NOTICE TO SUBMIT COMMENTS:** *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 41—General Tax Provisions**

**PROPOSED AMENDMENT**

**12 CSR 10-41.010 Annual Adjusted Rate of Interest.** The department proposes to amend section (1).

*PURPOSE: Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2007 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2007.*

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governor's of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

<b>Calendar Year</b>	<b>Rate of Interest on Unpaid Amounts of Taxes</b>
1995	12%
1996	9%
1997	8%
1998	9%
1999	8%
2000	8%
2001	10%
2002	6%
2003	5%
2004	4%
2005	5%
2006	7%
<b>2007</b>	<b>8%</b>

*AUTHORITY: section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 25, 2006, effective Jan. 1, 2007, expires June 29, 2007. Amended: Filed Oct. 25, 2006.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500)*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Any taxpayer with past due tax amounts.	Any taxpayer with past due tax amounts.	Because the amount of interest collected on past due amounts of taxes will be at an increased rate, the aggregate impact on private entities will be more than \$500. The future amount of past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2006, was \$759,155,364. The increased interest on that amount as a result of the proposed amendment would be \$7,591,553.64. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the costs to the private entity will be \$1 per year for every \$100 of tax owed.

**III. WORKSHEET**

The future amount of past due taxes is unknown. The gross amount of delinquent taxes as of June 30, 2006, was \$759,155,364. The 1% interest increase on that

amount as a result of the proposed amendment would be \$7,591,553.64. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the costs to the private entity will be \$1 per year for every \$100 of tax owed. Following is a comparison for the cost to a taxpayer with a past due amount of \$100:

	Current Rule – 7%	Proposed Amendment – 8%
Past due tax amount	\$100.00	\$100.00
Interest amount	7.00	8.00
Total Amount Due	\$107.00	\$108.00

**IV. ASSUMPTIONS**

Pursuant to Section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. Because the future amount of past due taxes is unknown, the precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the costs to the private entity will be \$1 per year for every \$100 of tax owed.

**Title 12—DEPARTMENT OF REVENUE**  
**Division 10—Director of Revenue**  
**Chapter 42—General Department Policies**

**PROPOSED RESCISSION**

**12 CSR 10-42.110 Local Tax Management Report.** This rule informed those local taxing authorities imposing a sales tax or cigarette tax, including Group B cities and counties and those political subdivisions receiving distributions of the financial institution tax, what information will be contained in the monthly Local Tax Management Report issued by the Department of Revenue and when the Report will be issued.

*PURPOSE:* This rule is being rescinded because it is no longer needed.

*AUTHORITY:* section 32.057, RSMo 1986. Original rule filed April 1, 1987, effective July 11, 1987. Rescinded: Filed Oct. 23, 2006.

*PUBLIC COST:* The proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE**  
**Division 10—Director of Revenue**  
**Chapter 400—Individual Income Tax**

**PROPOSED AMENDMENT**

**12 CSR 10-400.200 Special Needs Adoption Tax Credit.** The director proposes to amend subsections (2)(F), (3)(I) through (3)(L), and (4)(F); add subsections (2)(G), (3)(M) through (3)(O), and delete subsection (4)(H) and reletter existing subsections accordingly.

*PURPOSE:* This amendment changes the filing due date related to applications for the Special Needs Adoption Tax Credit. This change is being made due to TAFP HCS SS SCS SB 1229, enacted by the 93rd General Assembly, 2006.

(2) Definitions of Terms.

(F) Filing period—The filing period for claiming a credit related to a resident special needs adoption begins on July 1 of the fiscal year and ends on April 15 of the fiscal year. **The filing period for claiming a credit related to a nonresident special needs adoption begins on July 1 of the fiscal year and ends on December 31 of the fiscal year.** If [April 15] the filing period ends on a Saturday, Sunday, or a holiday, the [filing period] last day for filing shall [end on] be the first business day following [April 15] the end of the filing period.

(G) Approved payment arrangement—A payment plan signed by the taxpayer and submitted to and approved by the Department of Revenue (department) within sixty (60) days from the notice of denial.

(3) Basic Application.

(I) The cumulative amount of tax credits that may be issued for qualified expenses in any one (1) fiscal year [cannot exceed \$4,000,000] shall not be less than four (4) million dollars, [of which \$2,000,000] but may be increased by appropriation in any one (1) fiscal year. Two (2) million dollars may [only] be issued for the adoption of resident special needs children. The remaining [ \$2,000,000] two (2) million dollars is available first for credits claimed [during the first ninety (90) days] on or before December 31 of the fiscal year for the adoption of nonresident special needs children. If less than [ \$2,000,000] two (2) million dollars is claimed [during the ninety (90)-day period] on or before December 31 of the fiscal year for nonresident special needs children, the remainder is available for credits claimed for the adoption of resident special needs children. **If less than the allotted funds are claimed for the resident adoption applications the remaining amount of unclaimed funds will be available for Children in Crisis tax credits as defined in section 135.327, RSMo.** If the remaining [credit is] unclaimed funds are not used for the [adoption of resident special needs children, it is] **Children in Crisis, the funds are** available for the adoption of nonresident special needs children.

(J) If the total adoption tax credits claimed exceed the amount available in either category, the credits will be apportioned *pro rata* among all of the taxpayers in each category who have filed a valid claim within the filing period.

(K) All claims filed after the filing period [and received before the beginning of the next filing period] will be accepted in the order that they are filed until the amount available for that category is depleted. If no funds are available for that category, the claim] will be denied, and may be refiled during the filing period for the following fiscal year **provided the statute of limitations has not expired.**

(L) In the first year in which the credit is claimed, any taxpayer claiming this tax credit must attach to the individual income tax return a completed Missouri Department of Revenue Form ATC. This form can be accessed from the Department of Revenue's website at <http://www.dor.mo.gov/tax/personal/individual/forms/2004/>, under tax credit forms.

(M) After December 31 but before February 1 each year, the director shall calculate the total of all applications received for nonresident special needs adoptions and submit this calculation to the speaker of the House of Representatives, the president pro tempore of the Senate, and the director of the Division of Budget and Planning in the Office of Administration.

(N) In the event of a credit denial, due to lack of available funds, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or a payment arrangement has been received and approved by the department, within sixty (60) days from the notice of denial.

(O) Any amounts still outstanding sixty (60) days after the denial notice date, will be charged interest at the rate statutorily provided.

(4) Examples.

(F) An individual incurred a total of \$10,000 in qualified expenses related to the adoption of a resident special needs child. The individual incurred income tax of \$3,000 in [2004] 2006 and filed a [2004] 2006 return on April 30, [2005] 2007, after the filing period for the adoption tax credit. [At the end of the filing period, the aggregate amount of resident adoption tax credit that was claimed was \$1,998,000, and no other resident adoption tax credit claims were filed prior to the individual's return. The individual's credit is limited to the remaining \$2,000 of available credit for the fiscal year ending June 30, 2005, and \$1,000 of the individual's credit will be denied.] The claim for credit will be denied since the claim was filed after



**the filing period. The claim may be refiled in the next fiscal year provided the statute of limitations has not expired.**

*[(H)] A special needs child is placed in the home and the adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses and had income tax of \$6,000 for the tax year. The individual filed a 2004 return after the end of the filing period, and the cumulative amount of tax credits available for the fiscal year had been reached. The individual's claim for \$6,000 in 2004 will be denied, and the individual has \$10,000 to carry forward to 2005.]*

*[(I)] (H) A car dealer accepts an adoption tax credit as payment for a car. The car dealer may use the adoption tax credit to offset any income tax, subject to the applicable restrictions. No portion of the credit is refundable, but can be carried over for the remaining life of the credit.*

*[(J)] (I) In the year the adoption is finalized and after the tax credit had been sold, a juvenile court temporarily relieved the parents of custody, at a total cost to the state of \$8,000. The credit of \$10,000 will be reduced by the amount of the state's cost in providing care, and the transferee of the credit has \$2,000 available.*

*[(K)] (J) A special needs child is placed in the home and the adoption is finalized in 1999. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 each tax year. The individual did not claim an adoption tax credit on the individual's 1999 through 2003 returns. The individual may not claim a credit for 2004. However, the individual may file amended returns for any tax year for which the statute of limitations remains open and claim the adoption tax credit.*

*[(L)] (K) An individual adopts a special needs child in a foreign country and the adoption was finalized in the foreign country in 1999. The individual incurred \$14,000 in qualified expenses and owed no income tax in 1999, 2000, or 2001, and owed income tax of \$4,000 for 2002. The individual claimed \$4,000 adoption tax credit on the tax return for 2002. The unused \$6,000 of qualified expenses is available to be carried over to 2003, but no further.*

**AUTHORITY:** *sections 143.961, RSMo 2000 and 135.327, RSMo Supp. 2005, and TAFP HCS SS SCS SB 1229, enacted by the 93rd General Assembly, 2006. Emergency rule filed Jan. 7, 2005, effective Jan. 17, 2005, expired July 15, 2005. Original rule filed Jan. 7, 2005, effective July 30, 2005. Amended: Filed Oct. 31, 2006.*

**PUBLIC COST:** *This proposed amendment will cost state agencies or political subdivisions twenty-two thousand six hundred seventy-five dollars (\$22,675) annually over the life of the rule.*

**PRIVATE COST:** *This proposed amendment will cost private entities sixty-seven thousand one hundred four dollars (\$67,104) annually over the life of the rule.*

**NOTICE TO SUBMIT COMMENTS:** *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

## FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

<b>Rule Number and Name:</b>	12 CSR 10-400.200 Special Needs Adoption Tax Credit
<b>Type of Rulemaking:</b>	Proposed Amendment

### II. SUMMARY OF FISCAL IMPACT

<b>Affected Agency or Political Subdivision</b>	<b>Estimate Cost of Compliance annually over the life of the rule.</b>
Missouri Department of Revenue	\$22,675
Missouri Department of Social Services	\$0

### III. WORKSHEET

It costs the Department of Revenue \$2.72 to process each adoption tax credit claim. Based on the number of filers claiming the adoption tax credit in FY06 (1,976), the aggregate costs for DOR to process the claims are \$5,375. In addition to the processing costs, apportioning the funds available on all valid claims as required by section 135.327, RSMo will require a TPT III and three TPT II's for a minimum of 1,200 hours for a total of \$16,668. Postage costs for the adjustment notices will total an estimated \$632. Costs for processing, apportioning and postage total \$22,675. The Department of Social Services (DSS) maintains certain data regarding these credits. According to DSS this rule does not change DSS' processes or procedures; therefore, there are no monetary costs to DSS.

### IV. ASSUMPTIONS

The non-resident claims will continue to exceed \$2,000,000 and the supplemental appropriations will not be approved requiring apportionment of the available funds for the category among all valid claims. No apportionment will be required for resident special needs children. Any remaining funds will be applied to the Children in Crisis tax credit and unavailable for non-resident adoption tax credit claims. The funds available for non-resident special needs children must be apportioned among all filers with non-resident special needs adopted children. No filers in the non-resident category will receive the full amount claimed. Adjustment notices will be required for an estimated 800 filers. Salaries for FTE required for processing are based on midrange, as of FY2007.

**FISCAL NOTE  
 PRIVATE COST**

**I. RULE NUMBER**

<b>Rule Number and Name:</b>	12 CSR 10-400.200 Special Needs Adoption Tax Credit
<b>Type of Rulemaking:</b>	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

<b>Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule</b>	<b>Classification by types of the business entities which would likely be affected:</b>	<b>Estimate is annually as to the cost of compliance with the rule by the affected entities:</b>
1,956 individuals		\$66,425
20 businesses	Sole Proprietors, LLC's Partnerships, S-Corps	\$ 679

**III. WORKSHEET**

The Department of Revenue received 1,976 amended individual income tax returns from individuals and businesses claiming a special needs adoption tax credit in FY2006. The estimated cost to prepare, file and mail an amended individual income tax return is \$33.96. The total annual costs for all affected entities are \$67,104.

**IV. ASSUMPTIONS**

The average hourly rate is \$16.62 and it takes two hours record keeping and return preparation to complete an amended individual income tax return claiming an adoption tax credit with mailing costs of \$0.72 each. One percent or less of all tax returns filed claiming the adoption tax credit will be filed by businesses.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 400—Individual Income Tax**

**PROPOSED RULE**

**12 CSR 10-400.210 Children in Crisis Tax Credit**

*PURPOSE: This rule explains the application, allocation of funds, and redemption process to claim the Children in Crisis credit.*

(1) In general, this rule describes the procedure to claim the Children in Crisis tax credit for tax years beginning on or after January 1, 2006, and the distribution of funds associated with the credit.

(2) Definition of Terms.

(A) Children in Crisis tax credit—A tax credit equal to fifty percent (50%) of a verified contribution to a qualified agency. The minimum tax credit issued will not be less than fifty dollars (\$50).

(B) Qualified agency—Agencies as defined in section 135.327.1, RSMo, and as qualified by the Department of Social Services. Qualified agencies must apply to the Department of Social Services prior to December 31 of each year to verify qualified status.

(C) Approved payment arrangement—A payment plan signed by the taxpayer and submitted to and approved by the Department of Revenue (department) within sixty (60) days from the notice of denial.

(3) Basic Application.

(A) A qualified agency shall provide a contribution verification certification to the taxpayer who makes a contribution to the agency. This contribution shall not be less than one hundred dollars (\$100).

(B) In order to claim the tax credit, a taxpayer must complete and submit the following:

1. MO 1040 tax return;
2. Form MO-TC; and
3. Contribution verification from the qualified agency receiving the contribution.

(C) The filing period for claiming the Children in Crisis tax credit begins on July 1 and ends on April 15 of the fiscal year. If the filing period ends on a Saturday, Sunday, or a holiday, the last day for filing shall be the first business day following the end of the filing period. Any claims filed after the filing period shall be denied.

(D) In the event of a credit denial due to lack of available funds, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or a payment arrangement has been received and approved by the department, within sixty (60) days from the notice of denial.

(E) Any amounts outstanding sixty (60) days after the denial notice date will be charged interest at the rate statutorily provided.

(F) Funds will be distributed by taking any amount unclaimed in the resident pool for special needs adoptions and dividing it into equal amounts. This amount will then be available for payment of credits from the qualified agencies as defined above. In the event claims from one (1) agency do not total the amount of credit allotted for that agency, the remainder of that agency's allotment will be divided equally and added to the available funds of the other agencies until all claims are paid or apportioned.

(G) In the event claims for the Children in Crisis tax credit total more than the available funds, the claims will be apportioned so that all claims for the Children in Crisis tax credit will receive an equal percentage.

(H) The amount of tax credit used may not exceed the income tax for the tax year. The portion of the tax credit that exceeds the income tax shall not be refunded but may be carried forward and used against the taxpayer's income tax for the subsequent four (4) tax years.

(4) Examples.

(A) An individual donates \$200 to a qualified agency on

December 1, 2007, and receives a contribution verification showing \$200 donated and eligibility for \$100 in credit. To apply for the Children in Crisis tax credit, the individual must complete the MO-TC, attach a copy to their return, and provide a copy of the verification certification issued by a qualified agency. The tax return is filed prior to April 15, 2008, showing a tax due of \$150. Payment for \$50 was included with the return. The individual is eligible for the \$100 credit.

(B) Using the same circumstances as above, the qualified agency was allotted \$500,000 in available funds. Only \$400,000 in claims was submitted. The individual will be allowed \$100 in credit.

(C) Using the same circumstances as above, the qualified agency was allotted \$500,000 in available funds. \$1,000,000 in claims was submitted. The individual will receive 50% of the requested credit amount (\$50) and will be able to carry forward the remaining 50% (\$50) of eligible but not issued credit. A notice of denial indicating a balance due will be issued for \$50 allowing 60 days to pay the balance due without incurring interest.

(D) An individual applies for a Children in Crisis tax credit and is allowed a credit equal to 75% of the \$6,000 claimed leaving a balance of \$1,500 in tax due. A balance due notice is issued stating the amount of tax owed (\$1,500). Within 60 days, the taxpayer enters into an approved payment arrangement and makes all required payments. Interest will not be charged.

*AUTHORITY: section 135.327, RSMo Supp. 2005 and TAFP HCS SS SCS SB 1229, enacted by the 93rd General Assembly, 2006. Original rule filed Oct. 26, 2006.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions seventeen thousand sixty-one dollars (\$17,061) annually over the life of the rule.*

*PRIVATE COST: This proposed rule will cost private entities fifty thousand nine hundred forty dollars (\$50,940) annually over the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

<b>Rule Number and Name:</b>	12 CSR 10-400.210 Children in Crisis
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

<b>Affected Agency or Political Subdivision</b>	<b>Estimated Annual Cost of Compliance in the Aggregate</b>
Missouri Department of Revenue	\$17,061
Missouri Department of Social Services	\$Unknown

**III. WORKSHEET**

It costs the Department of Revenue (DOR) \$2.72 to process each Children in Crisis tax credit claim. If an estimated 1,500 filers claim the Children in Crisis tax credit, the aggregate costs for DOR to process the claims will be approximately \$4,080. In addition to the processing costs, apportioning the funds available on all valid claims as required by section 135.327, RSMo will require a TPT III and 3 TPT II's for a minimum of 900 hours totaling \$12,501. Postage costs for the adjustment notices will total an estimated \$480. Costs for processing, apportioning and postage total \$17,061. The Department of Social Services (DSS) maintains certain data regarding these credits. The DOR cannot determine the monetary costs to DSS.

**IV. ASSUMPTIONS**

Due to this being the first time for filing this credit, the number of claims filed claiming the Maternity Home tax credit in FY2006 was used to estimate the total number of claims that may be filed in 1 fiscal year. Also assume the funds available for the Children in Crisis credit will need to be apportioned among all filers claiming the credit. No claimants will receive the full amount claimed. Adjustment notices will be required for all filers. Salaries for FTE required for processing are midrange as of FY 2007.

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

<b>Rule Number and Name:</b>	12 CSR 10-400.210 Children in Crisis Tax Credit
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

<b>Estimate of the number of entities by class, which would likely be affected by the adoption of the proposed rule.</b>	<b>Classification by types of the business entities which would likely be affected.</b>	<b>Estimate in cost of compliance by the affected entities.</b>
1425	Individuals	\$48,393
75	Businesses, Sole Proprietors, LLCs, Partnerships and S-Corporations	\$ 2,547

**III. WORKSHEET**

The Department of Revenue expects to receive approximately 1,500 claims for the Children in Crisis tax credit from individuals and businesses. The estimated cost to prepare, file and mail an amended individual income tax return is \$33.96. The total annual aggregate costs for all affected entities are \$50,940.

**IV. ASSUMPTIONS**

The average hourly rate is \$16.62 and it takes 2 hours record keeping and return preparation to complete a tax return claiming a Children in Crisis tax credit with mailing costs of \$0.72 each. Five percent or less of all Children in Crisis credit claims are expected to be filed by businesses.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 405—Homestead Preservation Credit**

**PROPOSED AMENDMENT**

**12 CSR 10-405.105 Homestead Preservation Credit—Procedures.** The director proposes to amend subsection (3)(A).

*PURPOSE: This amendment changes the filing deadline due to recent legislative changes in TAFP SCS SB 630, enacted by the 93rd General Assembly, 2006.*

(3) Application of Rule.

(A) A taxpayer must complete an application on the form prescribed by the department. The taxpayer must submit the properly completed application to the department between April 1 and [September 30] **October 15** of the application year. An application postmarked on or before [September 30] **October 15** is timely.

*AUTHORITY: section 137.106, RSMo Supp. 2005 and TAFP SCS SB 630, enacted by the 93rd General Assembly, 2006. Original rule filed Oct. 17, 2005, effective April 30, 2006. Amended: Filed Oct. 25, 2006.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 405—Homestead Preservation Credit**

**PROPOSED AMENDMENT**

**12 CSR 10-405.205 Homestead Preservation Credit—Qualifications and Amount of Credit.** The director proposes to amend subsections (4)(F), (5)(E) and (5)(I).

*PURPOSE: This amendment changes an application and examples to reflect recent legislative changes in TAFP SCS SB 730, enacted by the 93rd General Assembly, 2006.*

(4) Application of Rule.

(F) [The taxpayer does not qualify for the Homestead Preservation Credit if the taxpayer owns the homestead jointly with anyone other than a spouse.] A title that provides that the homestead transfers to another on death does not disqualify a taxpayer or reduce the amount of the potential credit. **In the case of joint ownership by unmarried persons or ownership in common by unmarried persons, such owners must individually satisfy the eligibility requirements for an individual eligible owner under this section and the combined income of all individuals with an interest in the property must be equal to or less than the maximum upper limit in the year prior to completing an appli-**

**cation under this section. If any individual owner fails to satisfy the eligibility requirements or if the combined income of all owners exceeds the maximum upper limit, then all owners shall be deemed ineligible owners regardless of any one owner's ability to meet the eligibility requirements.**

(5) Examples:

(E) Taxpayer owns his home as an individual. His federal adjusted gross income is \$40,000. His wife's federal adjusted gross income is \$35,000. Taxpayer is not eligible for the Homestead Preservation Credit because the joint federal adjusted gross income exceeds the maximum upper limit [of \$70,000].

(I) Taxpayer owns his home jointly with his grown daughter **who does not qualify for the Homestead Preservation Credit.** Taxpayer is not eligible for the Homestead Preservation Credit.

*AUTHORITY: section 137.106, RSMo Supp. 2005 and TAFP SCS SB 630, enacted by the 93rd General Assembly, 2006. Original rule filed Oct. 17, 2005, effective April 30, 2006. Amended: Filed Oct. 25, 2006.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 16—RETIREMENT SYSTEMS  
Division 10—The Public School Retirement System  
of Missouri  
Chapter 5—Retirement, Options and Benefits**

**PROPOSED AMENDMENT**

**16 CSR 10-5.010 Service Retirement.** The Public School Retirement System of Missouri is amending section (2).

*PURPOSE: This amendment further defines the requirements for termination from employment and eligibility to receive a retirement allowance as set forth in section 169.070, RSMo.*

(2) The earliest date on which service retirement may become effective is the first day of the calendar month following the calendar month in which the services of the member are terminated, or the first day of the calendar month following the filing of the Application for Service Retirement, whichever is later; except that the earliest date on which service retirement may become effective for a member retiring after receiving credit for a year of membership service shall be July 1, the first day of the fiscal year following the termination of services. **Termination from employment covered by the retirement system prior to the effective date of retirement is required to be eligible for a retirement benefit. A member shall not be deemed to have terminated employment if the member is employed in a position covered by the retirement system within sixty (60) days after his or her effective date of retirement. A member shall not be deemed to have terminated employment if, prior to receipt of his or her first benefit payment, the member**

executes a contract for employment in a position covered by the retirement system that commences on or after the execution of such contract. The member shall be required to repay any benefit payments paid if it is determined that the member did not terminate employment covered by the retirement system.

*AUTHORITY:* section 169.020, RSMo [2000] Supp. 2005. Original rule filed Dec. 19, 1975, effective Jan. 1, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Nov. 1, 2006.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Public School and Public Education Employee Retirement Systems of Missouri, Steve Yoakum, Executive Director, PO Box 268, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Public School and Public Education Employee Retirement Systems of Missouri, Steve Yoakum, Executive Director, PO Box 268, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**PROPOSED AMENDMENT**

**16 CSR 10-6.060 Service Retirement.** The Public Education Employee Retirement System of Missouri is amending section (1).

*PURPOSE:* This amendment further defines the requirements for termination from employment and eligibility to receive a retirement allowance as set forth in section 169.670, RSMo.

(1) The earliest date on which retirement may become effective is the first day of the calendar month following the calendar month in which the services of the member are terminated, or the first day of the calendar month following the filing of the application for retirement, whichever is later; except that the earliest date on which retirement may become effective for a member who receives a year of membership service credit for the final school year in which the member serves shall be July 1 next following the member's last day of service. **Termination from employment covered by the retirement system prior to the effective date of retirement is required to be eligible for a retirement benefit. A member shall not be deemed to have terminated employment if the member is employed in a position covered by the retirement system within sixty (60) days after his or her effective date of retirement. A member shall not be deemed to have terminated employment if, prior to receipt of his or her first benefit payment, the member executes a contract for employment in a position covered by the retirement system that commences on or after the execution of such contract. The member shall be required to repay any benefit payments paid if it is determined that the member did not terminate employment covered by the retirement system.**

*AUTHORITY:* section 169.610, RSMo Supp. 2005. Original rule filed Dec. 19, 1975, effective Jan. 1, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Nov. 1, 2006.