

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Committee for Social Workers, Attention: Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing (573) 526-3489 or via e-mail at lcsww@pr.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY  
AND SECONDARY EDUCATION  
Division 50—Division of School Improvement  
Chapter 340—School Improvement and Accreditation**

**PROPOSED RESCISSION**

**5 CSR 50-340.110 Policies and Standards Relating to Academically Deficient Schools.** This rule established the criteria and procedures to be used to identify academically deficient schools and set the standards to be used for an educational audit.

*PURPOSE: This rule is being rescinded because the passage of Senate Bill 1080 repealed the legislation which served as the basis for this rule.*

*AUTHORITY: sections 160.538, RSMo 2000 and 161.092, RSMo Supp. 2002. Previously filed as 5 CSR 30-340.010. Original rule filed Sept. 5, 1996, effective March 30, 1997. Rescinded and readopted: Filed March 22, 1999, effective Sept. 30, 1999. Amended and moved to 5 CSR 50-340.110: Filed Sept. 27, 2001, effective May 30, 2002. Amended: Filed April 23, 2003, effective Nov. 30, 2003. Rescinded: Filed April 1, 2005.*

*PUBLIC COST: This 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 this proposed rescission with the Department of Elementary and Secondary Education, Attn: Ginny Vandelight, Assistant Director, MO School Improvement and Accreditation, Division of School Improvement, PO Box 480, Jefferson City, MO 65102-0480. 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 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 Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws.** The commission proposes to amend original sections (1), (2) and (7), and original subsections (4)(B)–(4)(E), (5)(A), (5)(C), (5)(E), (6)(B), (6)(C), (9)(A)–(9)(C), (10)(A) and (15)(C); renumber and amend original sections (16)–(23) and (25); renumber original section (24); add new subsections (9)(D)–(9)(L) and new sections (16), (17) and (23). 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/reggs/regagenda.htm](http://www.dnr.mo.gov/reggs/regagenda.htm).

*PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit 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 area. This amendment will make several 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 July 1, 2004. A Transportation Conformity State Implementation Plan (SIP) revision consistent with this federal amendment must be submitted to the U.S. Environmental Protection Agency (EPA) within twelve (12) months. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the **Federal Register** Notice issued July 1, 2004, (Volume 69, Number 126, Pages 40003-40081), regarding **Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards**.*

(1) Definitions.

(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;**

**[1.]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;

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

**[3.]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;

[4.]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;

[5.]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;

[6. *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 (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide);*]

**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);**

[7.]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.;

[8.]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;**

[9.]12. DOT—the United States Department of Transportation;

[10.]13. EPA—the Environmental Protection Agency;

[11.]14. FHWA—the Federal Highway Administration of DOT;

[12.]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;

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

[14.]17. FTA—the Federal Transit Administration of DOT;

[15.]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;

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

[17.]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;

[18.]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;**

[19.]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;**

[20.]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/;/;

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

[22.]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;

[23.]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 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;

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

**29. Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM<sub>10</sub> 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;**

*[25.]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 *[(16)](18)* and/or *[(17)](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;*

*[26.]31. National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA;*

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

*[28.]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;*

*[29.]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;*

*[30.]35. Project—a highway project or transit project;*

*[31.]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;*

*[32.]37. Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws 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;*

*[33.]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;*

*[34.]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;*

*[35.]40. Standard—a national ambient air quality standard;*

*[36.]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;*

*[37.]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;*

*[38.]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;*

*[39.]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;

*[40.]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;*

*[41.]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;*

*[42.]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;*

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

*[44.]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.

(A) Action Applicability.

1. Except as provided for in subsection (2)(C) of this rule or section *[(23)](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 ~~/(19)/(21)~~ applies to such projects if they are regionally significant.

(B) Geographic Applicability. The provisions of this rule shall apply in the Clay, Jackson and Platte Counties maintenance area for transportation-related criteria pollutants for which the area has a maintenance plan.

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: *[volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas.]*

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).

~~/(3.)/(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 93.114, except as provided by section 93.114(b).

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may pro-

ceed 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 *[standard]* 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 *[standard]* NAAQS for any of these pollutants, the provisions of this rule shall not apply with respect to that *[standard]* NAAQS for twelve (12) months following the effective date of final designation to nonattainment for each *[standard]* NAAQS for such pollutant.

(4) Frequency of Conformity Determinations.

(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 ~~/(23)/(26)~~ and ~~/(24)/(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 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.

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 ~~/(23)/(26)~~ or section ~~/(24)/(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 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.

~~/(4)~~. After the MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six (6) months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in sections (23) and (24) and has been made in

accordance with the notification provisions of subparagraph (5)(C)1.G. Otherwise, the existing conformity determination for the TIP 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 [have] elapse[d] 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 [or] approval of [the] plans, specifications and estimates) [occurred].**

(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. November 24, 1993;]

[2.]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 [(16)](18)(E) and can be used for transportation conformity purposes;

[3.]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**

[4. EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and]

[5.]3. The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget [or adds, deletes, or changes TCMs].

(5) Consultation.

(A) 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. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

**1. 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. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.**

[1.]2. 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, before making conformity determinations.

(C) Interagency Consultation Procedures: Specific Processes. Interagency consultation procedures shall also include the following specific processes:

1. An interagency consultation process in accordance with subsection (5)(B) 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. Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

B. 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. of this rule regarding changes in planning assumptions;

C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see sections [(23)](26) and [(24)](27)) 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. of this rule in the context of the transportation planning and TIP programming processes;

D. 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. of this rule in the context of the state air quality implementation plan development process;

E. Making a determination, as required by paragraph (13)(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. 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. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section [(23)](26) or section [(24)](27). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. 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 [(23)](26) or section [(24)](27) of this rule;

G. 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. of this rule in the context of the TIP programming process;

H. 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. of this rule regarding planning assumptions;

I. Determining the definition of reasonable professional practice for the purposes of section [(20)](22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions; [and]

J. Determining whether the project sponsor or the MPO has demonstrated that the requirements of section *((16))*(18) are satisfied without a particular mitigation or control measure, as provided in subsection *((22))*(25)(D). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes~~.~~;

**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. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by paragraph (9)(L)2.**

2. An interagency consultation process in accordance with subsection (5)(B) 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. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. 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. 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. of this rule.

3. 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) 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. 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. 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. 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 the Federal Transit Laws, 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. 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. of this rule.

A. 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. of this rule for each transportation planning and TIP development process.

B. 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 *((19))*(21).

C. For the purposes of paragraph (5)(C)4. of this rule, 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.

5. This interagency consultation process shall be undertaken in accordance with subsection (5)(B) of this rule involving the MPO and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)4. 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 *((20))*(22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.

6. This interagency consultation process outlined in subsection (5)(B) 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. of this rule as it relates to planning assumptions.

7. 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, including federal agencies.

(E) Public Consultation 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. 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 7.95] 49 CFR 7.43.

(6) Content of Transportation Plans.

(B) [Moderate Areas Reclassified to Serious. Ozone nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than two hundred thousand (>200,000) must meet the requirements of subsection (6)(A) of this rule within two (2) years from the date of reclassification.] **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)-(17)(19).

(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)-(17)(19) for projects not from a TIP before NEPA process completion.

(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)-(17)(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) [The following t/ Table 1 in this section indicates the criteria and procedures in sections (10)-(17)(19) which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections (C) through (I) of this section explain/s/ when the budget, /and/ interim emissions, /reduction tests/ and hot-spot tests are required for /ozone nonattainment and maintenance areas/ 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

|                                             |                                                          |
|---------------------------------------------|----------------------------------------------------------|
| <u>All Actions at /a/All /t/Times—</u>      |                                                          |
| Section (10)                                | Latest planning assumptions                              |
| Section (11)                                | Latest emissions model                                   |
| Section (12)                                | Consultation                                             |
| <u>Transportation Plan—</u>                 |                                                          |
| Subsection (13)(B)                          | TCMs                                                     |
| Section (16)(18) and/or<br>Section (17)(19) | Emissions budget and/or<br>interim emissions [reduction] |
| <u>TIP—</u>                                 |                                                          |
| Subsection (13)(C)                          | TCMs                                                     |
| Section (16)(18) and/or<br>Section (17)(19) | Emissions budget and/or<br>interim emissions [reduction] |

**Project (From a Conforming Plan and TIP)—**

|              |                                                         |
|--------------|---------------------------------------------------------|
| 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 |

**Project (Not From a Conforming Plan and TIP)—**

|                                              |                                                         |
|----------------------------------------------|---------------------------------------------------------|
| 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 [(16)](18) and/or Section [(17)](19) | Emissions budget and/or interim emissions [reduction]   |

(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 [reduction] 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 [(16)](18) for conformity determinations made on or after—

A. [Forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or] 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. [After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;] 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 [reduction] tests must be satisfied as required by section [(17)](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;

[A. During the first forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

B. If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan;]

3. An ozone nonattainment area must satisfy the interim emissions [reduction] test for NO<sub>x</sub>, as required by section [(17)](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 [reduction] tests required by section [(17)](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 [an] a reasonable further progress or attainment demonstration, and the budget test required by section [(16)](18) must be satisfied using the [submitted] 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 [reduction] tests as required by section [(17)](19);

B. The budget test as required by section [(16)](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 [(16)](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 multi-state one (1)-hour nonattainment or maintenance area.

E. Notwithstanding subparagraphs (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 NO<sub>x</sub>, 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 NO<sub>x</sub>. The implementation plan for the eight (8)-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 2002. Prior to an adequate or approved NO<sub>x</sub> 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 NO<sub>x</sub> if the implementation plan 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. 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  $PM_{10}$  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 out-

side 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, non-withstanding 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 Federal Transit Laws 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) [The conformity determination, with respect to all other applicable criteria in sections (11)–(17), must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of subsections (10)(B)–(F) of this rule.] 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.

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

(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 (22)(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.

(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.**

**[(16)](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; *and*

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.**

(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 **[(20)](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, *for beginning forty-five (45) days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.] 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) *[inadequate]* **adequate** for transportation conformity purposes, the *[inadequate]* 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 *[reduction]* tests required by section **[(17)](19)** must be satisfied.

3. If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes *[more than forty-five (45) days after its submission to EPA]* **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.**

*[(17)](19) Criteria and Procedures—Interim Emissions [Reductions] in Areas without Motor Vehicle Emissions Budgets.*

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must *[contribute to emissions reductions]* satisfy the interim emissions test(s) as described in subsections (9)(C) through (L). This criterion applies *[as described in subsection (9)(C). It 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) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (20) and subsections (E) through (H) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (D) of this section—*

*1. 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*

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

(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.

[(C)](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[; 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); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if] a regional emissions analysis that satisfies the requirements of section [(20)](22) and subsections [(E)](G) and [(F)](J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection [(D)](F) of this section, one (1) of the following requirements is met[;]—

1. The emissions predicted in the "Action" scenario are [less] 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 paragraph (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.

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

1. VOC in ozone areas;

2. NO<sub>x</sub> in ozone areas, unless the EPA administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;

3. CO in CO areas;

4. PM<sub>10</sub> in PM<sub>10</sub> areas;

5. [Transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment and maintenance areas] 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 one or both of such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; [and]

6. NO<sub>x</sub> in NO<sub>2</sub> areas[.];

7. PM<sub>2.5</sub> in PM<sub>2.5</sub> areas; and

8. Re-entrained road dust in PM<sub>2.5</sub> 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<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT.

[(E)](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.**

**[(F)](H) "Baseline" Scenario.** The regional emissions analysis required by subsections (B) *and (C)* 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 [(23)](26) and projects exempt from regional emissions analysis as listed in section [(24)](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.

**[(G)](I) "Action" scenario.** The regional emissions analysis required by subsections (B) *and (C)* 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 [(23)](26) and projects exempt from regional emissions analysis as listed section [(24)](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.

**[(H)](J) Projects not from a conforming transportation plan and TIP.** For the regional emissions analysis required by subsections (B) *and (C)* 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.

**[(18)](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 findings), 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, *[then beginning one hundred twenty (120) days after such disapproval, 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 one hundred twenty (120) days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming plan and TIP 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. During the first one hundred twenty (120) days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan revision, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to section (9).] 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 reduc-



tions 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.

*[(19)](21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or the Federal Transit Laws. [No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:*

*(A) The project was included in the first three (3) years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or*

*(B) There is a currently conforming transportation plan and TIP, and 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 (16) and/or (17) for a project not from a conforming transportation plan and TIP.)*

(A) Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws 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 the Federal Transit Laws shall adopt or approve a regionally significant highway or transit pro-

ject, 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 subsections (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws 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.

*[(20)](22) Procedures for Determining Regional Transportation-Related Emissions.*

(A) General Requirements.

1. The regional emissions analysis required by section *[(16)](18)* and section *[(17)](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 *[(16)](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 [(20)/(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 [(17)/(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.**

[(C)](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.

[(D)](E) PM<sub>10</sub> from Construction-Related Fugitive Dust.

1. For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

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

**(F) PM<sub>2.5</sub> from construction-related fugitive dust.**

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

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

**[(E)](G) Reliance on Previous Regional Emissions Analysis.**

1. **Conformity determinations for a new transportation plan and/or [The] TIP** may be demonstrated to satisfy the requirements of section [(16)](18) Motor Vehicle Emissions Budget or section [(17)](19) **Interim Emissions [Reductions] in Areas without Motor Vehicle Emissions Budgets** of this rule without new regional analysis if the **previous regional emissions analysis [already performed for the plan]** 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 *[transportation plan's] previous conformity determination; [and]*

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 [(16)](18) or section [(17)](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<sub>10</sub> Concentrations (Hot-Spot Analysis).**

**(A) CO Hot-Spot Analysis.**

1. The demonstrations required by section (16) Localized CO Violations 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) 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.**

*/(21)/(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) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin", the state may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit motor vehicle sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.]*

*/(C)/(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.

*/(D)/(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.

*/(E)/(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.

*/(22)/(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 the Federal Transit Laws, 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<sub>10</sub> 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 */(16)/(18)* Motor Vehicle Emissions Budget and */(17)/(19)* Interim Emissions [Reductions] in Areas Without Motor Vehicles 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 */(16)/(18)* and interim emissions [reduction] requirements of section */(17)/(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 */(16)/(18)* and/or */(17)/(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.

*/(23)/(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 712.204(d))](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.

[(24)](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

[(25)](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 [(16)](18) and [(17)](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.

*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., June 30, 2005. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, 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, 205 Jefferson Street, 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., July 7, 2005. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, 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 Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws.** The commission proposes to amend original sections (1), (2), (7) and (16), and original subsections (4)(B)–(4)(E), (5)(A), (5)(C), (5)(F), (6)(B), (6)(C), (9)(A)–(9)(D), (10)(A), (15)(C) and (16); renumber and amend original sections (17)–(24), (25) and (27); renumber original section (26); add new subsections (9)(D), (9)(E), (9)(G)–(9)(L) and new section (17). 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 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit 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 nonattainment and carbon monoxide maintenance areas. This amendment will make several 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 July 1, 2004. A Transportation Conformity State Implementation Plan (SIP) revision consistent with this federal amendment must be submitted to the U.S. Environmental Protection Agency (EPA) within twelve (12) months. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the Federal Register Notice issued July 1, 2004, (Volume 69, Number 126 Pages 40003–40081) regarding Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards.*

*PURPOSE: This rule implements section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit 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 and applicable to section 110 and Part D of the CAA. This rule applies to the St. Louis ozone nonattainment and carbon monoxide [nonattainment] maintenance areas.*

(1) Definitions.

(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;**

*[1.]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;

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

*[3.]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;

*[4.]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;

*[5.]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;

*[6.] 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 (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide;]*

**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);**

*[7.]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.;

*[8.]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;**

*[9.]12.* DOT—the United States Department of Transportation;

*[10.]13.* EPA—the Environmental Protection Agency;

*[11.]14.* FHWA—the Federal Highway Administration of DOT;

*[12.]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;

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

*[14.]17.* FTA—the Federal Transit Administration of DOT;

*[15.]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;

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

*[17.]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;

*[18.]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;**

*[19.]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 *[transportation improvement program (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;**

*[20.]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;

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

*[22.]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;

*[23.]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 Coordinating Council is the MPO for the St. Louis metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

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

**29. Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM<sub>10</sub> 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;**

*[25.]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 *[(17)](18)* and/or *[(18)](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;

*[26.]31.* National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

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

*[28.]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;

*[29.]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;

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

*[31.]36.* Project—a highway project or transit project;

**[32.]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;

**[33.]38.** Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws 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;

**[34.]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;

**[35.]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;

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

**[37.]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;

**[38.]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;

**[39.]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;

**[40.]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;

**[41.]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;

**[42.]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;

**[43.]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;

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

**[45.]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 **[(25)](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 **[(20)](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 **[and]**, 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: **[volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>)]** in ozone areas; and

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).**

*3.14.* 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 93.114, except as provided by section 93.114(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 *[standard]* 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 *[standard]* NAAQS for any of these pollutants, the provisions of this rule shall not apply with respect to that *[standard]* NAAQS for twelve (12) months following the effective date of final designation to nonattainment for each *[standard]* NAAQS for such pollutant.

#### (4) Frequency of Conformity Determinations.

(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 */(25)/(26)* and */(26)/(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 */(25)/(26)* or section */(26)/(27)* and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E. 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.

*4. After the MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six (6) months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in sections (25) and (26) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E. of this rule. Otherwise, the existing conformity determination for the TIP 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 [have] elapsed/d** 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 [or] approval of [the] plans, specifications and estimates) [occurred].**

(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. November 24, 1993;]*

*2.1.* The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy *[implementation] implementation* plan or maintenance plan are adequate pursuant to subsection */(17)/(18)*(E) and can be used for transportation conformity purposes;

*3.2.* **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**

*4.* **EPA approval of an implementation plan revision that adds, deletes, or changes TCMS; and]**

*5.3.* **The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle budget [or adds, deletes, or changes TCMS].**

(5) Consultation.

(A) 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. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

**1. 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. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.**

*1.1.2.* 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, before making conformity determinations.

(C) Interagency Consultation Procedures—Specific Processes. Interagency consultation procedures shall also include the following specific processes:

1. An interagency consultation process in accordance with subsection (5)(B) 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. Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

B. 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. Evaluating whether projects otherwise exempted from meeting the requirements of this rule under sections */(25)/(26)* and */(26)/(27)* should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason;

D. Making a determination, required by paragraph (13)(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. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section */(25)/(26)* or section */(26)/(27)*. 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 */(25)/(26)* or section */(26)/(27)* of this rule;

F. 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. Advising on the horizon years to be used for conformity determinations, in accordance with section (6) of this rule;

H. Advising whether the modeling methods and functional relationships used in the model are consistent with acceptable pro-

fessional practice and are reasonable for the purposes of emission estimation, as specified in section */(21)/(22)* of this rule;

I. Reviewing the models, databases and other requirements specified in section */(22)/(23)* of this rule 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 */(22)/(23)*;

J. 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. Determining whether the project sponsor or the MPO has demonstrated that the requirements of sections (16)–*/(18)/(19)* are satisfied without a particular mitigation or control measure, as provided in section */(24)/(25)*; *land*

L. Developing a list of TCMs to be included in the applicable implementation plan;

**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. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by paragraph (9)(L)2;**

2. An interagency consultation process in accordance with subsection (5)(B) 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. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). Any of the consulting agencies listed in paragraph (5)(B)3. 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. 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. Consultation on nonfederal projects.

A. An interagency consultation process in accordance with subsection (5)(B) 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 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

B. Notwithstanding the provisions of subparagraph (5)(C)3.A., 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. 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 ~~/(20)/(21)~~ of this rule.

D. For the purposes of this section and of section ~~/(20)/(21)~~ of this rule, 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. This interagency consultation process involving the agencies specified in paragraph (5)(B)3. 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. but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section ~~/(21)/(22)~~ of this rule. This process shall be initiated by the MPO;

5. The MPO shall undertake an on-going process of consultation with the agencies listed in paragraph (5)(B)3. 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. 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, including federal agencies.

(F) Interagency Consultation Procedures—Public Involvement.

1. 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. 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. 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. 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. 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. 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. 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. The MPO will, when imposing any charges for public inspections and copying, be consistent with the fee schedule contained in ~~49 CFR 7.95/49 CFR 7.43~~.

3. 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. At such times as the MPO proposes to adopt or revise the public involvement process under paragraph (5)(F)2., the MPO shall consult with the agencies listed in paragraph (5)(B)3. 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. 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.

(6) Content of Transportation Plans.

(B) *[Moderate Areas Reclassified to Serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than two hundred thousand (>200,000), must meet the requirements of subsection (6)(A) of this rule within two (2) years from the date of reclassification.] 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)–/(18)/(19).

(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)–/(18)/(19) for projects not from a TIP before NEPA process completion.

(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)–/(18)/(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) *[The following t/*Table 1 *in this section indicates the criteria and procedures in sections (10)–/(18)/(19) which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections (C) through (I) of this section explain/s/ when the budget, [and/ interim emissions, [reduction tests] and hot-spot tests are required for [ozone nonattainment and maintenance areas] 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

**All Actions at /a/All /t/Times—**

|              |                             |
|--------------|-----------------------------|
| Section (10) | Latest planning assumptions |
| Section (11) | Latest emissions model      |
| Section (12) | Consultation                |

**Transportation Plan—**

|                                                |                                                          |
|------------------------------------------------|----------------------------------------------------------|
| Subsection (13)(B)                             | TCMs                                                     |
| Section /(17)/(18)<br>and/or Section/(18)/(19) | Emissions budget and/or interim /E/emissions [reduction] |

**TIP—**

|                                                 |                                                          |
|-------------------------------------------------|----------------------------------------------------------|
| Subsection (13)(C)                              | TCMs                                                     |
| Section /(17)/(18)<br>and/or Section /(18)/(19) | Emissions budget and/or interim /E/emissions [reduction] |

**Project (From a Conforming Plan and TIP)—**

|              |                                        |
|--------------|----------------------------------------|
| 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 |

**Project (Not From a Conforming Plan and TIP)—**

|                                                 |                                                          |
|-------------------------------------------------|----------------------------------------------------------|
| 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 /(17)/(18)<br>and/or Section /(18)/(19) | Emissions budget and/or interim /E/emissions [reduction] |

(C) **One (1)-hour /O/ozone NAAQS /N/nonattainment and /M/maintenance /A/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 [reduction] 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 /(17)/(18) for conformity determinations made on or after—

A. *[Forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or] 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. *[After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.] 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 [reduction] tests must be satisfied as required by section /(18)/(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.

*[A. During the first forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or*

*B. If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.]*

3. An ozone nonattainment area must satisfy the interim emissions [reduction] test for NO<sub>x</sub>, as required by section /(18)/(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 [reduction] tests required by section [(178)/(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 [an] a reasonable further progress or attainment demonstration, and the budget test required by section [(177)/(18)] must be satisfied using the [submitted] 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 [reduction] tests as required by section [(178)/(19)];

B. The budget test as required by section [(177)/(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 [(177)/(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 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 other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for the eight (8)-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation 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 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 multistate 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 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; 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.

*[(D)](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 *[reduction]* 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 *[(17)](18)* for conformity determinations made **on or after**—

A. *[Forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or]* 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. *[After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.]* 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 *[(D)4.](F)4.* of this section, in CO nonattainment areas the **interim** emissions *[reduction]* tests must be satisfied as required by section *[(18)](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/—**.

*[A. During the first forty-five (45) days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or*

*B. If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously 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 *[reduction]* tests required by section *[(18)](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 *[(17)](18)* must be satisfied using the *[submitted]* **adequate or approved** motor vehicle emissions budget(s) (as described in paragraph *[(D)2.](F)2.* of this section).

**(G) PM<sub>10</sub> 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<sub>10</sub> 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<sub>10</sub> nonattainment or maintenance areas must satisfy the hot-spot test required by subsection (16)(A).

2. In PM<sub>10</sub> 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<sub>10</sub> 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>10</sub> 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 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 Federal Transit Laws 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) [The conformity determination, with respect to all other applicable criteria in sections (11)–(18), must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of subsections (10)(B)–(F).] 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.

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



(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 *[(24)](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.

(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 *[(22)](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 *[(22)](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.

*[(17)](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; *[and]*

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.**

(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 *[(21)](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, *[or beginning forty-five (45) days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes)]. However, submitted implementation plans do not supercede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.] 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) *[inadequate]* adequate for transportation conformity purposes, the *[inadequate]* 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 *[reduction]* tests required by section *[(18)](19)* must be satisfied.

3. If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes *[more than forty-five (45) days after its submission to EPA]* 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 (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.

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

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP [must contribute to emissions reductions] satisfy the interim emissions test(s) as described in subsections (9)(C) through (L). This criterion applies [as described in subsection (9)(C). It 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) [This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section (21) and subsections (E) through (H) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection (D) of this section—] 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. [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] 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—

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

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.

[(C)](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; 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); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if] a regional emissions analysis that satisfies the requirements of section [(21)](22) and subsections [(E)](G) and [(F)](J) of this section demonstrates that for each analysis year and for each of the pollutants described in subsection [(D)](F) of this section, one (1) of the following requirements is met[:]—

1. The emissions predicted in the "Action" scenario are [less] 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 paragraph (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.

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

1. VOC in ozone areas;

2. NO<sub>x</sub> in ozone areas, unless the EPA administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;

3. CO in CO areas;

4. PM<sub>10</sub> in PM<sub>10</sub> areas;

5. *[Transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment and maintenance areas]* 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 one or both of such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; *[and]*

6. NO<sub>x</sub> in NO<sub>2</sub> areas./.;

7. PM<sub>2.5</sub> in PM<sub>2.5</sub> areas; and

8. Re-entrained road dust in PM<sub>2.5</sub> 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<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT.

*[(E)](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.

*[(F)](H)* “Baseline” scenario. The regional emissions analysis required by subsections (B) *[and (C)]* 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 *[(25)](26)* and projects exempt from regional emissions analysis as listed in section *[(26)](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.

*[(G)](I)* “Action” scenario. The regional emissions analysis required by subsections (B) *[and (C)]* 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 *[(25)](26)* and projects exempt from regional emissions analysis as listed in section *[(26)](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.

*[(H)](J)* Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by subsections (B) *[and (C)]* 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.

*[(19)](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, *[then beginning one hundred twenty (120) days after such disapproval,*

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 one hundred twenty (120) days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three (3) years of the currently conforming plan and TIP 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. During the first one hundred twenty (120) days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan revision, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes pursuant to section (9).] 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.

[(20)](21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws. [No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:]

(A) [The project was included in the first three (3) years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or] Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws 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) [There is a currently conforming transportation plan and TIP, and 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 (17) and/or (18) for a project not from a conforming transportation plan and TIP).] 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 the Federal Transit Laws 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 subsections (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws 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.

[(21)](22) Procedures for Determining Regional Transportation-Related Emissions.

(A) General Requirements.

1. The regional emissions analysis required by section [(17)](18) and section [(18)](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 *[(17)](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 *[(21)](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 *[(18)](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.

*[(C)](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.

*[(D)](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.

*[(E)](G)* Reliance on Previous Regional Emissions Analysis.

1. *[The]* Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of section *[(17)](18)* Motor Vehicle Emissions Budget or section *[(18)](19)* Interim Emissions *[Reductions]* in Areas without Motor Vehicle Emissions Budgets of this rule without new regional analysis if the previous regional emissions analysis *[already performed for the plan]* 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 *[transportation plan's]* previous conformity determination; *[and]*

C. The design concept and scope of each regionally significant project in the new plan and/or TIP is not significantly differ-

ent 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 *[(17)](18)* or section *[(18)](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).

*[(22)](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) Localized CO Violations 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 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 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) 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 *[(24)](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.

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

*[(C)](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.

*[(D)](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.

*[(E)](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.

*[(24)](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 the Federal Transit Laws, 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 *[(17)](18)* Motor Vehicle Emissions Budget and *[(18)](19)* Interim Emissions [Reductions] 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 *[(17)](18)* and interim emissions [reduction] requirements of section *[(18)](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 *[(17)](18)* and/or *[(18)](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.

*[(25)](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 712.204(d))](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.

[(26)](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

[(27)](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 [(17)](18) and [(18)](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.*

*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., June 30, 2005. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, Jefferson City, Missouri. 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, 205 Jefferson Street, 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., July 7, 2005. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution*

Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 20—Clean Water Commission**  
**Chapter 7—Water Quality**

**PROPOSED AMENDMENT**

**10 CSR 20-7.015 Effluent Regulations.** The Department of Natural Resources is amending (1)(A)3. to update the name change of Geological Survey and Resource Assessment Division, (2)(B)4. to add language referencing the implementation schedule for facilities without disinfected effluent and referencing the temporary suspension of accountability for bacteria standards, (3)(B)3. to add language referencing the implementation schedule for facilities without disinfected effluent and referencing the temporary suspension of accountability for bacteria standards, (3)(F)1. to clarify the effective date of phosphorus rule for Lake Taneycomo, (3)(G)2. to clarify the effective date of phosphorus rule for Table Rock Lake, (3)(G)3. to clarify the effective date of phosphorus rule for Table Rock Lake, (3)(G)4. to clarify the effective date of phosphorus rule for Table Rock Lake, (4)(B)5. to revise confusing dechlorination language, (6) to make this rule more consistent with the Water Quality Standards, (7)(C) to update the name change of Geological Survey and Resource Assessment Division, (8)(B)4. to add language referencing the implementation schedule for facilities without disinfected effluent and referencing the temporary suspension of accountability for bacteria standards, (9)(H) to add language explaining the implementation schedule for facilities without disinfected effluent affected by whole body contact recreation designation in 10 CSR 20-7.031, Water Quality Standards, and (9)(I) to add language for the temporary suspension of accountability for bacteria standards during wet weather. The evidence supporting the need for this proposed rule-making is available for viewing at the Missouri Department of Natural Resources' Water Protection 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) or Water Protection Program Rule Development website, <http://www.dnr.mo.gov/wpscd/wppcp/rules/wpp-rule-dev.htm>.

*PURPOSE:* This amendment implements changes resulting from the revisions of Missouri's Water Quality Standards (WQS).

In 2001, the Missouri Department of Natural Resources (MDNR or department) Division of Geology and Land Survey officially changed its title to the Geological Survey and Resource Assessment Division. Therefore, it is necessary to modify language in the Effluent Regulations to reflect the change.

Section 101(a)(2) of the CWA establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and . . . recreation in and on the water," wherever attainable. This national goal is commonly referred to as the "fishable/swimmable" goal. Missouri currently lists all classified waters for aquatic life, but selectively lists water bodies for whole body contact recreation. Therefore all waters listed in 10 CSR 20-7.031 Tables G and H will be designated for whole body contact recreation upon the effective date of the Water Quality Standards at 10 CSR 20-7.031. An implementation schedule will be included within which affected permitted facilities must comply with the revised WQS.

Under the Lakes and Reservoirs section, the adoption dates of the phosphorus rules for Lake Taneycomo (10 CSR 20-7.015(3)(F)) and Table Rock Lake (10 CSR 20-7.015(3)(G)) were not specifically men-

tioned. Therefore the dates will be added to ensure correct interpretation of these regulations.

Language describing dechlorination of discharges to losing stream in paragraph (4)(B)5. is confusing as written. A special workgroup was formed to address this issue, called the Total Residual Chlorine Workgroup. Water Pollution Control Branch staff and the workgroup agreed that the intent of the regulation was to require dechlorination for all discharges to losing streams. Therefore, the language was revised to clarify the issue.

It has been stated that a couple of Missouri's WQS are inconsistent and/or conflict with the Antidegradation Policy. Maintaining consistency with Tier III in 10 CSR 20-7.031(2)(C), all dischargers into Outstanding National Resource Waters (ONRWs) and Outstanding State Resource Waters (OSRWs) or into their watershed must be subject to special effluent limitations as required in 10 CSR 20-7.015(6).

Missouri currently allows exceedance of bacteria limits during periods of storm water runoff (high flow exemption). As currently stated in 10 CSR 20-7.031, Water Quality Standards, the high flow exemption might not ensure that whole body contact recreation is adequately protected. Also of concern, the high flow exemption is broad and qualitative. Therefore, the high flow exemption will be revised and moved to 10 CSR 20-7.015 Effluent Regulations.

When discovered, typographical errors found in the rule were corrected.

(1) Designations of Waters of the State.

(A) For the purpose of this rule, the waters of the state are divided into the following categories:

1. The Missouri and Mississippi Rivers;

2. Lakes and reservoirs, including natural lakes and any impoundments created by the construction of a dam across any waterway or watershed. An impoundment designed for or used as a disposal site for tailings or sediment from a mine or mill shall be considered a wastewater treatment device and not a lake or reservoir. Releases to lakes and reservoirs include discharges into streams one-half (1/2) stream mile (.80 km) before the stream enters the lake as measured to its normal full pool;

3. A losing stream is a stream which distributes thirty percent (30%) or more of its flow through natural processes such as through permeable geologic materials into a bedrock aquifer within two (2) miles' flow distance downstream of an existing or proposed discharge. Flow measurements to determine percentage of water loss must be corrected to approximate the seven (7)-day  $Q_{10}$  stream flow.

If a stream bed or drainage way has an intermittent flow or a flow insufficient to measure in accordance with this rule, it may be determined to be a losing stream on the basis of channel development, valley configuration, vegetation development, dye tracing studies, bedrock characteristics, geographical data and other geological factors. Only discharges which in the opinion of the department reach the losing section and which occur within two (2) miles upstream of the losing section of the stream shall be considered releases to a losing stream. A list of known losing streams is available [from the Water Pollution Control Program] in the Water Quality Standards, 10 CSR 20-7.031 Table J—Losing Streams. Other streams may be determined to be losing by the [Division of Geology and Land Survey] Geological Survey and Resource Assessment Division;

4. Metropolitan no-discharge streams. These streams and the limitations on discharging to them are listed in the commission's Water Quality Standards 10 CSR 20-7.031. This rule shall in no way change, amend or be construed to allow a violation of the existing or future water quality standards;

5. Special streams—wild and scenic rivers, Ozark National Scenic Riverways and Outstanding State Resource Waters;

6. Subsurface waters in aquifers; and
7. All other waters except as noted in paragraphs (1)(A)1.-6. of this rule.

(2) Effluent Limitations for the Missouri and Mississippi Rivers.

(B) Discharges from wastewater treatment facilities which receive primarily domestic waste or from publicly-owned treatment works (POTWs) shall undergo treatment sufficient to conform to the following limitations:

1. Biochemical Oxygen Demand<sub>5</sub> (BOD<sub>5</sub>) and nonfilterable residues (NFRs) equal to or less than a monthly average of thirty milligrams per liter (30 mg/l) and a weekly average of forty-five milligrams per liter (45 mg/l);

2. pH shall be maintained in the range from six to nine (6-9) standard units;

3. Exceptions to paragraphs (2)(B)1. and 2. are as follows:

A. If the facility is a wastewater lagoon, the NFRs shall be equal to or less than a monthly average of eighty (80) mg/l and a weekly average of one hundred twenty (120) mg/l and the pH shall be maintained above 6.0, and the BOD<sub>5</sub> shall be equal to or less than a monthly average of forty-five (45) mg/l and a weekly average of sixty-five (65) mg/l;

B. If the facility is a trickling filter plant the BOD<sub>5</sub> and NFRs shall be equal to or less than a monthly average of forty-five (45) mg/l and a weekly average of sixty-five (65) mg/l;

C. Where the use of effluent limitations set forward in this section is known or expected to produce an effluent that will endanger or violate water quality, the department will set specific effluent limitations for individual dischargers to protect the water quality of the receiving streams. When a waste load allocation or a total maximum daily load study is conducted for a stream or stream segment, all permits for discharges in the study area shall be modified to reflect the limits established in the study;

D. The department may require more stringent limitations than authorized in subsections (3)(A) and (B) under the following conditions:

(I) If the facility is an existing facility, the department may set the BOD<sub>5</sub> and NFR limits based upon an analysis of the past performance, rounded up to the next five (5) mg/l range; and

(II) If the facility is a new facility, the department may set the BOD<sub>5</sub> and NFR limits based upon the design capabilities of the plant considering geographical and climatic conditions;

(a) A design capability study has been conducted for new lagoon systems. The study reflects that the effluent limitations should be BOD<sub>5</sub> equal to or less than a monthly average of forty-five (45) mg/l, a weekly average of sixty-five (65) mg/l, NFRs equal to or less than a monthly average of seventy (70) mg/l and a weekly average of one hundred ten (110) mg/l.

(b) A design capability study has been conducted for new trickling filter systems and the study reflects that the effluent limitations should be BOD<sub>5</sub> and NFRs equal to or less than a monthly average of forty (40) mg/l and a weekly average of sixty (60) mg/l; and

E. If the facility is a POTW wastewater treatment facility providing at least primary treatment during a precipitation event and discharges on a noncontinuous basis, the discharge may be allowed provided that:

(I) BOD<sub>5</sub> and NFRs equal to or less than a weekly average of forty-five (45) mg/l. The NFR (total suspended solids) limit may be higher than forty-five (45) mg/l for combined sewer overflow treatment devices when organic solids are demonstrated to be an insignificant fraction of total inorganic storm water generated solids, and the permittee can demonstrate that achieving a limit of forty-five (45) mg/l is not cost effective relative to water quality benefits. In

these cases, an alternative total suspended solids limit would be developed.

(II) pH shall be maintained in the range from six to nine (6-9) standard units; and

(III) Only the wastewater in excess of the capacity of the noncontinuous wastewater treatment plant hydraulic capacity may be discharged;

4. Fecal coliform. Discharges *[to the Mississippi from the Missouri-Iowa line down to Lock and Dam 26]* into segments identified as whole body contact areas shall not contain more than a monthly average of four hundred (400) fecal coliform colonies per one hundred milliliters (100 ml) and a daily maximum of one thousand (1,000) fecal coliform colonies per one hundred milliliters (100 ml) from April 1 to October 31. The department may waive or relax this limitation if the owner or operator of the wastewater treatment facility can demonstrate that neither health nor water quality will be endangered by failure to disinfect. **Facilities without disinfected effluent shall comply with the implementation schedule found in subsection (9)(H) of this rule. During periods of wet weather, a temporary suspension of accountability for bacteria standards may be established through the process described in subsection (9)(I) of this rule.**

5. Sludges removed in the treatment process shall not be discharged. Sludges shall be routinely removed from the wastewater treatment facility and disposed or used in accordance with a sludge management practice approved by the department; and

6. When the wastewater treatment process causes nitrification which affects the BOD<sub>5</sub> reading, the permittee can petition the department to substitute carbonaceous BOD<sub>5</sub> in lieu of regular BOD<sub>5</sub> testing. If the department concurs that nitrification is occurring, the department will set a carbonaceous BOD<sub>5</sub> at five (5) mg/l less than the regular BOD<sub>5</sub> in the operating permit.

(3) Effluent Limitations for the Lakes and Reservoirs.

(B) Discharges from wastewater treatment facilities which receive primarily domestic waste or from POTWs shall undergo treatment sufficient to conform to the following limitations:

1. BOD<sub>5</sub> and NFRs equal to or less than a monthly average of twenty (20) mg/l and a weekly average of thirty (30) mg/l;

2. pH shall be maintained in the range from six to nine (6-9) standard units;

3. Discharge to lakes and reservoirs identified as whole body contact areas shall not contain more than a monthly average of four hundred (400) fecal coliform colonies per one hundred milliliters (100 ml) and a daily maximum of one thousand (1,000) fecal coliform colonies per one hundred milliliters (100 ml) from April 1 to October 31. The department may waive or relax this limitation if the permittee can demonstrate that neither health nor water quality will be endangered by failure to disinfect. **Facilities without disinfected effluent shall comply with the implementation schedule found in subsection (9)(H) of this rule. During periods of wet weather, a temporary suspension of accountability for bacteria standards may be established through the process described in subsection (9)(I) of this rule;**

4. Where the use of effluent limitations set forth in section (3) is known or expected to produce an effluent that will endanger or violate water quality, the department may either—conduct waste load allocation studies in order to arrive at a limitation which protects the water quality of the state or set specific effluent limitations for individual dischargers to protect the water quality of the receiving streams. When a waste load allocation study is conducted for a stream or stream segment, all permits for discharges in the study area shall be modified to reflect the limits established in the waste load allocation study;

5. If the facility is a POTW wastewater treatment facility providing at least primary treatment during a precipitation event and discharges on a noncontinuous basis, the discharge may be allowed subject to the following:

A. BOD<sub>5</sub> and NFRs equal to or less than a weekly average of forty-five (45) mg/l;

B. pH shall be maintained in the range from six to nine (6–9) standard units; and

C. Only the wastewater in excess of the capacity of the non-continuous wastewater treatment plant hydraulic capacity may be discharged;

6. Sludges removed in the treatment process shall not be discharged. Sludges shall be routinely removed from the wastewater treatment facility and disposed of or used in accordance with a sludge management practice approved by the department; and

7. When the wastewater treatment process causes nitrification which effects the BOD<sub>5</sub> reading, the permittee can petition the department to substitute carbonaceous BOD<sub>5</sub> in lieu of regular BOD<sub>5</sub> testing. If the department concurs that nitrification is occurring, the department will set a carbonaceous BOD<sub>5</sub> at five (5) mg/l less than the regular BOD<sub>5</sub> in the operating permit.

(F) In addition to other requirements in this section, discharges to Lake Taneycomo and its tributaries between Table Rock Dam and Power Site Dam (and excluding the discharges from the dams) shall not exceed five-tenths (0.5) mg/l of phosphorus as a monthly average. Discharges meeting both the following conditions shall be exempt from this requirement:

1. Those permitted prior to *[adoption of this rule] May 9, 1994*; and

2. Those with design flows of less than twenty-two thousand five hundred gallons per day (22,500 gpd). All existing facilities whose capacity is increased would be subject to phosphorus limitations. The department may allow the construction and operation of interim facilities without phosphorus control provided their discharges are connected to regional treatment facilities with phosphorus control not later than three (3) years after authorization. Discharges in the White River basin and outside of the area designated above for phosphorus limitations shall be monitored for phosphorus discharges, and the frequency of monitoring shall be the same as that for BOD<sub>5</sub> and NFR, but not less than annually. The department may reduce the frequency of monitoring if the monitoring data is sufficient for water quality planning purposes.

(G) In addition to other requirements in this section, discharges to Table Rock Lake watershed, defined as hydrologic units numbered 11010001 and 11010002, shall not exceed five-tenths milligrams per liter (0.5 mg/l) of phosphorus as a monthly average according to the following schedules except as noted in paragraph (3)(G)5.:

1. Any new discharge shall comply with this new requirement upon the start of operations;

2. Any existing discharge, or any sum of discharges operated by a single continuing authority, with a design flow of 1.0 mgd or greater shall comply no later than *[four (4) years after the effective date of this rule] November 30, 2003*;

3. Any existing discharge, or any sum of discharges operated by a single continuing authority, with a design flow of 0.1 mgd or greater, but less than 1.0 mgd, shall comply no later than *[eight (8) years after the effective date of this rule] November 30, 2007*, and shall not exceed one milligram per liter (1.0 mg/l) as a monthly average as soon as possible and no later than *[four (4) years after the effective date of this rule] November 30, 2003*;

4. Any existing discharge with a design flow of twenty-two thousand five hundred gallons per day (22,500 gpd) or greater, but less than 0.1 mgd, shall comply no later than *[eight (8) years after the effective date of this rule] November 30, 2007*;

5. Any existing discharge with a design flow of less than twenty-two thousand five hundred gallons per day (22,500 gpd) permitted prior to *[the effective date of this rule] November 30, 1999* shall be exempt from this requirement unless the design flow is increased; and

6. Any existing discharge in which the design flow is increased shall comply according to the schedule applicable to the final design flow.

(4) Effluent Limitations for Losing Streams.

(B) If the department agrees to allow a release to a losing stream, the permit will be written using the limitations contained in subsections (4)(B) and (C). Discharges from wastewater treatment facilities which receive primarily domestic waste or from POTWs permitted under this section shall undergo treatment sufficient to conform to the following limitations:

1. BOD<sub>5</sub> equal to or less than a monthly average of ten (10) mg/l and a weekly average of fifteen (15) mg/l;

2. NFRs equal to or less than a monthly average of fifteen (15) mg/l and a weekly average of twenty (20) mg/l;

3. pH shall be maintained in the range from six to nine (6–9) standard units;

4. Discharges to losing streams shall not contain more than a monthly average of four hundred (400) fecal coliform colonies per one hundred milliliters (100 ml) and a daily maximum of one thousand (1,000) fecal coliform colonies per one hundred milliliters (100 ml);

5. *[Where chlorine is used as a disinfectant, the effluent shall be dechlorinated except when the discharge is—*

*A. Into an unclassified stream at least one (1) mile from a water quality standard classified stream; and*

*B. Into a flowing stream where the seven (7)-day Q<sub>10</sub> flow is equal to or greater than fifty (50) times the effluent flow;]* **All chlorinated effluent discharges to losing streams or within two (2) stream miles flow distance upstream of a losing stream shall also be dechlorinated prior to discharge.**

6. If the facility is a POTW wastewater treatment facility providing at least primary treatment during a precipitation event and discharges on a noncontinuous basis, the discharge may be allowed subject to the following:

A. BOD<sub>5</sub> and NFRs equal to or less than a weekly average of forty-five (45) mg/l;

B. pH shall be maintained in the range from six to nine (6–9) standard units; and

C. Only the wastewater in excess of the capacity of the non-continuous wastewater treatment plant hydraulic capacity may be discharged;

7. Sludges removed in the treatment process shall not be discharged. Sludges shall be routinely removed from the wastewater treatment facility and disposed of or used in accordance with a sludge management practice approved by the department; and

8. When the wastewater treatment process causes nitrification which effects the BOD<sub>5</sub> reading, the permittee can petition the department to substitute carbonaceous BOD<sub>5</sub> in lieu of regular BOD<sub>5</sub> testing. If the department concurs that nitrification is occurring, the department will set a carbonaceous BOD<sub>5</sub> at five (5) mg/l less than the regular BOD<sub>5</sub> in the operating permit.

(6) *[Effluent Limitations for Special Streams.] Discharge Restrictions for Outstanding National or State Resource Waters and Drainages Thereto.*

*[[A] Limits for Wild and Scenic Rivers and Ozark National Scenic Riverways and Drainages Thereto.*

1. The following limitations represent the maximum amount of pollutants which may be discharged from any point source, water contaminant source or wastewater treatment facility to waters included in this section.

2. Discharges from wastewater treatment facilities, which receive primarily domestic waste or from POTWs are limited as follows:

A. New releases from any source other than POTW facilities are prohibited;

B. Discharges from sources that existed before June 29, 1974, or if additional stream segments are placed in this section, discharges that were permitted at the time of the designation will be allowed;

C. Discharges from POTWs; and

D. Releases from the permitted facilities under subparagraphs (6)(A)2.A.-C. shall meet the following effluent limitation:

(I)  $BOD_5$  equal to or less than a monthly average of ten (10) mg/l and a weekly average of fifteen (15) mg/l;

(II) NFRs equal to or less than a monthly average of fifteen (15) mg/l and a weekly average of twenty (20) mg/l;

(III) pH shall be maintained in the range from six to nine (6-9) standard units;

(IV) Discharges shall not contain more than a monthly average of four hundred (400) fecal coliform colonies per one hundred milliliters (100 ml) and a daily maximum of one thousand (1,000) fecal coliform colonies per one hundred milliliters (100 ml);

(V) Where chlorine is used as a disinfectant, the effluent shall be dechlorinated except when the discharge is—

(a) Into an unclassified stream at least one (1) mile from a water quality standard classified stream; or

(b) Into a flowing stream where the seven (7)-day  $Q_{10}$  flow is equal to or greater than fifty (50) times the effluent flow;

(VI) If the facility is a POTW wastewater treatment facility providing at least primary treatment during a precipitation event and discharges on a noncontinuous basis, the discharge may be allowed subject to the following:

(a)  $BOD_5$  and NFRs equal to or less than a weekly average of forty-five (45) mg/l;

(b) pH shall be maintained in the range from six to nine (6-9) standard units; and

(c) Only the wastewater in excess of the capacity of the noncontinuous wastewater treatment plant hydraulic capacity may be discharged; and

(VII) When the wastewater treatment process causes nitrification which affects the  $BOD_5$  reading, the permittee can petition the department to substitute carbonaceous  $BOD_5$  in lieu of regular  $BOD_5$  testing. If the department concurs that nitrification is occurring, the department will set a carbonaceous  $BOD_5$  at five (5) mg/l less than the regular  $BOD_5$  in the operating permit.

3. Industrial, agricultural and other non-domestic contaminant sources, point sources or wastewater treatment facilities which are not included under subparagraph (6)(A)2.B. shall not be allowed to discharge. Agrichemical facilities shall be designed and constructed so that all bulk liquid pesticide nonmobile storage containers and all bulk liquid fertilizer nonmobile storage containers are located within a secondary containment facility. Dry bulk pesticides and dry bulk fertilizers shall be stored in a building so that they are protected from the weather. The floors of the buildings shall be con-

structed of an approved design and material(s). At an agrichemical facility, all transferring, loading, unloading, mixing and repackaging of bulk agrichemicals shall be conducted in an operational area. All precipitation collected in the operational containment area or secondary containment area as well as process generated wastewater shall be stored and disposed of in a no-discharge manner.

4. Monitoring requirements.

A. The department will develop a wastewater and sludge sampling program based on design flow that will require, at a minimum, one (1) wastewater sample per year for each twenty-five thousand (25,000) gpd of effluent, or fraction thereof, except that—

(I) Point sources that discharge less than five thousand (5,000) gpd may only be required to submit an annual report;

(II) Point sources that discharge more than one point three (1.3) mgd will be required at a minimum to collect fifty-two (52) wastewater samples per year; and

(III) Sludge sampling will be established in the permit.

B. Sampling frequency shall be spread evenly throughout the discharge year. This means that a point source with a continuous discharge shall take samples on a regular schedule, while point sources with seasonal discharges shall collect samples during the season of discharge.

C. Sample types shall be as follows:

(I) Samples collected from lagoons may be grab samples;

(II) Samples collected from mechanical plants shall be twenty-four (24)-hour composite samples, unless otherwise specified in the operating permit; and

(III) Sludge samples shall be a grab sample unless otherwise specified in the operating permit.

D. The monitoring frequency and sample types stated in paragraph (6)(D)3. are minimum requirements. The permit writer shall establish monitoring frequencies and sampling types to fulfill the site specific informational needs of the department.

(B) Limits for Outstanding State Resource Waters as per Water Quality Standards.

1. Discharges shall not cause the current water quality in the streams to be lowered.

2. Discharges will be permitted as long as the requirements of paragraph (6)(B)1. are met and the limitations in section (8) are not exceeded.]

(A) Discharge Restrictions for Outstanding National or State Resource Waters.

1. Except as specified below, no new or expanded discharges shall be allowed directly into these waters.

2. Discharge from sources that existed before June 29, 1974, are allowed.

3. When additional waters are designated in 10 CSR 20-7.031—Tables D and E, discharges that are permitted at the time of the designation are allowed.

4. Temporary lowering of water quality, but not below water quality standards, may be allowed from storm water discharges during a construction project with prior approval by the department.

(B) Discharge Restrictions in the Watershed of Outstanding National or State Resource Waters.

1. All discharges into the tributaries of designated waters must ensure that no lowering of water quality occurs at or below the point the tributary enters the designated water.

2. Discharges within the watershed of designated waters shall not result in the lowering of water quality in the designated

water through hydrologic connections, such as through groundwater.

**3. Watershed, as used in this section, shall be any drainage area, on the surface or underground, that drains or flows to a designated water.**

(7) Effluent Limitations for Subsurface Waters.

(C) All abandoned wells and test holes shall be properly plugged or sealed to prevent pollution of subsurface waters, as per the requirements of the *[Division of Geology and Land Survey]* Geological Survey and Resource Assessment Division.

(8) Effluent Limitations for All Waters, Except Those in Paragraphs (1)(A)1.-6.

(B) Discharges from wastewater treatment facilities which receive primarily domestic waste or POTWs shall undergo treatment sufficient to conform to the following limitations:

1. BOD<sub>5</sub> and NFRs equal to or less than a monthly average of thirty (30) mg/l and a weekly average of forty-five (45) mg/l;

2. pH shall be maintained in the range from six to nine (6-9) standard units;

3. The limitations of paragraphs (8)(B)1. and 2. will be effective unless a water quality impact study has been conducted by the department, or conducted by the permittee and approved by the department, showing that alternate limitation will not cause violations of the Water Quality Standards or impairment of the uses in the standards. When a water quality impact study has been completed to the satisfaction of the department, the following alternate limitation may be allowed:

A. If the facility is a wastewater lagoon, the NFRs shall be equal to or less than a monthly average of eighty (80) mg/l and a weekly average of one hundred twenty (120) mg/l and the pH shall be maintained above 6.0 and the BOD<sub>5</sub> shall be equal to or less than a monthly average of forty-five (45) mg/l and a weekly average of sixty-five (65) mg/l;

B. If the facility is a trickling filter plant, the BOD<sub>5</sub> and NFRs shall be equal to or less than a monthly average of forty-five (45) mg/l and a weekly average of sixty-five (65) mg/l;

C. Where the use of effluent limitations set forth in section (8) is known or expected to produce an effluent that will endanger water quality, the department will set specific effluent limitations for individual dischargers to protect the water quality of the receiving streams. When a waste load allocation study is conducted for a stream or stream segment, all permits for discharges in the study area shall be modified to reflect the limits established in the waste load allocation study;

D. The department may require more stringent limitations than authorized in subsections (3)(A) and (B) under the following conditions:

(I) If the facility is an existing facility, the department may set the BOD<sub>5</sub> and NFR limits based upon an analysis of the past performance, rounded up to the next five (5) mg/l range; and

(II) If the facility is a new facility, the department may set the BOD<sub>5</sub> and NFR limits based upon the design capabilities of the plant considering geographical and climatic conditions;

(a) A design capability study has been conducted for new lagoon systems. The study reflects that the effluent limitations should be BOD<sub>5</sub> equal to or less than a monthly average of forty-five (45) mg/l, a weekly average of sixty-five (65) mg/l, NFRs equal to or less than a monthly average of seventy (70) mg/l and a weekly average of one hundred ten (110) mg/l;

(b) A design capability study has been conducted for new trickling filter systems and the study reflects that the effluent limitations should be BOD<sub>5</sub> and NFR equal to or less than a month-

ly average of forty (40) mg/l and a weekly average of sixty (60) mg/l; and

E. If the facility is a POTW wastewater treatment facility providing at least primary treatment during a precipitation event and discharges on a noncontinuous basis, the discharge may be allowed provided that:

(I) BOD<sub>5</sub> and NFRs equal to or less than a weekly average of forty-five (45) mg/l. The NFR (total suspended solids) limit may be higher than forty-five (45) mg/l for combined sewer overflow treatment devices when organic solids are demonstrated to be an insignificant fraction of total inorganic storm water generated solids, and the permittee can demonstrate that achieving a limit of forty-five (45) mg/l is not cost effective relative to water quality benefits. In these cases, an alternative total suspended solids limit would be developed.

(II) pH shall be maintained in the range from six to nine (6-9) units; and

(III) Only the wastewater in excess of the capacity of the noncontinuous wastewater treatment plant hydraulic capacity may be discharged;

4. Fecal coliform.

A. Discharges to streams identified as whole body contact areas, discharges within two (2) miles upstream of these areas and discharges to streams with a seven (7)-day Q<sub>10</sub> flow of zero (0) in metropolitan areas where the stream is readily accessible to the public shall not contain more than a monthly average of four hundred (400) fecal coliform colonies per one hundred milliliters (100 ml) and a daily maximum of one thousand (1,000) fecal coliform colonies per one hundred milliliters (100 ml) from April 1 to October 31. The department may waive or relax this limitation if the owner or operator of the wastewater treatment facility can demonstrate that neither health nor water quality will be endangered by failure to disinfect. **Facilities without disinfected effluent shall comply with the implementation schedule found in subsection (9)(H) of this rule. During periods of wet weather, a temporary suspension of accountability for bacteria standards may be established through the process described in subsection (9)(I) of this rule.**

B. Where chlorine is used as a disinfectant, the effluent shall be dechlorinated except when the discharge is—

(I) Into an unclassified stream at least one (1) mile from a Water Quality Standards classified stream; or

(II) Into a flowing stream where the seven (7)-day Q<sub>10</sub> flow is equal to or greater than fifty (50) times the design effluent flow;

5. Sludges removed in the treatment process shall not be discharged. Sludges shall be routinely removed from the wastewater treatment facility and disposed of or used in accordance with a sludge management practice approved by the department; and

6. When the wastewater treatment process causes nitrification which affects the BOD<sub>5</sub> reading, the permittee can petition the department to substitute carbonaceous BOD<sub>5</sub> in lieu of regular BOD<sub>5</sub> testing. If the department concurs that nitrification is occurring, the department will set a carbonaceous BOD<sub>5</sub> at five (5) mg/l less than the regular BOD<sub>5</sub> in the operating permit.

(9) General Conditions.

**(H) Implementation Schedule for Protection of Whole Body Contact and Secondary Contact Recreation. Upon the first renewal of each permit upon the effective date of this rule, each permit shall be modified to contain a compliance schedule that provides up to three (3) years for the permittee to either install disinfection systems, present an evaluation sufficient to show that disinfection is not required to protect one or both designated recreational uses, or present a use attainability analyses (UAA) that demonstrates one or both designated recreational uses are**

not attainable in the classified waters receiving the effluent. Permit applications received after the effective date of this rule for newly constructed or upgraded facilities shall comply with this subsection upon permit issuance.

(I) **Temporary Suspension of Accountability for Bacteria Standards during Wet Weather.** The accountability for bacteria standards may be temporarily suspended for specific discharges when conditions contained in paragraphs (9)(I)1. through 3. are met.

1. No recreational use exists within two (2) miles downstream of the discharge during the period of suspension as confirmed through a use assessment.

2. Compliance with water quality based discharge controls more stringent than secondary treatment standards for domestic wastewater treatment systems, approved watershed management plans, or approved long-term control plans (LTCPs) for combined sewer overflows (CSOs) would result in substantial and widespread economic and social impact.

3. The Missouri Clean Water Commission has approved the suspension.

*AUTHORITY: section 644.026, RSMo [Supp. 1999] 2000. Original rule filed June 6, 1974, effective June 16, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed March 31, 2005.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities less 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 Department of Natural Resources, Water Protection and Soil Conservation Division, Water Protection Program, Marlene Kirchner, Missouri Clean Water Commission Secretary, PO Box 176, Jefferson City, MO 65102, phone (573) 751-1300. To be considered, comments must be post-marked by 5:00 p.m. July 14, 2005. A public hearing is scheduled for 9:00 a.m., July 6, 2005, in the Best Western Moberly Inn, 1200 Highway 24 East, Moberly, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. The public hearing is scheduled during the regular Missouri Clean Water Commission meeting and will occur after previous meeting minutes are discussed, shortly after 9:00 a.m.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 20—Clean Water Commission  
Chapter 7—Water Quality**

**PROPOSED AMENDMENT**

**10 CSR 20-7.031 Water Quality Standards.** The Department of Natural Resources is amending (1)(C)8. to state all waters listed in Tables G and H will be designated for whole body contact recreation, (1)(C)9. to revise the definition of boating and canoeing and rename the use to secondary contact recreation, (1)(G) to add definition of early life stages, (1)(L)(M) to update the name change of Geological Survey and Resource Assessment Division, (1)(M)(N) to add language to clarify mixing zone implementation, revise definitions of seven (7)-day  $Q_{10}$  and sixty (60)-day  $Q_{10}$ , and add definitions of thirty (30)-day  $Q_{10}$  and one (1)-day  $Q_{10}$ , (1)(S) to add definition of reference lakes or reservoirs, (1)(V) to add definition of

water effect ratio, (1)(T)(W) to clarify hardness definition regarding the twenty-fifth percentile, (1)(Y) to add definition of waters of the state, (2)(D) to add language for antidegradation policy implementation development, (4)(A)/3. to remove language associated with site-specific dissolved oxygen, (4)(A)/5.4. to not allow a mixing zone exemption for streams with seven (7)-day  $Q_{10}$  low flows of less than 0.1 cfs and remove any reference to classification (e.g., Class C streams), (4)(A)/6.5. to add language for wetland specific criteria derivation methods, (4)(B)1. to remove language associated with site-specific criteria for Tables A and B, (4)(B)2.B. to change analysis method for metals in drinking water supplies, (4)(B)6. to add language referencing hardness dependent metals criteria for aquatic life in Table A, (4)(B)7. to add language explaining the revised total ammonia nitrogen criteria in Table B, (4)(C) to revise language for bacterial indicator change and bacterial high flow exemption, (4)(E) to clarify unit of measurement for pH, (4)(L)/3. to remove language for sulfate and chloride site-specific criteria, (4)(R) to add language for site-specific criteria methods for all water quality criteria for the protection of aquatic life, (7) to revise language for Outstanding National Resource Waters to be consistent with the antidegradation policy, (8) to revise language for Outstanding State Resource Waters to be consistent with the antidegradation policy, Table A to revise criteria and correct typographical mistakes, Table B to replace existing ammonia criteria with new criteria, Table C to correct minor errors, Table E to correct minor errors and add Bull Creek, Table G to correct minor errors and designate all waters for whole body contact recreation, Table H to correct minor errors and designate all waters for whole body contact recreation, and Table I to revise entries. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Water Protection 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) or Water Protection Program Rule Development web site, <http://www.dnr.mo.gov/wpscd/wpcp/rules/wpp-rule-dev.htm>.

*PURPOSE: This amendment fulfills an obligation under 40 CFR 131.20, which requires a state to review its water quality standards at least once every three (3) years. The following outlines draft changes to Missouri's Water Quality Standards (WQS) resulting from meetings with stakeholders, EPA, and department staff.*

*The addition of eight (8) definitions (whole body contact recreation category A, whole body contact recreation category B, early life stages, thirty (30)-day  $Q_{10}$ , one (1)-day  $Q_{10}$ , reference lakes or reservoirs, water effect ratio, and waters of the state) and revision to existing definitions (whole body contact recreation, boating and canoeing/secondary contact recreation, and low-flow conditions) will better clarify the Water Quality Standards.*

*In 2001, the Missouri Department of Natural Resources (MDNR or department) Division of Geology and Land Survey officially changed its title to the Geological Survey and Resource Assessment Division. Therefore, it is necessary to modify language in the WQS to reflect the change.*

*Missouri currently has an approved antidegradation policy but does not have an antidegradation implementation procedure. Language is included in this proposed amendment that provides for the development and use of antidegradation implementation procedures.*

*Language referencing modification of water quality standards and/or site specific criteria can be found in Missouri's dissolved oxygen criteria, Tables A and B criteria, and sulfate and chloride criteria. Although federal guidance allows site-specific adjustment of water quality criteria, EPA disapproved part of the language describing the application of specific criteria to waters with natural concentrations of dissolved oxygen below criteria. In response, the site-*

specific criteria language in each of the listed paragraphs above will be removed and subsection (R) added, which describes the site-specific criteria development methods for the protection of aquatic life for all water quality standards.

Allowing mixing zones of any size in streams with a seven (7)-day  $Q_{10}$  of less than 0.1 cfs might not protect the aquatic life communities under all hydrological circumstances. Therefore the allowance for mixing zones in streams with seven (7)-day  $Q_{10}$  low flows of less than 0.1 cfs will not be allowed.

Language was added to 10 CSR 20-7.031(4) that reflects a more detailed method for how wetlands could be assigned specific criteria.

Missouri currently uses the dissolved metal analytic method for compliance with drinking water standards, which differs from federal criteria. Therefore, all drinking water supply metals shall be analyzed using the total recoverable method.

Metals criteria for aquatic life protection were recalculated using the most recent toxicity data sets that included genus *Ceriodaphnia*. The metals affected by this recalculation include cadmium, trivalent chromium ( $Cr^{+3}$ ), hexavalent chromium ( $Cr^{+6}$ ), copper, lead, nickel, silver, and zinc. The results of these criteria recalculations are equation based and, with the exception of hexavalent chromium, are hardness dependent. Also, the values in the table will be revised and based on the lowest (most protective) hardness value in the range listed.

New total ammonia nitrogen criteria was published in December 1999 by USEPA. Advances in research methods and increases in funding have allowed toxicologists to more accurately assess the toxicity of ammonia to aquatic life. The new ammonia criteria will be adopted to reflect improvements to the current (1984/88) criteria.

Missouri has been strongly encouraged to adopt EPA's **Ambient Water Quality Criteria for Bacteria—1986** for whole body contact recreation. Therefore, *E. coli* will be adopted as indicator bacteria and the 1986 criteria will apply for water bodies with whole body contact and secondary contact recreation designations.

Missouri currently allows exceedance of bacteria limits during periods of storm water runoff (high flow exemption). As currently stated, the high flow exemption might not ensure that whole body contact recreation is adequately protected. Also of concern, the high flow exemption is broad and qualitative. Therefore, the high flow exemption will be revised and moved to 10 CSR 20-7.015(9)(I) of the Effluent Regulations.

It has been stated that a couple of Missouri's WQS are inconsistent and/or conflict with the Antidegradation Policy. Maintaining consistency with Tier III in 10 CSR 20-7.031(2)(C), all dischargers into Outstanding National Resource Waters (ONRWs) and Outstanding State Resource Waters (OSRWs) or into their watershed must be subject to special effluent limitations as required in 10 CSR 20-7.015(6).

Several parameters in 10 CSR 20-7.031, Table A—Criteria for Designated Uses are currently inconsistent with federal criteria. The human health protection—fish consumption criteria affected include 2,4,6-trichlorophenol and *n*-nitrosopyrrolidene. The drinking water supply criteria affected include, 1,2,4,5-tetrachlorobenzene; 2,3,7,8-TCDD (dioxin); trihalomethanes; dichlorobromomethane; methylene chloride and 1, 2-dichloropropane. The criteria affected for both the protection of human health—fish consumption and drinking water supply include pentachlorobenzene; 4-4'-DDT; 4-4'-DDE; 4-4'-DDD; bis (chloromethyl) ether; bromoform; chlorodibromomethane; tetrachloroethylene; and D chloroform. All of the above criteria were changed to match federal criteria.

During EPA's review of 10 CSR 20-7.031, Table C—Water Bodies Designated for Cold-Water Fisheries with Tables G—Lake Classification and Use Designation and H—Stream Classification and Use Designations, six (6) waters designated for cold water fisheries had reduced mileage or were removed during past revisions. These waters have been restored to Table C and include the addition of Bull Shoals Lake (Ozark County) and Indian Creek (Franklin/Washington Counties) and corrections to L. Piney Creek

(Phelps County), N. Fork White River (Ozark County), S. Indian Creek (Newton/McDonald Counties), and Spring Creek (Douglas/Ozark Counties).

During the June 18, 2003 meeting, the Missouri Clean Water Commission directed staff to propose Bull Creek for Outstanding State Resource Water status. Bull Creek will be added for the mileage located within the Mark Twain National Forest in Christian County.

Several changes were made to 10 CSR 20-7.031, Table G—Lake Classification and Use Designation and Table H—Stream Classification and Use Designations to rectify discrepancies stated by EPA. A few changes requested by EPA were not needed due to misunderstandings or lack of information provided by the department during the last review.

Section 101(a)(2) of the CWA establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and . . . recreation in and on the water," wherever attainable. This national goal is commonly referred to as the "fishable/swimmable" goal. Missouri currently lists all classified waters for aquatic life, but selectively lists water bodies for whole body contact recreation. Therefore all waters listed in 10 CSR 20-7.031 Tables G and H will be designated for whole body contact recreation on the effective date of this rule and an implementation schedule will be included within which affected permitted facilities must comply with the revised standard.

Several changes were made to 10 CSR 20-7.031, Table I—Biocriteria Reference Locations due to water withdrawal for irrigation, accessibility limitations, and refinement of selection processes.

When discovered, typographical errors found in the rule were corrected.

#### (1) Definitions.

(C) Beneficial water uses. Beneficial uses (1)(C)1.–11. of classified waters are identified in Tables G and H. Beneficial uses (1)(C)12.–15. of classified waters must be determined on a site-by-site basis and are therefore not listed in Tables G and H.

1. Irrigation—Application of water to cropland or directly to plants that may be used for human or livestock consumption. Occasional supplemental irrigation, rather than continuous irrigation, is assumed.

2. Livestock and wildlife watering—Maintenance of conditions to support health in livestock and wildlife.

3. Cold-water fishery—Waters in which naturally occurring water quality and habitat conditions allow the maintenance of a naturally reproducing or stocked trout fishery and other naturally reproducing populations of recreationally important fish species.

4. Cool-water fishery—Waters in which naturally occurring water quality and habitat conditions allow the maintenance of a sensitive, high-quality sport fishery (including smallmouth bass and rock bass) and other naturally reproducing populations of recreationally important fish species.

5. Protection of aquatic life (General warm-water fishery)—Waters in which naturally occurring water quality and habitat conditions allow the maintenance of a wide variety of warm-water biota, including naturally reproducing populations of recreationally important fish species. This includes all Ozark Class C and P streams, all streams with seven (7)-day  $Q_{10}$  low flows of more than one-tenth cubic [feet] foot per second (0.1 cfs), all P1 streams and all classified lakes. However, individual Ozark Class C streams may be determined to be limited warm-water fisheries on the basis of limited habitat, losing-stream classification, land-use characteristics or faunal studies which demonstrate a lack of recreationally important fish species.

6. Protection of aquatic life (Limited warm-water fishery)—Waters in which natural water quality and/or habitat conditions prevent the maintenance of naturally reproducing populations of recreationally important fish species. This includes non-Ozark Class C streams and non-Ozark Class P streams with seven (7)-day  $Q_{10}$  low



flows equal to or less than 0.1 cfs and Ozark Class C streams with the characteristics outlined in paragraph (1)(C)5.

7. Human health protection (Fish consumption [*and secondary contact recreation*])—Criteria to protect this use are based on the assumption of an average amount of fish consumed on a long-term basis. Protection of this use includes compliance with [*Federal*] **Food and Drug Administration (FDA)** limits for fish tissue, maximum water concentrations corresponding to the  $10^{-6}$  cancer risk level and other human health fish consumption criteria. [*Secondary contact recreation assumes limited physical contact with the water without likelihood of water ingestion.*]

8. Whole [*/body /*]contact recreation—Activities in which there is direct human contact with the raw surface water to the point of complete body submergence. The raw water may be ingested accidentally and certain sensitive body organs, such as the eyes, ears and the nose, will be exposed to the water. Although the water may be ingested accidentally, it is not intended to be used as a potable supply unless acceptable treatment is applied. Water so designated is intended to be used for swimming, water skiing or skin diving. **All waters in Tables G and H of this rule are designated for whole body contact recreation. The use designation for whole body contact recreation may be removed or modified through a Use Attainability Analysis (UAA). Assignment of this use does not grant an individual the right to trespass when a land is not open to and accessible by the public through law or written permission of the landowner.**

**A. Category A—This category applies to those water segments that have been established by the property owner as public swimming areas allowing full and free access by the public for swimming purposes and waters with existing whole body contact recreational use(s). Examples of this category include, but are not limited to, public swimming beaches and property where whole body contact recreational activity is open to and accessible by the public through law or written permission of the landowner.**

**B. Category B—This category applies to waters designated for whole body contact recreation not contained within category A.**

9. [*Boating and canoeing—Activities in which limited contact with water is assumed*]. Secondary contact recreation—Uses include fishing, wading, commercial and recreational boating, any limited contact incidental to shoreline activities, and activities in which users do not swim or float in the water. These recreational activities may result in contact with the water that is either incidental or accidental and the probability of ingesting appreciable quantities of water is minimal. Assignment of this use does not grant an individual the right to trespass when a land is not open to and accessible by the public through law or written permission of the landowner.

10. Drinking water supply—Maintenance of a raw water supply which will yield potable water after treatment by public water treatment facilities.

11. Industrial process water and industrial cooling water—Water to support various industrial uses; since quality needs will vary by industry, no specific criteria are set in these standards.

12. Storm- and flood-water storage and attenuation—Waters which serve as overflow and storage areas during flood or storm events slowly release water to downstream areas, thus lowering flood peaks and associated damage to life and property.

13. Habitat for resident and migratory wildlife species, including rare and endangered species—Waters that provide essential breeding, nesting, feeding and predator escape habitats for wildlife including waterfowl, birds, mammals, fish, amphibians and reptiles.

14. Recreational, cultural, educational, scientific and natural aesthetic values and uses—Waters that serve as recreational sites for fishing, hunting and observing wildlife; waters of historic or archaeological significance; waters which provide great diversity for nature observation, educational opportunities and scientific study.

15. Hydrologic cycle maintenance—Waters hydrologically connected to rivers and streams serve to maintain flow conditions during periods of drought. Waters that are connected hydrologically to the groundwater system recharge groundwater supplies and assume an important local or regional role in maintaining groundwater levels.

(F) Classified waters—All waters listed as L1, L2 and L3 in Table G and P, P1 and C in Table H. During normal flow periods, some rivers back water into tributaries which are not otherwise classified. These permanent backwater areas are considered to have the same classification as the water body into which the tributary flows.

1. Class L1—Lakes used primarily for public drinking water supply.

2. Class L2—Major reservoirs.

3. Class L3—Other lakes [*which*] that are waters of the state. These include both public and private lakes. For effluent regulation purposes, publicly owned L3 lakes are those for which a substantial portion of the surrounding lands are publicly owned or managed.

4. Class P—Streams that maintain permanent flow even in drought periods.

5. Class P1—Standing-water reaches of Class P streams.

6. Class C—Streams that may cease flow in dry periods but maintain permanent pools which support aquatic life.

7. Class W—Wetlands that are waters of the state that meet the criteria in the *Corps of Engineers Wetlands Delineation Manual* (January 1987), and subsequent federal revisions. Class W waters do not include wetlands that are artificially created on dry land and maintained for the treatment of mine drainage, stormwater control, drainage associated with road construction, or industrial, municipal or agricultural waste. Class W determination on any specific site shall be consistent with federal law.

(G) Early life stages—The pre-hatch embryonic period, the post-hatch free embryo or yolk-sac fry, and the larval period during which the organism feeds. Juvenile fish, which are anatomically rather similar to adults, are not considered an early life stage.

[(G)] (H) Ecoregion—A major region within the state which contains waters with similar geological, hydrological, chemical and biological characteristics.

[(H)] (I) Epilimnion—Zone of atmospheric mixing in a thermostratified lake.

[(I)] (J) Fecal coliform bacteria—A group of bacteria originating in intestines of warm-blooded animals which indicates the possible presence of pathogenic organisms in water.

[(J)] (K) Hypolimnion—Zone beneath the zone of atmospheric mixing in a thermostratified lake.

[(K)] (L) Lethal concentration<sub>50</sub> (LC<sub>50</sub>)—Concentration of a toxicant which would be expected to kill fifty percent (50%) of the individuals of the test species organisms in a test of specified length of time.

[(L)] (M) Losing stream—A stream which distributes thirty percent (30%) or more of its flow during low flow conditions through natural processes, such as through permeable geologic materials into a bedrock aquifer within two (2) miles' flow distance downstream of an existing or proposed discharge. Flow measurements to determine percentage of water loss must be corrected to approximate the seven (7)-day Q<sub>10</sub> stream flow. If a stream bed or drainage way has an intermittent flow or a flow insufficient to measure in accordance with this rule, it may be determined to be a losing stream on the basis of channel development, valley configuration, vegetation development, dye tracing studies, bedrock characteristics, geographical data and other geological factors. Losing streams are listed in Table J; additional streams may be determined to be losing by the [*Division of Geology and Land Survey*] **Geological Survey and Resource Assessment Division**.

[(M)] (N) Low-flow conditions—Where used in this regulation in the context of mixing zones, the low-flow conditions shall refer to the minimum amount of stream flow occurring immediately

upstream of a wastewater discharge and available, in whole or in part, for dilution or assimilation of wastewater discharges.

1. Seven (7)-day, one (1)-in-ten (10)-year low flow (7-day  $Q_{10}$ )—The lowest average [minimum] flow for seven (7) consecutive days that has a probable recurrence interval of once-in-ten (10) years[; and].

2. Sixty (60)-day, one (1)-in-two (2)-year low flow (60-day/ $Q_{12/2}$ )—The lowest average [minimum] flow for sixty (60) consecutive days that has a probable recurrence interval of once-in-two (2) years.

3. Thirty (30)-day, one (1)-in-ten (10)-year low flow (30-day  $Q_{10}$ )—The lowest average flow for thirty (30) consecutive days that has a probable recurrence interval of once-in-ten (10) years.

4. One (1)-day, one (1)-in-ten (10)-year low flow (1-day  $Q_{10}$ )—The lowest average flow for one (1) day that has a probable recurrence interval of once-in-ten (10) years.

[(N)] (O) Mixing zone—An area of dilution of effluent in the receiving water beyond which chronic toxicity criteria must be met.

[(O)] (P) Outstanding national resource waters—Waters which have outstanding national recreational and ecological significance. These waters shall receive special protection against any degradation in quality. Congressionally designated rivers, including those in the Ozark national scenic riverways and the wild and scenic rivers system, are so designated (see Table D).

[(P)] (Q) Outstanding state resource waters—High quality waters with a significant aesthetic, recreational or scientific value which are specifically designated as such by the Clean Water Commission (see Table E).

[(Q)] (R) Ozark streams—Streams lying within the Ozark faunal region as described in the *Aquatic Community Classification System for Missouri*, Missouri Department of Conservation, 1989.

(S) Reference lakes or reservoirs—Lakes or reservoirs determined by Missouri Department of Natural Resources to be the best available representatives of ecoregion waters in a natural condition with respect to habitat, water quality, biological integrity and diversity, watershed land use, and riparian conditions.

[(R)] (T) Reference stream reaches—Stream reaches determined by the department to be the best available representatives of ecoregion waters in a natural condition, with respect to habitat, water quality, biological integrity and diversity, watershed land use and riparian conditions.

[(S)] (U) Regulated-flow streams—A stream that derives a majority of its flow from an impounded area with a flow-regulating device.

(V) Water effect ratio—Appropriate measure of the toxicity of a material obtained in a site water divided by the same measure of the toxicity of the same material obtained simultaneously in a laboratory dilution water.

[(T)] (W) Water hardness—The total concentration of calcium and magnesium ions expressed as calcium carbonate. For purposes of this rule, hardness will be determined by the lower twenty-fifth percentile value[, so that no more than twenty-five percent (25%) of samples fall below the value] of a representative number of samples from the water body in question or from a similar water body at the appropriate stream flow conditions.

[(U)] (X) Water quality criteria—Chemical, physical and biological properties of water that are necessary to protect beneficial water uses.

[(V)] (Y) Zone of initial dilution—A small area of initial mixing below an effluent outfall beyond which acute toxicity criteria must be met.

(W) Zone of passage—A continuous water route necessary to allow passage of organisms with no acutely toxic effects produced on their populations.

(X) Wetlands—Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for

life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. This definition is consistent with both the United States Army Corps of Engineers 33 CFR 328.3(b) and the United States Environmental Protection Agency 40 CFR 232.2(r).

(Y) Whole effluent toxicity tests—A toxicity test conducted under specified laboratory conditions on specific indicator organisms. To estimate chronic and acute toxicity of the effluent in its receiving stream, the effluent may be diluted to simulate the computed percent effluent at the edge of the mixing zone or zone of initial dilution.]

(Y) Waters of the state—All rivers, streams, lakes, and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased, or otherwise controlled by a single person or by two (2) or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

(Z) Wetlands—Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. This definition is consistent with both the United States Army Corps of Engineers 33 CFR 328.3(b) and the United States Environmental Protection Agency 40 CFR 232.2(r).

(AA) Whole effluent toxicity tests—A toxicity test conducted under specified laboratory conditions on specific indicator organisms. To estimate chronic and acute toxicity of the effluent in its receiving stream, the effluent may be diluted to simulate the computed percent effluent at the edge of the mixing zone or zone of initial dilution.

(BB) Zone of initial dilution—A small area of initial mixing below an effluent outfall beyond which acute toxicity criteria must be met.

(CC) Zone of passage—A continuous water route necessary to allow passage of organisms with no acutely toxic effects produced on their populations.

[(Z)](DD) Other definitions as set forth in the Missouri Clean Water Law and 10 CSR 20-2.010 shall apply to terms used in this rule.

(2) Antidegradation. The antidegradation policy shall provide three (3) levels of protection.

(A) Tier One. Public health, existing in-stream water uses and a level of water quality necessary to protect existing uses shall be maintained and protected.

(B) Tier Two. For all waters of the state, if existing water quality is better than applicable water quality criteria established in these rules, that existing quality shall be fully maintained and protected. Water quality may be lowered only if the state finds, after full satisfaction of the intergovernmental coordination and public participation requirements, that the lowered water quality is necessary to allow important economic and social development in the geographical area in which the waters are located. In allowing the lowering of water quality, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality. This provision allows a proposed new or modified point or nonpoint source of pollution to result in limited lowering of water quality provided that—

1. The source does not violate any of the general criteria set forth in section (3) of this rule, or any of the criteria for protection of beneficial uses set forth in section (4) of this rule;

2. The source meets all applicable technological effluent limitations and minimum standards of design for point sources or minimum pollution control practices for nonpoint sources; and

3. The lowering of water quality, in the judgment of the department, is necessary for the accommodation of important economic and social development in the geographical vicinity of the discharge. In making a preliminary determination based on socioeconomic development considerations, the department may consider the potential for regional increases in utility rates, taxation levels or recoverable costs associated with the production of goods or services that may result from the imposition of a strict no-degradation policy. Consideration may also be given to the possible indirect effects of a policy on per capita income and the level of employment in the geographical vicinity of the proposed pollution source. Any preliminary decision by the department to allow a limited lowering of water quality will be stated as such in a public notice issued pursuant to 10 CSR 20-6.010. Pursuant to that provision, a public hearing will be held in the geographical vicinity of the proposed pollution source, if the department determines there is significant public interest in and need for a hearing.

(C) **Tier Three.** There shall be no lowered water quality in outstanding national resource waters or outstanding state resource waters, as designated in Tables D and E.

**(D) The three (3) levels of protection provided by the anti-degradation policy in subsections (A) through (C) of this section shall be implemented according to procedures developed by the department. The anti-degradation implementation procedure shall go through stakeholder development and the finalized procedure shall be referenced by this rule before it becomes effective.**

(4) Specific Criteria. The specific criteria shall apply to classified waters. Protection of drinking water supply is limited to surface waters designated for raw drinking water supply and aquifers. Protection of whole/-/ body/-/ contact recreation is limited to classified waters designated for that use. Only waters designated for livestock and wildlife watering are considered to be long-term supplies and are subject to the chronic toxicity requirements of the specific criteria.

(A) The maximum chronic toxicity criteria in Tables A and B shall apply to waters designated for the indicated uses given in Tables G and H. All Table A and B criteria are chronic toxicity criteria, except those specifically identified as acute criteria. Water contaminants shall not cause or contribute to concentrations in excess of these values. Table A values listed as health advisory levels shall be used in establishing discharge permit limits and management strategies until additional data becomes available to support alternative criteria, or other standards are established. However, exceptions may be granted in the following cases:

1. Permanent flow streams when the stream flow is less than seven (7)-day  $Q_{10}$ ;

2. Regulated flow streams if the flow is less than the minimum release flow agreed upon by the regulating agencies;

[3. *When natural upstream concentration of dissolved oxygen are below the criteria, wasteload allocations and permits for point source discharges will be developed so that existing natural dissolved oxygen concentrations, as determined on a regional or watershed basis, are maintained;*]

[4.] 3. For the natural and unavoidable chemical and physical changes that occur in the hypolimnion of lakes. Streams below impoundments shall meet applicable specific criteria;

[5.] 4. For mixing zones.

A. The mixing zone shall be exempted from the chronic criteria requirements of this section for those components of waste that are rendered nontoxic by dilution, dissipation or rapid chemical transformation. Acute numeric criteria of Tables A and B and whole effluent acute toxicity requirements of subsection (3)(I) must be met at all times within the mixing zone, except within the zone of initial

dilution. The following criteria do not apply to thermal mixing zones. Criteria for thermal mixing zones are listed in paragraph (4)(D)6.

B. The maximum size of mixing zones and zone of initial dilution will be determined as follows:

(I) *[Class C streams and s]*Streams with seven (7)-day  $Q_{10}$  low flows of **less than 0.1 cfs [or less]**.

(a) Mixing zone—*[length of one-quarter (1/4) mile. If multiple discharges affect a reach or if zone of passage requirements mandate less extensive mixing zones, shorter mixing zones may be required.]* **not allowed; and**

(b) Zone of initial dilution—**not allowed;**

(II) Streams with seven (7)-day  $Q_{10}$  low flow of one-tenth to twenty (0.1–20) cfs—

(a) Mixing zone—one-quarter (1/4) of the stream width, cross-sectional area or volume of flow; length one-quarter (1/4) mile. If the discharger can document that rapid and complete mixing of the effluent occurs in the receiving stream, the mixing zone may be up to one-half (1/2) of the stream width, cross-sectional area or volume of flow; and

(b) Zone of initial dilution—one-tenth (0.1) of the mixing zone width, cross-sectional area or volume of flow;

(III) Streams with seven (7)-day  $Q_{10}$  low flow of greater than twenty (20) cfs—

(a) Mixing zone—one-quarter (1/4) of stream width, cross-sectional area or volume of flow; length of one-quarter (1/4) mile; and

(b) Zone of initial dilution—one-tenth (0.1) of the mixing zone width, cross-sectional area or volume of flow and no more than ten (10) times the effluent design flow volume unless the use of diffusers or specific mixing zone studies can justify more dilution; and

(IV) Lakes.

(a) Mixing zone—**not to exceed one-quarter (1/4) of the lake width at the discharge point or one hundred feet (100') from the discharge point, whichever is less.**

(b) Zone of initial dilution—**not allowed.**

C. A mixing zone shall not overlap another mixing zone in a manner that the maintenance of aquatic life in the body of water in the overlapping area would be further adversely affected.

D. Other factors that may prohibit or further limit the size and location of mixing zones are the size of the river, the volume of discharge, the stream bank configuration, the mixing velocities, other hydrologic or physiographic characteristics and the designated uses of the water, including type of aquatic life supported, potential effects on mouths of tributary streams and proximity to water supply intakes.

E. Zones of passage must be provided wherever mixing zones are allowed.

F. Mixing zone and zone of initial dilution size limits will normally be based on streams at the seven (7)-day  $Q_{10}$  low flow. However, this percent of stream size limits also applies at higher stream flows and discharge limitations may be based on higher stream flows if discharge volume or quality may be adjusted to correlate with stream flow; and

[6.] 5. For wetlands. Water quality needs will vary depending on the individual characteristics of wetlands. Application of numeric criteria will depend on the specific aquatic life, wildlife and vegetational requirements.

**A. Specific criteria for wetlands shall be developed using scientific procedures including, but not limited to, those procedures described in the U.S. Environmental Protection Agency's "Water Quality Standards Handbook," Second Edition, August 1994.**

**B. Specific criteria shall protect all life stages of species associated with wetlands and prevent acute and chronic toxicity in all parts of the wetland.**

C. Specific criteria shall include both chronic and acute concentrations to better reflect the different tolerances to the inherent variability between concentrations and toxicological characteristics of a condition.

D. Specific criteria shall be clearly identified as maximum “not to be exceeded” or average values, and if an average, the averaging period and the minimum number of samples. The conditions, if any, when the criteria apply shall be clearly stated (e.g., specific levels of hardness, pH, or water temperature). Specific sampling requirements (e.g., location, frequency), if any, shall also be identified.

E. The data, testing procedures, and application (safety) factors used to develop specific criteria shall reflect the nature of the condition (e.g., persistency, bioaccumulation potential) and the most sensitive species associated with the wetland.

F. Each specific criterion shall be promulgated in rule 10 CSR 20-7.031. The public notice shall include a description of the affected wetland and the reasons for applying the proposed criterion. A public hearing may be held in the geographical vicinity of the affected wetland. Any specific criterion promulgated under these provisions is subject to U.S. EPA approval prior to becoming effective.

(B) Toxic Substances.

1. Water contaminants shall not cause the criteria in Tables A and B to be exceeded. Concentrations of these substances in bottom sediments or waters shall not harm benthic organisms and shall not accumulate through the food chain in harmful concentrations, nor shall state and federal maximum fish tissue levels for fish consumption be exceeded. More stringent criteria may be imposed if there is evidence of additive or synergistic effects. *[Site-specific criterial modifications may be allowed. With the department’s approval, entities may conduct studies to determine if site-specific factors would justify modifications in the criteria that apply to specific receiving waters. In approving a study and reviewing its results, the department will take into account EPA and other appropriate guidelines as they exist at the time the study is submitted for approval.]*

2. For compliance with this rule, metals shall be analyzed by the following methods:

A. Aquatic life protection and human-health protection fish consumption.

(I) Mercury—total recoverable metals.

(II) All other metals—dissolved metals;

B. Drinking water supply—*[dissolved metals]* total recoverable metals; and

C. All other beneficial uses—total recoverable metals.

3. Other potentially toxic substances for which sufficient toxicity data are not available may not be released to waters of the state until safe levels are demonstrated through adequate bioassay studies.

4. Drinking water criteria, for substances which are rendered nontoxic by transformation processes in the surface water body, shall apply at water supply withdrawal points.

5. Site-specific alternative criteria for human health—fish consumption may be allowed. Designation of this site-specific criteria must follow the established variance request process.

6. Metals criteria for which toxicity is hardness dependent are in equation format in Table A.

7. Total ammonia nitrogen. For any given sample, the total ammonia nitrogen criteria shall be based on the pH and temperature of the water body measured at the time of each sample at the point of compliance.

A. The acute criteria shall not be exceeded at any time except in those waters for which the department has allowed a zone of initial dilution (ZID). The one (1)-day  $Q_{10}$  low flow condition will be used in determining acute total ammonia nitrogen criteria.

B. The chronic criteria shall not be exceeded except in water segments for which the department has allowed a mixing

zone (MZ). The chronic criteria shall be based on a thirty (30)-day exposure period. Therefore, the thirty (30)-day  $Q_{10}$  low flow condition of the receiving water body will be used in determining chronic total ammonia nitrogen criteria.

C. Without sufficient and reliable data, it is assumed that early life stages are present and must be protected at all times of the year.

(I) Sufficient and reliable data shall include, but is not limited to, seasonal studies on the fish species distributions, spawning periods, nursery periods, duration of sensitive life stages, and water body temperature. Best professional judgment from fisheries biologists and other scientists will be considered as appropriate.

(II) The time frames during the year when early life stages are considered to be absent are those time periods when early life stages are present in numbers that, if chronic toxicity did occur, would not affect the long-term success of the populations.

(III) A source of information for determining the duration of early life stages is *The American Society for Testing and Materials (ASTM) Standard E-1241*, “Standard Guide for Conducting Early Life-Stage Toxicity Tests with Fishes.”

(IV) Protection of early life stages should include the most sensitive species that have used a water body for spawning and rearing since November 28, 1975.

(C) *[Fecal Coliform]* Bacteria. Protection/s] of whole [-]/body [-] contact recreation is limited to classified waters designated for that use. *[For periods when the stream or lake is not affected by storm water runoff,]* Either of the following bacteria criterion shall apply until a date three (3) years from the effective date of this rule; at which time, only *E. coli* criterion shall apply. The recreational season is from April 1 to October 31.

1. Fecal coliform bacteria—the fecal coliform count shall not exceed *[two hundred colonies per one hundred milliliters (200/100 ml)]* the criterion listed in Table A as a geometric mean during the recreational season in waters designated for whole[-] body [-] contact recreation *[or]*. The fecal coliform count shall not exceed two hundred (200) colonies per one hundred milliliters (100 mL) at any time in losing streams. *[The recreational season is from April 1 to October 31.]* For waters designated for secondary contact recreation, the fecal coliform count shall not exceed one thousand eight hundred (1,800) colonies per one hundred milliliters (100 mL) as a geometric mean during the recreational season; or

2. *E. Coli* bacteria—the *E. coli* count shall not exceed the criterion listed in Table A as a geometric mean during the recreational season in waters designated for whole body contact recreation. The *E. coli* count shall not exceed one hundred twenty-six (126) colonies per one hundred milliliters (100 mL) at any time in losing streams. For waters designated for secondary contact recreation, the fecal coliform count shall not exceed one thousand one hundred thirty-four (1,134) colonies per one hundred milliliters (100 mL) as a geometric mean during the recreational season.

(D) Temperature.

1. For general and limited warm-water fisheries beyond the mixing zone, water contaminant sources and physical alteration of the water course shall not raise or lower the temperature of a stream more than five degrees Fahrenheit (5°F) or two and seven-ninths degrees Celsius (2 7/9 °C). Water contaminant sources shall not cause or contribute to stream temperature in excess of ninety degrees Fahrenheit (90°F) or thirty-two and two-ninths degrees Celsius (32 2/9 °C). However, site-specific ambient temperature data and requirements of sensitive resident aquatic species will be considered, when data are available, to establish alternative maxima or deviations from ambient temperatures.

2. For cool-water fisheries beyond the mixing zone, water contaminant sources and physical alteration of the water course shall not

raise or lower the temperature of a stream more than five degrees Fahrenheit (5°F) or two and seven-ninths degrees Celsius (2 7/9 °C). Water contaminant sources shall not cause or contribute to stream temperature in excess of eighty-four degrees Fahrenheit (84°F) or twenty-eight and eight-ninths degrees Celsius (28 8/9 °C).

3. For cold-water fisheries beyond the mixing zone, water contaminant sources and physical alteration of the water course shall not raise or lower the temperature of the water body more than two degrees Fahrenheit (2°F) or one and one-ninth degrees Celsius (1 1/9 °C). Water contaminant sources shall not cause or contribute to temperatures above sixty-eight degrees Fahrenheit (68°F) or twenty degrees Celsius (20°C).

4. Water contaminant sources shall not cause any measurable rise in the temperature of lakes. An increase is allowable for Lake Springfield, Thomas Hill Reservoir and Montrose Lake; however, discharges from these lakes must comply with temperature limits for streams.

5. For the Mississippi River Zones 1A and 2, the water temperature outside the mixing zone shall not exceed the maximum limits indicated in the following list during more than one percent (1%) of the time in any calendar year. In Zone 1B, limits may not be exceeded more than five percent (5%) of the time in a calendar year. At no time shall the river water temperature outside of the thermal mixing zone exceed the listed limits by more than three degrees Fahrenheit (3°F) or one and six-ninths degrees Celsius (1 6/9 °C).

|           | A[,] and B |        | C    |        |
|-----------|------------|--------|------|--------|
|           | (°F)       | (°C)   | (°F) | (°C)   |
| January   | 45         | 7 2/9  | 50   | 10     |
| February  | 45         | 7 2/9  | 50   | 10     |
| March     | 57         | 13 8/9 | 60   | 15 5/9 |
| April     | 68         | 20     | 70   | 21 1/9 |
| May       | 78         | 25 5/9 | 80   | 26 6/9 |
| June      | 86         | 30     | 87   | 30 5/9 |
| July      | 88         | 31 1/9 | 89   | 31 6/9 |
| August    | 88         | 31 1/9 | 89   | 31 6/9 |
| September | 86         | 30     | 87   | 30 5/9 |
| October   | 75         | 23 8/9 | 78   | 25 5/9 |
| November  | 65         | 18 3/9 | 70   | 21 1/9 |
| December  | 52         | 11 1/9 | 57   | 13 8/9 |

A = Zone 1A—Des Moines River to Lock and Dam No. 25.  
B = Zone 1B—Lock and Dam No. 25 to Lock and Dam No. 26.  
C = Zone 2—Lock and Dam No. 26 to the Missouri-Arkansas state line.

6. Thermal mixing zones shall be limited to twenty-five percent (25%) of the cross-sectional area or volume of a river, unless biological surveys performed in response to section 316(a) of the federal Clean Water Act (or equivalent) indicate no significant adverse impact on aquatic life. Thermal plume lengths and widths within rivers, and all plume dimensions within lakes, shall be determined on a case-by-case basis and shall be based on physical and biological surveys when appropriate.

(E) pH. Water contaminants shall not cause pH to be outside of the range of 6.5[-] to 9.0 standard pH units.

(L) Sulfate and Chloride Limit for Protection of Aquatic Life.

1. Streams with seven (7)-day Q<sub>10</sub> low flow of less than one (1) cubic foot per second. The concentration of chloride plus sulfate shall not exceed one thousand milligrams per liter (1,000 mg/LL) [at the seven (7)-day Q<sub>10</sub> low flow]. Table A includes additional chloride criteria.

2. Class P1, L1, L2 and L3 waters and streams with seven (7)-day Q<sub>10</sub> low flow of more than one (1) cubic foot per second. The total chloride plus sulfate concentration shall not exceed the estimated natural background concentration by more than twenty percent (20%) at the sixty (60)-day Q<sub>10</sub> low flow.

[3. If higher concentrations can be demonstrated through bioassays or studies not to be detrimental to indigenous aquatic life, then an appropriate higher concentration shall be allowed.]

(Q) Biocriteria. The biological integrity of waters, as measured by lists or numeric diversity indices of benthic invertebrates, fish, algae or other appropriate biological indicators, shall not be significantly different from reference waters. Waters shall be compared [with] to reference waters of similar size within an ecoregion. Reference water locations are listed in Table I.

(R) Site-specific Criteria Development for the Protection of Aquatic Life. When water quality criteria in this regulation are either underprotective or overprotective of water quality due to natural, non-anthropogenic conditions for a given water body segment, a petitioner may request site-specific criteria. The petitioner must provide the department with sufficient documentation to show that the current criteria are not adequate and that the proposed site-specific criteria will protect all existing and/or potential uses of the water body.

1. Site-specific criteria may be appropriate where, but is not limited to:

A. The resident aquatic species of the selected water body have a different degree of sensitivity to a specific pollutant as compared to those species in the data set used to calculate the national or state criteria.

(I) Natural adaptive processes have enabled a viable, balanced aquatic community to exist in waters where natural (non-anthropogenic) background conditions exceed the criterion (e.g., resident species have evolved a genetically based greater tolerance to high concentrations of a chemical).

(II) The composition of aquatic species in a water body is different from those used in deriving a criterion (e.g., most of the species considered among the most sensitive, such as salmonids or the cladoceran, *Ceriodaphnia dubia*, which were used in developing a criterion, are absent from a water body).

B. The physical and/or chemical characteristics of the water body alter the biological availability and/or toxicity of the pollutant (e.g., pH, alkalinity, salinity, water temperature, hardness).

2. All petitioners seeking to develop site-specific criteria shall coordinate with the department early in the process. This coordination will insure the use of adequate, relevant, and quality data; proper analysis and testing; and defensible procedures. The department will provide guidance for establishing site-specific water quality criteria using scientific procedures including, but not limited to, those procedures described in the U. S. Environmental Protection Agency's "Water Quality Standards Handbook," Second Edition, August 1994.

3. Site-specific criteria shall protect all life stages of resident species and prevent acute and chronic toxicity in all parts of a water body.

4. Site-specific criteria shall include both chronic and acute concentrations to better reflect the different tolerances of resident species to the inherent variability between concentrations and toxicological characteristics of a chemical.

5. Site-specific criteria shall be clearly identified as maximum "not to be exceeded" or average values, and if an average, the averaging period and the minimum number of samples. The conditions, if any, when the criteria apply shall be clearly stated (e.g., specific levels of hardness, pH, or water temperature). Specific sampling requirements (e.g., location, frequency), if any, shall also be identified.

6. The data, testing procedures, and application (safety) factors used to develop site-specific criteria shall reflect the nature of the chemical (e.g., persistency, bioaccumulation potential, and avoidance or attraction responses in fish) and the most sensitive resident species of a water body.

7. The size of a site may be limited to a single stream segment or may cover a whole watershed depending on the particular situation for which the specific criterion is developed. A group of water bodies may be considered one site if their respective aquatic communities are similar in composition and have comparable water quality.

8. The department shall determine if a site-specific criterion is adequate and justifiable. Each site-specific criterion shall be promulgated into rule 10 CSR 20-7.031. The public notice shall include a description of the affected water body or water body segment and the reasons for applying the proposed criterion. If the department determines that there is significant public interest, a public hearing may be held in the geographical vicinity of the affected water body or water body segment. Any site-specific criterion promulgated under these provisions is subject to U.S. EPA approval prior to becoming effective.

(5) Groundwater.

(A) Water contaminants shall not cause or contribute to exceedance of Table A, *[Column VII] groundwater* limits in aquifers and caves. Table A values listed as health advisory levels shall be used in establishing management strategies and groundwater cleanup criteria, until additional data becomes available to support alternative criteria or other standards are established. Substances not listed in Table A shall be limited so that drinking water, livestock watering and irrigation uses are protected.

(B) When criteria for the protection of aquatic life or human health protection—fish consumption in *[Column I or II of] Table A* are more stringent than *[Column VII] groundwater* criteria, appropriate *[Column I or II]* criteria for the protection of aquatic life or human health protection—fish consumption shall apply to waters in caves and to aquifers which contribute an important part of base flow of surface waters designated for aquatic life protection. Other substances not listed in Table A shall be limited in these aquifers and caves so that the aquatic life use is protected.

(C) *[Column VIII] Groundwater* and other criteria shall apply in any part of the aquifer, including the point at which the pollutant enters the aquifer. A specific monitoring depth requirement for releases to aquifers is included in 10 CSR 20-7.015(7)(A).

(D) For aquifers in which contaminant concentrations exceed *[Column VIII] groundwater* criteria or other protection criteria, and existing and potential uses are not impaired, alternative site-specific criteria may be allowed. To allow alternative criteria, the management authority must demonstrate that alternative criteria will not impair existing and potential uses. The demonstration must consider the factors and be subject to the review requirements of 10 CSR 20-7.015(7)(F).

(7) Outstanding National Resource Waters. *[Under section (2), antidegradation section of this rule, new releases to outstanding national resource waters from any source other than publicly-owned waste treatment facilities and mine dewatering water are prohibited and releases from allowed facilities] All discharges into these waters or into the watershed of these waters* are subject to special effluent limitations as required in 10 CSR 20-7.015(6)/(A)3.J. Table D contains a list of the outstanding national resource waters in Missouri.

(8) Outstanding State Resources Waters.

*[(A)]* The commission wishes to recognize certain high-quality waters that may require exceptionally stringent water-quality management requirements to assure conformance with the antidegradation policy. *[The degree of management requirements will be decided on an individual basis. To qualify for inclusion, all of the following criteria must be met.] All discharges into these waters or into the watershed of these waters* are subject to special effluent limitations as required in 10 CSR 20-7.015(6). Table E

contains a list of the outstanding state resource waters in Missouri. The waters listed in Table E must—

*[1.] (A)* Have a high level of aesthetic or scientific value;

*[2.] (B)* Have an undeveloped watershed; and

*[3.] (C)* Be located on or pass through lands which are state or federally owned, or which are leased or held in perpetual easement for conservation purposes by a state, federal, or private conservation agency or organization.

(10) Compliance with Water Quality Based Limitations. Compliance with new or revised National Pollutant Discharge Elimination System (NPDES) or Missouri operating permit limitations based on criteria in this rule shall be achieved with all deliberate speed and no later than three (3) years from the date of issuance of the permit.