

REGULATION XII – TRANSPORTATION CONFORMITY

Reg. 12. CONFORMITY TO STATE IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT ACT

Adopted: 10/05/94

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§ 1201 Purpose.

The purpose of this rule is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR part 51 subpart T, with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to this applicable implementation plan, developed and applicable pursuant to section 110 and Part D of the CAA.

§ 1202 Definitions.

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

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

CAA means the Clean Air Act, as amended.

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

1. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or
2. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Consultation means that one party confers with another identified party, provides all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required and those actions subject to §§ 1206(b)(7), 1206(c)(1)(vii), 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.

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

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM10), carbon monoxide (CO), nitrogen dioxide (NO₂), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM10, NO₂, CO, or ozone, as appropriate. This period ends when the State submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.

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

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

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

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

FTA means the Federal Transit Administration of DOT.

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

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system in accordance with § 1207 of this rule.

Hot-spot analysis is an estimation of likely future localized CO and PM10 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

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

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

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

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

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

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

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the California Air Resources Board, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NOx) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NOx budget will be achieved with measures in the implementation plan (as an implementation

plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

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

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

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

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

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

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following: (1) submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or (2) the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the State's failure to submit any such plans and the State, MPO, and DOT have received notice of such finding of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 1229 of this rule.

Project means a highway project or transit project.

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

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum—

1. all principal arterial highways,

2. all fixed guideway transit facilities that offer an alternative to regional highway travel,
3. any project that increases vehicle miles traveled (VMT) in the region by a statistically significant amount or will lead to an increase in emissions of more than 5% of the mobile sources emissions budget for the area or subarea,
4. any project that will be associated with a statistically significant increase of vehicle trips per day,
5. any project that is associated with an increase in emissions of PM10 of 250 pounds per day or more,
6. any project that increases the capacity of any minor arterial or greater classification highway,
7. any project that adds a new, or significantly modifies an existing, interchange or intersection in a manner that may increase emissions,
8. any project that adds a lane (other than a turning lane in the vicinity of an intersection) to a minor arterial or greater classification highway,
9. any project that changes facility alignment in a manner that may increase emissions on more than a local basis,
10. any change in facility classification or access classification of the facility that may be associated with an increase in emissions,
11. any project for the construction of a new facility that is a minor arterial or greater classification highway, and
12. any project that the State air quality agency identifies as having the potential to affect air quality on a regional basis.

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

Standard means a national ambient air quality standard.

State project is any highway or transit project which is proposed to receive funding assistance [or approval] through any State or local transportation program.

Statewide transportation improvement program (STIP) means a staged, multi-year, intermodal program of transportation projects covering the State [or the nonattainment area, attainment area, or maintenance area], which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR part 450.

Statewide transportation plan means the official intermodal statewide transportation plan that is developed through the statewide planning process for the State, developed pursuant to 23 CFR part 450.

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

Title 23 U.S.C. means title 23 of the United States Code.

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

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

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

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the California Air Resources Board and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 1229 of this rule.

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

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

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

Transportation project is a highway project or a transit project.

§ 1203 Applicability.

- a. Action applicability.
 1. Except as provided for in paragraph (c) of this section or § 1235, conformity determinations are required for:
 - i. The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

- ii The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and
 - iii The approval, funding, or implementation of FHWA/FTA projects.
 - 2. Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 1230 applies to such projects if they are regionally significant.
- b. Geographic applicability.
 - 1. The provisions of this rule shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
 - 2. The provisions of this rule apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).
 - 3. The provisions of this rule apply with respect to emissions of the following precursor pollutants:
 - i Volatile organic compounds and nitrogen oxides in ozone areas
 - ii Nitrogen oxides in nitrogen dioxide areas; and
 - iii Volatile organic compounds, nitrogen oxides, and PM10 in PM10 areas if:
 - A. During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT; or
 - B. During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
- c. Limitations.
 - 1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination

are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

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

§ 1204 Priority.

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

§ 1205 Frequency of conformity determinations.

- a. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.
- b. Transportation plans.
 1. Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.
 2. All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii). The conformity determination must be based on the transportation plan and the revision taken as a whole.
 3. The existing conformity determination will lapse unless conformity of existing transportation plans is redetermined:
 - i within 18 months of EPA approval of an implementation plan revision which:
 - A. establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
 - B. adds, deletes, or changes TCMs; and
 - ii within 18 months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

4. In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.
- c. Transportation improvement programs.
1. A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.
 2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii).
 3. After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii). Otherwise, the existing conformity determination for the TIP will lapse.
 4. In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.
- d. Projects.

FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three year period: 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.

§ 1206 Consultation.

a. General.

This rule provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by MPOs, the State department of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, the State department of transportation, and DOT in developing applicable implementation plans.

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

b. Interagency consultation procedures: General factors.

1.

- A. Representatives of the MPOs, State and local air quality planning agencies, and State and local transportation agencies, and shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.
- B. The Great Basin Unified Air Pollution Control District shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan.

The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. In the case of non-metropolitan areas, the California Department of Transportation shall be the lead agency responsible for preparing the final document or decision for regional and localized actions, and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide transportation plan, the STIP, and any amendments or revisions thereto. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this rule for which the MPO is responsible.

- C. In addition to the lead agencies identified in subparagraph (B), other agencies entitled to participate in any interagency consultation process under this rule include the California Department of Transportation, both headquarters and the District 9 & 10 Offices, the Town of Mammoth Lakes, the Federal Highway Administration - California Division, the Federal Transit Administration regional office, and the California Air Resources Board.
- D. It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraph

(B), to confer with all other agencies identified under subparagraph (C) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of § 1206(b), where required, assure policy-level contact with those agencies, and, (except for actions subject to § 1206(b)(7) or (c)(1)(vii)) prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (C), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings as appropriate, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

- E. Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:
- (i) The Great Basin Unified Air Pollution Control District shall be responsible for developing (I) emissions inventories, (II) emissions budgets, (III) air quality modeling, (IV) attainment demonstrations, (V) control strategy implementation plan revisions, (VI) regulatory TCMs, and (VII) updated motor vehicle emissions factors;
 - (ii) The MPO shall be responsible for (I) developing transportation plans and TIPs, (II) evaluating TCM transportation impacts, (III) developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to air quality agencies for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects, (IV) monitoring regionally significant projects, (V) developing system- or facility-based or other programmatic (non-regulatory) TCMs, (VI) providing technical and policy input on emissions budgets, and (VII) perform transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments;

- (iii) The California Department of Transportation shall be responsible for (I) developing Statewide transportation plans and STIPs, (II) providing technical input on proposed revisions to motor vehicle emissions factors, (III) distributing draft and final project environmental documents to other agencies, and (IV) convening air quality technical review meetings on specific projects when requested by other agencies or as needed;
- (iv) FHWA and FTA shall be responsible for (I) assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and 40 CFR § 51.402, and (II) provide guidance on conformity and the transportation planning process to agencies in interagency consultation; and
- (v) EPA shall be responsible for (I) reviewing and approving updated motor vehicle emissions factors, and (II) providing guidance on conformity criteria and procedures to agencies in interagency consultation.
- (vi) The California Air Resources Board shall be responsible for (I) reviewing all draft and final State Implementation Plan (SIP) revisions for compliance with applicable requirements, (II) submitting SIP revisions to EPA, (III) developing and soliciting input on and adopting updated motor vehicle emission factors (EMFAC) for use in control strategy SIP development, and (IV) advocating the State's position on air quality-related issues to federal agencies.

2. Consultation on Regional Transportation Plans, Transportation Improvement Programs, and State Implementation Plans.

- A. It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants, convene consultation meetings early in the process of decision on the final document, appoint the convenors of technical meetings, and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.
- B. Regular consultation on major activities such as the development of an implementation plan or any control strategy implementation plan revision, the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs, shall include annual meetings and shall be attended by representatives at the technical level of each agency. In addition, policy meetings shall be convened as necessary.
- C. Each lead agency in the consultation process required under this section (that is, the agency with the responsibility for preparing the final document subject to the interagency consultation process)

shall confer with all other agencies identified under paragraph (1) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

3. Consultation on Transportation Projects.

It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner. Such notification shall be provided within 30 days from the issuance of a final environmental assessment under the California Environmental Quality Act (CEQA) or within 30 days prior to the preparation of the final document or decision if the proposed action is not subject to CEQA requirements.

4. Each lead agency subject to an interagency consultation process under this section (including any Federal agency) shall provide each final document that is the product of such consultation process (including applicable implementation plans or implementation plan revisions, transportation plans, TIPs, and determinations of conformity), together with all supporting information, to each other agency that has participated in the consultation process within 7 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

5. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.

c. Interagency consultation procedures: Specific processes.

1. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT shall be undertaken for the following:

- i. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
- ii. Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an

- alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by the California Department of Transportation, Districts 9 or 10 and conducted in accordance with paragraph (b)(2);
- iii. Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see §§ 1235 and 1236) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
 - iv. Making a determination, as required by § 1214(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, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2). This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;
 - v. Making a determination, as required by § 1230(b), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and 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, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
 - vi. Identifying, as required by § 1232(d), projects located at sites in PM10 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 PM10 hot-spot analysis, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
 - vii. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 1235, to be initiated by the California Department of Transportation, District 9 or 10 and conducted in accordance with paragraph (b)(2), other than the requirement that such notice be provided prior to final action;
 - viii. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
 - ix. Determining the definition of "reasonable professional practice" for the purposes of §§ 1231 and 1232(b), to be initiated by the Great Basin

- Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2); and
- x. Determining whether the project sponsor or MPO has demonstrated that the requirements of §§ 1217, 1219, and 1220 are satisfied without a particular mitigation or control measure, as provided in § 1234(d), to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2).
2. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, and State and local transportation agencies, shall be undertaken for the following:
 - i. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 1205, to be initiated by the GBUAPCD and conducted in accordance with paragraph (b)(2); and
 - ii. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by the GBUAPCD and conducted in accordance with paragraph (b)(2).
 3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with paragraph (b) involving the MPO and the State department of transportation shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by the California Department of Transportation, District 9 or 10, and conducted in accordance with paragraph (b)(2).
 4.
 - i. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, and recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.
 - ii. 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 or otherwise, shall 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. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the MPO annually, not later than December 31 of each year 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.

- iii. In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, 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 § 1230.
 - iv. For the purposes of this section and § 1230, 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. An interagency consultation process in accordance with paragraph (b) involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 1231, to be initiated by the California Department of Transportation, District 9 or 10 and conducted in accordance with paragraph (b)(2).
 6. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, and State and local transportation 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), to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2).
 7. Final decisions made following interagency consultation in accordance with paragraph (b) shall be made through concurrence of the participating agencies.

d. Resolving conflicts.

1. Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.
2.
 - A. The State air quality agency has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the State DOT or MPO has notified the State air quality agency of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO or the State DOT has confirmed receipt by the director of the State air quality agency of the resolution of the comments of the State air quality agency. If the State air quality agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State air quality agency must provide notice of any appeal under this subsection to the MPO and the State DOT. If the State air quality agency does not appeal to the Governor within 14 days, the MPO or State DOT may proceed with the final conformity determination.
 - B. In the case of any comments with regard to findings of fiscal constraint under § 1209 or the air quality effects of any proposed determination of conformity, the State DOT has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the MPO has notified the State air quality agency or the State DOT of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO has confirmed receipt by the director of the State air quality agency or the State DOT of the resolution of the comments of the State DOT. If the State DOT appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State DOT must provide notice of any appeal under this subsection to the MPO and the State air quality agency. If the State DOT does not appeal to the Governor within 14 days, the MPO may proceed with the final conformity determination.
3. The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, any agency that has responsibility for only one of these functions, or an MPO.

e. Public consultation procedures.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450, including §§ 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. In addition, any such agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA or CEQA). The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, 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.

§ 1207 Content of transportation plans.

a. Transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.

The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan, after consultation in accordance with § 1206, may choose any years to be horizon years, subject to the following restrictions:
 - i. Horizon years may be no more than 10 years apart.
 - ii. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
 - iii. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.
 - iv. The last horizon year must be the last year of the transportation plan's forecast period.
2. For these horizon years:
 - i. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 1206;
 - ii. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be

operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for areawide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

- iii. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
- b. Moderate areas reclassified to serious: Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.
- c. Transportation plans for other areas: Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 1210 - 1228.
- d. Savings: The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 1208 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 §§ 1210 - 1228 for projects not from a TIP before NEPA process completion.

§ 1209 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs shall be fiscally constrained and meet the requirements of 23 CFR 450.322(b)(11) and 450.324(e) as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with § 1206.

§ 1210 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

- a. In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 1211 - 1228 as listed in Table 1 in paragraph (b) of this section, and 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 determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects, the time period in which the conformity determination is made, and the relevant pollutant.
- b. The following table indicates the criteria and procedures in §§ 1211 - 1228 which apply for each action in each time period.

Table 1.
Conformity Criteria

During all periods:

Action	Criteria
Transportation Plan	§§ 1211, 1212, 1213, 1214(b)
TIP	§§ 1211, 1212, 1213, 1214(c)
Project (From a conforming plan and TIP)	§§ 1211, 1212, 1213, 1215, 1216, 1217, 1218
Project (Not from a conforming plan and TIP)	§§ 1211, 1212, 1213, 1214(d), 1215, 1217, 1218

Phase II of the interim period:

Action	Criteria
Transportation Plan	§§ 1223, 1226
TIP	§§ 1224, 1227
Project (From a conforming plan and TIP)	§ 1222
Project (Not from a conforming plan and TIP)	§§ 1222, 1225, 1228

Transitional period:

Action	Criteria
Transportation Plan	§§ 1219, 1223, 1226
TIP	§§ 1220, 1224, 1227
Project (From a conforming plan and TIP)	§ 1222
Project (Not from a conforming plan and TIP)	§§ 1221, 1222, 1225, 1228

Control strategy and maintenance periods:

Action	Criteria
Transportation Plan	§ 1219
TIP	§ 1220
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	§ 1221

§ 1211 Criteria and procedures: Latest planning assumptions.

- a. During all periods the conformity determination, with respect to all other applicable criteria in §§ 1212 - 1228, shall 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 paragraphs (b) through (f) of this section.
- b. Assumptions (including, but not limited to, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area, after consultation with the State air quality agency.
- c. The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- d. The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- e. The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- f. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 1206.

§ 1212 Criteria and procedures: Latest emissions model.

- a. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the State or area is used for the conformity analysis. (Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.)
- b. Conformity analyses for which the emissions analysis was begun before the Federal Register notice of availability of the latest emission model, or during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 1213 Criteria and procedures: Consultation.

All conformity determinations shall be made according to the consultation procedures in this rule, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until this rule is approved by EPA as an implementation plan revision, the conformity determination must be made according to the procedures in 40 CFR § 51.402(a)(2) and 40 CFR § 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 1214 Criteria and procedures: Timely implementation of TCMs.

- a. During all periods the transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- b. For transportation plans, this criterion is satisfied if the following two conditions are met:
 1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, including, but not limited to, those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
 2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- c. For TIPs, this criterion is satisfied if the following conditions are met:
 1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, including, but not limited to, those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.
 2. If Federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for Federal funding under ISTEAs Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform.

3. Nothing in the TIP interferes with the implementation of any TCM in the applicable implementation plan.
- d. For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 1215 Criteria and procedures: Currently conforming transportation plan and TIP.

During all periods there must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the criteria and procedures of this rule. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the conformity determination for the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 1205.

§ 1216 Criteria and procedures: Projects from a plan and TIP.

- a. During all periods the project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of § 1210 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming TIP if it meets the requirements of paragraph (c) of this section.
- b. A project is considered to be from a conforming transportation plan if one of the following conditions applies:
 1. For projects which are required to be identified in the transportation plan in order to satisfy § 1207, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
 2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- c. A project is considered to be from a conforming TIP if the following conditions are met:
 1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor or operator as required by § 1234(a) in order for the project to be considered from a conforming TIP. 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.

§ 1217 Criteria and procedures: Localized CO and PM10 violations (hot spots).

- a. During all periods the FHWA/FTA project must not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- b. The demonstration must be performed according to the requirements of § 1206(c)(1)(i) and § 1232.
- c. For projects which are not of the type identified by §§ 1232(a) or 1232(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 1232(b).

§ 1218 Criteria and procedures: Compliance with PM10 control measures.

During all periods the FHWA/FTA project must comply with PM10 control measures in the applicable implementation plan. This criterion is satisfied if control measures (for the purpose of limiting PM10 emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 1219 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

- a. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.
- b. A regional emissions analysis shall be performed as follows:
 1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:
 - i. VOC as an ozone precursor;
 - ii. NOx as an ozone precursor;

- iii. CO;
 - iv. PM10 (and its precursors VOC and NOx if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM10 nonattainment problem or establishes a budget for such emissions); or
 - v. NOx (in NO2 nonattainment or maintenance areas);
2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
 3. The emissions analysis methodology shall meet the requirements of § 1231;
 4. For areas with a transportation plan that meets the content requirements of § 1207(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and
 5. For areas with a transportation plan that does not meet the content requirements of § 1207(a), the emissions analysis shall be performed for –
 - i. the last year of the plan's forecast period;
 - ii. the attainment year, if the attainment year is in the time span of the transportation plan; and
 - iii. any other years in the time span of the transportation plan that are no more than ten years apart.

Emissions in milestone years which are between these analysis years may be determined by interpolation.

- c. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:
 1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;
 2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;
 3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for

years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

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

§ 1220 Criteria and procedures: Motor vehicle emissions budget (TIP).

- a. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.
- b. For areas with a conforming transportation plan that fully meets the content requirements of § 1207(a), this criterion may be satisfied without additional regional emissions analysis if:
 1. Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and
 2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
 - i. The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
 - ii. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
 - iii. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.
 3. If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:
 - i. The TIP may be modified to meet those requirements; or
 - ii. The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

- c. For areas with a transportation plan that does not meet the content requirements of § 1207(a), a regional emissions analysis must meet all of the following requirements:
 - 1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
 - 2. The analysis methodology shall meet the requirements of § 1231(c); and
 - 3. The regional emissions analysis shall satisfy the requirements of § 1219(b)(1), § 1219(b)(5), and § 1219(c).

§ 1221 Criteria and procedures: Motor vehicle emissions budget (Project not from a plan and TIP).

- a. The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).
- b. For areas with a conforming transportation plan that meets the content requirements of § 1207(a):
 - 1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:
 - i. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
 - ii. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
 - iii. The design concept and scope of the project is not significantly different from that described in the transportation plan.
 - 2. If the requirements in paragraph (b)(i) of this section are not met, a regional emissions analysis must be performed as follows:
 - i. The analysis methodology shall meet the requirements of § 1231;
 - ii. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all

previously approved projects which were not from a transportation plan and TIP; and

- iii. The regional emissions analysis shall meet the requirements of § 1219(b)(1), § 1219(b)(4), and § 1219(c).
- c. For areas with a transportation plan that does not meet the content requirements of § 1207(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:
1. The analysis methodology meets the requirements of § 1231(c);
 2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and
 3. The regional emissions analysis satisfies the requirements of § 1219(b)(1), § 1219(b)(5), and § 1219(c).

§ 1222 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

- a. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- b. The demonstration must be performed according to the requirements of § 1206(c)(1)(i) and § 1232.
- c. For projects which are not of the type identified by § 1232(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 1232(b).

§ 1223 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

- a. A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- b. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if

the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

- c. Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
1. All in-place regionally significant highway and transit facilities, services and activities;
 2. All ongoing travel demand management or transportation system management activities; and
 3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the most recent three year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)
- d. Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in § 1235 and § 1236 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 funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
 4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval,

which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
 6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- e. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NOx emissions between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 1231. Emissions in milestone years which are between the analysis years may be determined by interpolation.
- f. This criterion is met if the regional VOC and NOx emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional emissions analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 1224 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

- a. A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- b. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- c. Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
 1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and
 3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)
- d. Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
1. All facilities, services, and activities in the 'Baseline' scenario;
 2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
 3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
 4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
 5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
 6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- e. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions and the difference in CO emissions

between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 1231. Emissions in milestone years which are between analysis years may be determined by interpolation.

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

§ 1225 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 1223 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 1226 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (transportation plan).

- a. A transportation plan must contribute to emission reductions or must not increase emissions in PM10 and NO2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.
- b. Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM10 in a PM10 nonattainment area (and of each transportation-related precursor of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area, by performing a regional emissions analysis as follows:
 - 1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO2 areas) or four years and six months following the date of designation (for PM10 areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

2. Define for each of the analysis years the 'Baseline' scenario, as defined in § 1223(c), and the 'Action' scenario, as defined in § 1223(d).
 3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference between the two scenarios in regional PM10 emissions in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and in NOx emissions in an NO2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 1231. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
 4. Demonstrate that the regional PM10 emissions and PM10 precursor emissions, where applicable, (for PM10 nonattainment areas) and NOx emissions (for NO2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- c. Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:
1. Determine the baseline regional emissions of PM10 and PM10 precursors, where applicable (for PM10 nonattainment areas) and NOx (for NO2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990.
 2. Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 1231. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO2 areas) or four years and six months following the date of designation (for PM10 areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years

beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

3. Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM10 and PM10 precursors, where applicable (for PM10 nonattainment areas) or NOx (for NO2 nonattainment areas) from highway and transit sources.

§ 1227 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (TIP).

- a. A TIP must contribute to emission reductions or must not increase emissions in PM10 and NO2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.
- b. Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area, by performing a regional emissions analysis as follows:
 1. Determine the analysis years for which emissions are to be estimated, according to the requirements of § 1226(b)(1).
 2. Define for each of the analysis years the 'Baseline' scenario, as defined in § 1224(c), and the 'Action' scenario, as defined in § 1224(d).
 3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios as required by § 1226(b)(3), and make the demonstration required by § 1226(b)(4).
- c. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 1226(c)(1), (2), and (3).

§ 1228 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM10 and NO2 nonattainment areas. This criterion applies during the interim and transitional periods only. This

criterion is met if a regional emissions analysis is performed which meets the requirements of § 1226 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 126(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 1229 Transition from the interim period to the control strategy period.

- a. Areas which submit a control strategy implementation plan revision after November 24, 1993.
 1. The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
 - i. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
 - ii. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
 2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
 3. Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

- b. Areas which have not submitted a control strategy implementation plan revision.
 - 1. For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act §§ 179 or 110(m):
 - i. No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and
 - ii. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
 - 2. For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - i. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
 - ii. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- c. Areas which have not submitted a complete control strategy implementation plan revision.
 - 1. For areas where EPA notifies the State, MPO, and DOT after November 24, 1993, that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - i. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and
 - ii. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
 - iii. Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy

implementation plan revision is submitted to EPA and found to be complete.

2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - i. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
 - ii. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
 - iii. Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- d. Areas which submitted a control strategy implementation plan before November 24, 1993.
 1. The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.
 - i. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.
 - ii. Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
 2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- e. Projects: If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e)(1) and (2) of this section must be met.
1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the 'Action' scenario (as required by §§ 1223 - 1228) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
 2. In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 1206(d), which applies for any State air agency comments on a conformity determination.
- f. Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.
1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 1211 and 1212 if:
 - i. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and
 - ii. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
 2. A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 1205(b)(4) or § 1205(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all applicable criteria and procedures of § 1210 within three years of the last determination which did not rely on paragraph (f)(1) of this section.
- g. Ozone nonattainment areas.

1. The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act § 182(b)(1) requires to be submitted to EPA November 15, 1993.
 2. The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act § 182(b)(1).
 3. The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- h. Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.
1. If an area listed in § 1237 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 1237 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.
- i. Maintenance plans: If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act § 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 1230 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 1215 and the requirements of one of the following paragraphs (a) through (e) are met:

- a. The project comes from a conforming plan and program consistent with the requirements of § 1216;
- b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in

the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

- c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 1221;
- d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 1225 (in ozone and CO nonattainment areas) or § 1228 (in PM10 and NO2 nonattainment areas); or
- e. During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 1231 Procedures for determining regional transportation-related emissions.

a. General requirements.

- 1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP, and all other regionally significant projects which are disclosed to the MPO as required by § 1206. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
- 2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
- 3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without

any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 1219 - 1221, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 1219 - 1221 are satisfied.
 5. A regional emissions analysis for the purpose of satisfying the requirements of §§ 1223 - 1225 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the 'Baseline' and 'Action' scenarios.
 6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation in accordance with § 1206 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- b. Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (4) of this section.
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:
 - i. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;
 - ii. The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;
 - iii. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;
 - iv. Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

- v. Free-flow speeds on network links shall be based on empirical observations;
 - vi. Peak and off-peak travel demand and travel times must be provided;
 - vii. Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;
 - viii. The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;
 - ix. A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;
 - x. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and
 - xi. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.
 3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
 4. Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
- c. Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.
1. Procedures which satisfy some or all of the requirements of paragraph (b) of this section shall be used in all areas not subject to paragraph (b) of this section in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.
- d. Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).
1. Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 1221, 1225, and 1228 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).
 2. The requirements of § 1221 shall be satisfied according to the procedures in § 1221(c), with references to the "transportation plan" taken to mean the statewide transportation plan.
 3. The requirements of §§ 1225 and 1228 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).
 4. The requirement of § 1230(b) shall be satisfied if:
 - i. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 1221, 1225, or 1228 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and
 - ii. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
- e. PM10 from construction-related fugitive dust.
1. For areas in which the implementation plan does not identify construction-related fugitive PM10 as a contributor to the nonattainment problem, the fugitive PM10 emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In PM10 nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM10 as a contributor to the nonattainment problem, the regional PM10 emissions analysis shall consider construction-related fugitive PM10 and shall account for the level of construction activity, the fugitive PM10 control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 1232 Procedures for determining localized CO and PM10 concentrations (hot-spot analysis).

- a. In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in § 1206 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
 1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
 2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
 3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
 4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and
 5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.
- b. In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.
- c. CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
- d. PM10 hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM10 hot-spot analysis shall be determined through the interagency consultation process required in § 1206. In PM10 nonattainment and maintenance areas, new or expanded

bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. (The requirements of this paragraph for quantitative hot-spot analysis shall take effect when EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.)

- e. Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- f. PM10 or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written enforceable commitments from the project sponsor or operator to the implementation of such measures, as required by § 1234(a).
- g. CO and PM10 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 1233 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 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 mobile 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. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without an implementation plan revision or an applicable implementation plan which establishes mechanisms for such trades.
- d. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- e. If a nonattainment area includes more than one MPO, the applicable implementation plan may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area.

§ 1234 Enforceability of design concept and scope and project-level mitigation and control measures.

- a. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor or operator enforceable 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 PM10 or CO impacts. Before making conformity determinations enforceable written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 1219 - 1221 and §§ 1223 - 1225 or used in the project-level hot-spot analysis required by §§ 1217 and 1222.
- b. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and must comply with the obligations of such commitments.
- c. Enforceable written commitments to mitigation or control measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.
- d. During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 1217, 1219, and 1220 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 1206. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of

§§ 1219 and 1220 and that the project still satisfies the requirements of § 1217, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 1235 Exempt projects.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 1206(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must assure that exempt projects do not interfere with TCM implementation.

Table 2.
Exempt Projects

Safety

- Railroad/highway crossing
- Hazard elimination program
- Safer non-Federal-aid system roads
- Shoulder improvements
- Increasing sight distance
- Safety improvement program
- Traffic control devices and operating assistance other than signalization projects
- Railroad/highway crossing warning devices
- Guardrails, median barriers, crash cushions
- Pavement resurfacing 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 (In PM10 nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan.)
- Purchase of office, shop, and operating equipment for existing facilities
- Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)

- Construction or renovation of power, signal, and communications systems
- Construction of small passenger shelters and information kiosks
- Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet (In PM10 nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan.)
- Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771

Air Quality

- Continuation of ride-sharing and van-pooling promotion activities at current levels
- Bicycle and pedestrian facilities

Other

- Specific activities which do not involve or lead directly to construction, such as:
 - Planning and technical studies
 - Grants for training and research programs
 - Planning activities conducted pursuant to titles 23 and 49 U.S.C.
 - Federal-aid systems revisions
 - Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
 - Noise attenuation
 - Advance land acquisitions (23 CFR part 712 or 23 CFR part 771)
 - Acquisition of scenic easements
 - Plantings, landscaping, etc.
 - Sign removal
 - Directional and informational signs
 - Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
 - Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes

§ 1236 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see

1206(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3.
Projects Exempt from Regional Emissions Analyses

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

§ 1237 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

- a. Application: This section applies in the following areas:
1. Rural transport ozone nonattainment areas;
 2. Marginal ozone areas;
 3. Submarginal ozone areas;
 4. Transitional ozone areas;
 5. Incomplete data ozone areas;
 6. Moderate CO areas with a design value of 12.7 ppm or less; and
 7. Not classified CO areas.
- b. Default conformity procedures: The criteria and procedures in §§ 1223 - 1225 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 1219 - 1221, except as otherwise provided in paragraph (c) of this section.
- c. Optional conformity procedures: The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 1219-1221 apply in lieu of the procedures in §§ 1223-1225.

§ 1238 Savings provisions.

The Federal conformity rules under 40 CFR part 51 subpart T, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.