6 NYCRR Part 240

Conformity to State or Federal Implementation Plans of Transportation Plans
Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C.
Or the Federal Transit Laws
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Section 240.1  PURPOSE.

The purpose of this Part is to implement Environmental Protection Agency (EPA) regulations codified at 40 CFR Part 51.390 (see section 200.9 of this Title), which requires each state to submit revisions to its State Implementation Plan (SIP) establishing criteria and procedures for assessing the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (USDOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53)(see section 200.9 of this Title). This Part sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable state implementation plan (SIP) revisions developed pursuant to section 110 and Part D of the Act (see section 200.9 of this Title).

Section 240.2  DEFINITIONS.

(1) Affected MPO. A metropolitan planning organization (MPO) with a planning boundary that includes a nonattainment or maintenance area.

(2) Applicable state implementation plan (SIP) revision. For the purpose of this part an applicable state implementation plan (SIP) revision meets the requirements of an implementation plan as defined in section 302(q) of the Act (see section 200.9 of this Title) and means the portion (or portions) of the state implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) (see section 200.9 of this Title) and which implements the relevant requirements of the Act for the purpose of determining conformity of Federally Funded Transportation Plans, Programs or Projects to State Implementation Plans.

(3) Cause or contribute to a new violation for a project.

   (1) To cause or contribute to a new violation of a national ambient air quality standard (NAAQS) in the area substantially affected by the project or over a region which would otherwise not be in violation of the NAAQS 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 NAAQS in such area.

(4) Clean data. Air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 (see section 200.9 of this Title) that indicate attainment of a national ambient air quality standard.
(5) Control strategy implementation plan revision. A state implementation plan (SIP) revision which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy the Act’s requirements for demonstrations of reasonable further progress and attainment (see sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide of the Act)(see section 200.9 of this Title).

(6) Consultation. The process by which involved agencies confer with each other, provide appropriate information needed for meaningful input, and consider the views of other involved agencies prior to any final decisions made pursuant to this Part. At a minimum, consultation means substantial compliance with the requirements of section 240.6 of this Part.

(7) Department. The New York State Department of Environmental Conservation.

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

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

(10) Facility. For the purpose of this Part, a facility is that which is built, installed, established or operated to serve a transportation purpose.

(11) FHWA. The Federal Highway Administration of USDOT.

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

(13) FTA. The Federal Transit Administration of USDOT.

(14) Forecast period. With respect to a transportation plan the period covered by the transportation plan pursuant to 23 CFR Part 450 (see section 200.9 of this Title).

(15) Governor. The Governor of the State of New York, or his or her designee.
(16) **Highway project.** An undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (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.

(17) **Horizon year.** A year for which the transportation plan describes the envisioned transportation system according to section 240.7 of this Part.

(18) **Hot-spot analysis.** An estimation of likely future localized CO and PM$_{10}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards (NAAQS). 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.

(19) **Increase the frequency or severity.** To cause a location or region to exceed a national ambient air quality standard (NAAQS) more often or to cause a violation of a NAAQS at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

(20) **Involved agencies.** The Department, NYSDOT, EPA, USDOT, affected MPOs, affected counties in nonattainment or maintenance areas outside MPO planning boundaries for state implementation plan (SIP) revisions and transportation conformity determinations directly affecting their jurisdictions, affected local air agencies and any other agencies responsible for project level conformity.

(21) **Lapse.** When the conformity determination for a transportation plan or TIP has expired, and there is no currently conforming transportation plan and TIP.

(22) **Lead Conformity Agency.** Any agency primarily responsible for the development of a transportation plan, a transportation improvement program (TIP), a transportation project or the associated conformity determinations.

(23) **Local Air Agency.** A local agency responsible for air quality issues which has been specifically identified in the state implementation plan as a local air agency.

(24) **Maintenance area.** Any geographic region of the United States previously designated nonattainment under the Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the Act, as amended (see section 200.9 of this Title).
(25) **Maintenance plan.** An applicable SIP revision meeting the requirements of section 175A of the Act, as amended (see section 200.9 of this Title).

(26) **Metropolitan planning organization (MPO).** That organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. section 134 and 49 U.S.C. section 5303 (see section 200.9 of this Title). It is the forum for cooperative transportation decision-making.

(27) **Milestone.** A milestone is the date on which an emissions level is required to be achieved under sections 182(g)(1) or section 198(c) of the Act (see section 200.9 of this Title).

(28) **Motor vehicle emissions budget.** That portion of the total allowable emissions defined in the applicable submitted or approved control strategy SIP revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

(29) **National ambient air quality standards (NAAQS).** Those standards established pursuant to section 109 of the Act (see section 200.9 of this Title).

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

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

(32) **Nonattainment area.** For the purpose of the Part, any geographic region of the United States which has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

(33) **NYSDOT.** The New York State Department of Transportation.

(34) **Project.** A highway project or transit project.

(35) **Protective finding.** A determination by EPA that a submitted control strategy SIP revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements.
relevant to the statutory provision for which the SIP revision was submitted, such as reasonable further progress or attainment.

(36) Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws. Any agency at any level of State, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws (see section 200.9 of this Title) 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.

(37) Regional Administrator. The Regional Administrator of the appropriate regional office of the EPA or the authorized representative of the Regional Administrator.

(38) Regionally significant project. A transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area’s transportation network, including, at a minimum, all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

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

(40) SEQR. The State Environmental Quality Review Act, article 8 of the Environmental Conservation Law.

(41) Title 23 U.S.C. Title 23 of the United States Code, which primarily deals with Federal-Aid highway projects (see section 200.9 of this Title).

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

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

(44) Transportation control measure (TCM). Any measure that is specifically identified and committed to in the applicable SIP revision that is either one of the types listed in section 108 of the Act (see section 200.9 of this Title), or any other measure also specifically identified and committed to in the applicable SIP revision as a TCM for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing travel 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 Part.

(45) Transportation improvement program (TIP). A staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR Part 450 (see section 200.9 of this Title). A statewide transportation improvement program (STIP) is not a TIP subject to this Part.

(46) Transportation plan. The official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450 (see section 200.9 of this Title). For purposes of this Part, a statewide transportation plan is not a transportation plan subject to the conformity requirements.

(47) Transportation project. A highway project or a transit project.

(48) USDOT. The United States Department of Transportation.

(49) Written commitment. For the purposes of this Part, a written commitment includes a description of the action to be taken, a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable SIP revision.

Section 240.3 APPLICABILITY.

(a) Action applicability.

(1) Except as provided for in paragraph (c) of this section or section 240.27 of this Part, conformity determinations are required for:
(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 (see section 200.9 of this Title) by an MPO or USDOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 (see section 200.9 of this Title) by an MPO or USDOT; and

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

(2) Conformity determinations are not required under this Part for individual projects which are not FHWA/FTA projects. However, sections 240.17, 240.18 and 240.22 of this Part apply to such projects if they are regionally significant.

(b) Geographic Applicability. The provisions of this Part 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.

(1) The provisions of this Part apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

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

(i) Volatile organic compounds (VOC) and nitrogen oxides (NOx) in ozone areas;

(ii) NOx in NO₂ areas; and

(iii) VOC, NOx, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the Commissioner has made a finding 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 USDOT, or if the applicable SIP revision (or applicable SIP revision submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this Part apply to maintenance areas for 20 years from the date EPA approves the area’s request under section 107(d) of the Act (see section 200.9 of this Title) for redesignation to attainment, unless the applicable SIP revision specifies that the provisions of this Part shall apply for more than 20 years.

(c) Limitations.
Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by USDOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step occurred (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates). All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

Section 240.4 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 SIP revision prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

Section 240.5 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 SIP revision.

(b) Frequency of conformity determinations for transportation plans.

(1) Each new transportation plan must be demonstrated to conform pursuant to the provisions of this Part before the transportation plan is approved by the MPO or accepted by USDOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in section 240.27 or section 240.28 of this Part. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and USDOT must determine the conformity of the transportation plan pursuant to the provisions of this Part no less frequently than every three years. If more than three years elapse after USDOT's conformity determination without the MPO and
USDOT determining conformity of the transportation plan, the existing conformity
determination will lapse.

(c) Frequency of conformity determinations for transportation improvement
programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the
MPO or accepted by USDOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP
before the amendment is approved by the MPO or accepted by USDOT, unless the
amendment merely adds or deletes exempt projects listed in section 240.27 or section
240.28 of this Part.

(3) The MPO and USDOT must determine the conformity of the TIP no less
frequently than every three years. If more than three years elapse after USDOT’s
conformity determination without the MPO and USDOT determining conformity of the
TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP
must be redetermined by the MPO and USDOT within six months from the date of
USDOT’s conformity determination for the transportation plan, unless the new or
revised plan merely adds or deletes exempt projects listed in sections 240.27 and
240.28 of this Part. Otherwise, the existing conformity determination for the TIP will
lapse.

(d) Projects. FHWA/FTA projects must be found to conform before they are adopted,
accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA
project if three years have elapsed since the most recent major step to advance the
project (NEPA process completion; start of final design; acquisition of a significant
portion of the right-of-way; or approval of the plans, specifications and estimates)
occurred.

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

(1) The date of the State’s initial submission to EPA of each control strategy SIP
revision or maintenance plan establishing a motor vehicle emissions budget;

(2) EPA approval of a control strategy SIP revision or maintenance plan which
establishes or revises a motor vehicle emissions budget;
(3) EPA approval of a SIP revision that adds, deletes, or changes TCMs; and

(4) EPA promulgation of a SIP revision which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

Section 240.6 CONSULTATION.

(a) General. The affected MPOs and NYSDOT shall provide the Department, local air agencies, other involved agencies where appropriate, USDOT and EPA with reasonable opportunity for consultation throughout the process of determining conformity of MPO long range transportation plans and TIPs. The Department shall provide reasonable opportunity for consultation with NYSDOT, affected MPOs, local air agencies, other involved agencies where appropriate, FHWA/FTA, and EPA throughout the process of developing applicable SIP revisions. Such reasonable opportunity shall include substantial compliance with all applicable consultation procedures set forth in this section.

(b) Interagency Department communications. In order to provide for an appropriate integration of air quality and transportation planning, the affected MPOs and NYSDOT shall provide an opportunity for the Department and, where appropriate, local air agencies and other involved agencies to be fully and actively involved on a continuing basis throughout the development of MPO transportation plans, MPO TIPs, program of transportation projects and associated MPO transportation plan, MPO TIP, and program of projects conformity determinations. The Department shall provide an opportunity for NYSDOT, affected MPOs, and, where applicable, other involved agencies, to be fully and actively involved on a continuing basis throughout the development of applicable SIP revisions, including, but not limited to, the TCM and emissions budget components.

(1) The communications required by this subdivision shall include communications necessary to allow a full and active involvement on a continuing basis by the Department and, where appropriate, local air agencies and other involved agencies throughout the development of MPO transportation plans, MPO TIPs, and associated MPO transportation plan, MPO TIP and program of projects conformity determinations. The communications required by this subdivision shall also include communications necessary to allow a full and active involvement on a continuing basis by NYSDOT and affected MPOs in the development of the applicable SIP revision.

(2) The lead conformity agency developing MPO transportation plans, MPO TIPs, and associated MPO transportation plan and MPO TIP conformity determinations or the Department shall convene meetings:

(i) between technical representatives of such agency and the Department, NYSDOT, affected MPOs and, as appropriate, local air and transportation agencies;
(a) at least every 120 days for MPO transportation plan and MPO TIP conformity determinations applicable to serious or severe nonattainment areas:

(b) at least every 180 days for MPO transportation plan and MPO TIP conformity determinations applicable to other nonattainment or maintenance areas;

(c) at least every 120 days for proposed applicable SIP revisions for serious or severe nonattainment areas; and

(d) at least every 180 days for proposed applicable SIP revisions for other nonattainment areas.

(ii) between policy level representatives of such agency and the Department, NYSDOT, affected MPOs and, as appropriate, local air and transportation agencies:

(a) at least every 180 days for MPO transportation plan and MPO TIP conformity determinations applicable to serious or severe nonattainment areas;

(b) at least once annually for MPO transportation plan and MPO TIP conformity determinations applicable to other nonattainment or maintenance areas;

(c) at least every 180 days for proposed applicable SIP revisions for serious or severe nonattainment areas; and

(d) at least once annually for proposed applicable SIP revisions for other nonattainment or maintenance areas.

(3) The Department, NYSDOT, and the affected MPOs may agree to waive any of the meetings required pursuant to section 240.6(b)(2) if the meeting is not necessary for adequate consultation.

(c) The Department shall annually provide to NYSDOT a list of all applicable SIP revisions expected to be submitted to EPA that calendar year. NYSDOT shall annually provide to the Department a list of all actions requiring a conformity determination that calendar year.

(d) **Conformity contacts.** The affected MPOs, NYSDOT, the Department, local air agencies, and nonattainment and maintenance area counties outside MPO boundaries shall provide to all other involved agencies, the names and addresses of agency offices or officers to which all correspondence in furtherance of this Part is to be directed. Each involved agency shall provide the information required by this subdivision within 30 days of the effective date of this Part.

(e) **Provision of draft documents.** The lead conformity agency and the Department
shall provide the other involved agencies with relevant draft documents in accordance with this subdivision.

(1) MPOs developing the long range transportation plan, TIP, and associated transportation plan, MPO TIP conformity determinations shall provide involved agencies with draft documents including; draft long range transportation plans, draft TIPs, draft transportation plan conformity determinations, draft TIP conformity determinations, draft regional emissions analyses, and other draft emissions analyses to be utilized for conformity determinations. The draft conformity determination shall include the proposed list of exempt and non-exempt projects, proposed list of regionally significant projects, and pertinent supporting documentation. NYSDOT shall provide such materials for nonattainment and maintenance areas outside the MPO boundaries.

(2) The Department shall provide NYSDOT, the affected MPOs, affected nonattainment and maintenance counties outside MPO boundaries, and other involved agencies with draft proposed applicable revisions to the SIP, draft emissions budgets, and pertinent supporting documentation.

(3) In the event that the documents and supporting materials to be provided pursuant to this subdivision are excessively voluminous, the agency providing such documentation may provide a list of pertinent supporting documents necessary to analyze the draft materials. Upon request the agency shall make the documents available.

(4) Within 30 days of receipt of such draft document described in this subdivision, involved agencies may make written comments in response to any draft proposed applicable SIP revision, draft transportation plan, draft TIP, or draft transportation plan TIP and program of projects conformity determination provided in accordance with this section. In cases where such written comments are provided, the agency issuing such draft materials shall prepare a written response fully addressing all issues raised therein. Where possible, the lead conformity agencies and the Department, as applicable, shall provide pertinent draft documentation 15 days prior to the beginning of the public review period.

(f) Consultation obligations. In addition to any other responsibilities imposed by this section, the following general duties shall also apply:

(1) The Department shall:

(i) cooperatively develop, with NYSDOT and the affected MPOs, a list of TCMs for potential inclusion in the applicable SIP revision in accordance with subdivision (g) of this section;

(ii) consult with NYSDOT and affected MPOs on the air quality parameters used to make conformity determinations to ensure that such parameters are consistent with
air quality modeling performed for applicable SIP revision purposes;

(iii) consult with NYSDOT and affected MPOs with respect to the traffic data and parameters used for emissions forecasting and determining conformity of transportation plans and TIPs; and

(vi) provide guidance, expertise, and assistance to other involved agencies on applicable SIP revision related issues which impact conformity determinations to affected MPOs, NYSDOT, and local agencies.

(v) convene, as necessary, meetings among technical staff of participating agencies for purposes of consulting on air quality analysis procedures.

(2) NYSDOT shall:

(i) coordinate the review of MPO draft transportation plans and MPO draft TIP conformity determinations provided by affected MPOs and administer the formal submittal of the MPO transportation plan and MPO TIP conformity determinations to FHWA/FTA;

(ii) coordinate the review of the program of projects in nonattainment or maintenance areas outside MPO boundaries and administer the formal submittal of the conformity analysis to FHWA/FTA;

(iii) review, in consultation with the Department, emission estimation procedures and traffic data and parameters employed by affected MPOs in making conformity determinations for consistency with the applicable SIP revision;

(iv) cooperatively develop, with the Department and affected MPOs, a list of TCMs for potential inclusion in the applicable SIP revision in accordance with subdivision (g) of this section;

(v) develop a public involvement process which provides opportunity for public review and comment on conformity determinations for transportation programs for which NYSDOT is making a conformity determination in accordance with subsection 23 CFR 450.212 (see section 200.9 of this Title);

(vi) provide guidance, expertise, and assistance to affected MPOs and local transportation agencies making conformity determinations, and

(vii) in cooperation with affected MPOs, provide transportation data and transportation related parameters to the Department for calculation of mobile source emissions for applicable SIP revisions.
(3) The affected MPOs shall:

(i) develop metropolitan area transportation plan and TIP conformity determinations;

(ii) develop a public involvement process which provides opportunity for public review and comment on conformity determinations for MPO transportation plans and MPO TIPs;

(iii) cooperatively develop, with NYSDOT and the Department, a list of TCMs for potential inclusion in the applicable SIP revision in accordance with subdivision (g) of this section;

(iv) document consideration of all significant comments received from involved agencies with respect to conformity determinations for MPO transportation plans and MPO TIPs; and

(v) provide, in consultation with NYSDOT and the Department, for local transportation planning and local air agencies to be involved to the extent required by this section.

(g) Transportation Control Measures and Emissions Budgets in the applicable SIP Revision.

(1) Transportation Control Measures (TCMs).

(i) NYSDOT and the affected MPOs, in consultation with the Department, shall develop a list of TCMs for potential inclusion in the applicable SIP revision.

(ii) In the event that NYSDOT, the Department, and the affected MPOs cannot reach agreement as to which TCMs, if any, are to be included in the state air quality implementation plan, the matter shall be resolved in accordance with the procedures in section 240.6(i) of this Part.

(iii) The TCMs designated pursuant to this subdivision shall be specifically identified in the applicable SIP revision.

(2) Emissions Budget.

(i) The Department shall develop any proposed motor vehicle emissions budget and provide such proposed budget to NYSDOT and the affected MPOs for review and comment prior to the submittal of the motor vehicle emissions budget to EPA for inclusion in the applicable SIP revision.
(ii) In the event that NYSDOT, the Department, and the affected MPOs cannot reach an agreement on the proposed motor vehicle emissions budget is appropriate for inclusion in the applicable SIP revision, the matter shall be resolved in accordance with the procedures in section 240.6(i) of this Part.

(h) Specific procedures.

(1) Model evaluation and selection:

   (i) NYSDOT shall consult with the Department, affected MPOs, affected local air agencies, affected local transportation agencies, USDOT, and EPA to select the air quality models and parameters to use for MPO transportation plan and TIP conformity determinations;

   (ii) NYSDOT shall consult with the Department, USDOT, and EPA to select the air quality models and parameters to use for regionally significant project conformity determinations and hot spot analyses;

   (iii) Affected MPOs and NYSDOT shall develop procedures for transportation models and transportation inputs and parameters in consultation with the Department, affected local air and transportation agencies, USDOT, and EPA; and

   (iv) The Department shall select air quality models and develop non-transportation related inputs and parameters used to develop the emissions budget in the applicable SIP revision during the SIP revision process in consultation with NYSDOT, affected MPOs, affected local air and transportation agencies, USDOT, and EPA.

(2) Regional Significance and Significant Project Changes.

The affected MPOs and NYSDOT shall, in consultation with the Department, determine which transportation projects, other than exempt projects, constitute regionally significant projects. Where the regional significance of a project is in question, the following criteria shall be considered by the involved agencies to evaluate whether the project is regionally significant:

   (i) The following list includes, but is not limited to, thresholds which shall be used to initiate a mutual consideration between the affected MPOs, the Department and NYSDOT as to whether the subject project constitutes a regionally significant project:

      (a) Highway /Roadway Projects:

         (1) New construction on new alignment. A principal arterial or above. 1
mile or longer.

(2) Widening of Principal Arterials or higher class roads to provide additional through-traffic lanes 1 mile or longer.

(3) Widening of Principal Arterial or above to provide a new continuous turn lane 2 miles or longer, or affecting 5 signalized intersections.

(4) Widening or reallocation of lane use for by High Occupancy Vehicles (HOVs) on Principal Arterials or above, 1 mile or longer.

(5) Additional grade-separated ramps or new interchanges on Principal Arterials or above.

(6) Widening or changes, as indicated above in subclauses (1) through (5) of this clause, to any roadway determined by the MPO to serve regional transportation needs, (e.g., minor arterial or higher classification), and included in the MPO’s regional transportation forecasting model. If a regional transportation forecasting model is not used, widening or change, as indicated above in subclauses (1) through (5) of this clause, on any roadway that has been determined by the MPO or NYSDOT, through the interagency consultation process, to serve regional transportation needs.

(b) Traffic Signalization Projects:

(1) Coordination or upgrade of signal systems on Principal Arterials or above encompassing at least 10 signalized intersections and at least 2.5 miles of highway.

(2) Coordination and upgrade of traffic signal systems on facilities indicated in subclause (6) of clause 240.6(h)(2)(i)(A) of this Part for highways or roadways, encompassing at least 10 signalized intersections and at least 2.5 miles of highway.

(c) Transit/Rail Projects:

(1) New passenger rail or bus service and extensions of existing service 5 miles or longer, including new rail stations and new or expanded rail/bus connections to provide new regional transit service.

(2) Purchase of additional (not replacement) rolling stock to support increased frequency and higher ridership.

(3) New or expanded exclusive park-and-ride facilities resulting in at least 100 new parking spaces.
(d) Other Projects:

(1) Automated toll collection facilities (ETTM or AVI) where a study is available that indicates potential impacts on regional travel.

(2) Regional ITS facilities where a study is available that indicates potential impacts on regional travel.

(e) Air Quality or Emissions Impact. Any transportation project that the Commissioner of the Department identifies, after consultation with NYSDOT and the affected MPO, as having the potential to affect air quality on a regional basis.

(ii) Affected MPOs and NYSDOT shall, in consultation with the Department, determine which minor arterials and transit projects, if any, have the principal purpose of serving regional transportation needs. Such minor arterials and transportation projects shall be included in the regional emissions analysis as required in this part.

(iii) The MPO shall, in consultation with the Department and NYSDOT, determine which projects, based on information provided by the project sponsor, have undergone a significant change in design concept and scope from the MPO transportation plan and MPO TIP.

(iv) NYSDOT shall, in consultation with the appropriate affected local transportation and air agencies, make the determinations required under subparagraph (i), (ii) and (iii) of this paragraph for arterials and projects in nonattainment and maintenance areas outside MPO boundaries.

(v) In the event that the Department, NYSDOT, and the affected MPOs cannot reach agreement as to which projects are regionally significant, the matter shall be resolved in accordance with the procedures of section 240.6(i) of this Part.

(3) Procedures for the Evaluation of Certain Exempt Projects

(i) The affected MPOs and NYSDOT shall, in consultation with the Department, determine which projects, if any, that are otherwise exempt under sections 240.27 and 240.28 of this Part, should be treated as non-exempt due to significant emissions impacts.

(ii) NYSDOT shall, in consultation with the Department and affected local air and transportation agencies, make the determination required under subparagraph (i) of this paragraph for projects in nonattainment and maintenance areas outside MPO boundaries.

(4) Timely TCM Implementation.
(i) NYSDOT, the Department, and the affected MPOs, shall cooperatively
determine:

(a) whether TCMs specifically identified in the applicable SIP revision are being
implemented as scheduled;

(b) whether State and local agencies with the appropriate authority are giving
maximum priority, consistent with Section 240.14 of this Part, to approving or funding of
TCMs specifically identified in the applicable SIP revision; and

(c) whether delays in implementing TCMs specifically identified in the
applicable SIP further revision necessitate revision of the SIP.

(5) Procedures for Projects in PM\textsubscript{10} Nonattainment Area.

(i) The lead conformity agency shall determine if projects located at sites in PM\textsubscript{10}
nonattainment areas have vehicle and roadway emission and dispersion characteristics
that are essentially identical to those at sites which have violations verified by
monitoring. Such projects shall require a quantitative PM\textsubscript{10} hot-spot analysis.

(6) Procedures for Notification of MPO Transportation Plan or MPO TIP
Amendments Adding or Deleting Only Exempt Projects.

(i) Each affected MPO shall determine, in consultation with NYSDOT, whether
MPO TIP or MPO transportation plan amendments solely concern the addition or
deletion of exempt projects listed in sections 240.27 and 240.28 of this Part.

(ii) NYSDOT shall make the determination required under subparagraph (i) of
this paragraph for projects outside MPO boundaries in nonattainment or maintenance
areas.

(iii) The Department, NYSDOT, USDOT, EPA and, as appropriate, affected
local air and transportation agencies, shall be notified in writing of any determinations
made pursuant to this paragraph within 30 days of such determination.

(7) Procedures for Events Triggering New Conformity Determinations. NYSDOT
shall, in consultation with the Department and affected MPOs, identify instances when
new conformity determinations are required, in addition to those determinations
required by section 240.5 of this Part.

(8) Procedures for Transportation Activities Crossing MPO or Nonattainment Areas
Boundaries. NYSDOT, in consultation with the Department and affected MPOs, shall
coordinate emissions analyses where a non-exempt transportation project crosses the
border of nonattainment or maintenance areas or MPO boundaries.
(9) Nonattainment or Maintenance Areas Not Entirely Included in a single MPO Boundary.

(i) NYSDOT shall coordinate, in accordance with the provisions of section 240.6 of this Part, the preparation of conformity determinations and air quality analyses in nonattainment or maintenance areas which are not entirely included in MPO boundaries.

(ii) NYSDOT shall make, in accordance with the provisions of this Part, air quality analyses in nonattainment or maintenance areas which are not entirely included in MPO boundaries. The results of any regional emissions analysis outside the MPO boundary shall be coupled with the MPO analysis for the remainder of the nonattainment or maintenance area, as appropriate, to allow a conformity determination based on the entire nonattainment or maintenance area.

(iii) If more than one MPO is within the same nonattainment or maintenance area, NYSDOT shall coordinate, in accordance with the provisions of section 240.6 of this Part, the preparation of the conformity determinations.

(10) Isolated Rural Nonattainment or Maintenance areas.

(i) In isolated rural nonattainment and maintenance areas, NYSDOT shall coordinate, in accordance with the provisions of section 240.6 of this Part, the preparation of conformity determinations and air quality analysis. As required by section 240.10(g), the choice of conformity analysis to be used must be determined through consultation with all involved agencies, including the Department, any local air quality or transportation agencies, EPA and USDOT.

(11) Consideration of Regionally Significant Projects that are not FHWA/FTA Projects.

(i) The affected MPOs and NYSDOT, as appropriate, shall work with the Department to identify regionally significant projects that are not FHWA/FTA projects so that proper project information is included in the regional emissions analysis. The MPO shall solicit the necessary information from agencies that are recipients of federal funding under Title 23 U.S.C. or the Federal Transit Act for any regionally significant projects, regardless of funding, in conjunction with MPO transportation plan and MPO TIP updates. In non-attainment and maintenance areas outside of MPO boundaries, NYSDOT shall solicit such information.

(ii) If during the public participation process, or interagency consultation process, other regionally significant projects are identified, or there are changes in the design concept and scope of a regionally significant project that would affect the air
quality analysis, the NYSDOT or affected MPO shall appropriately refine the conformity analysis in accordance with the provisions of this section.

(12) Research and Data Collection and Transportation Model Development. The affected MPOs shall consult with NYSDOT, the Department, and affected local air and transportation agencies before formally adopting initiatives related to research and data collection efforts in support of regional transportation model development.

(13) Provision of Final Documents.

(i) The affected MPOs shall provide a final copy of the MPO transportation plans, MPO TIPs and associated MPO transportation plan and MPO TIP conformity determinations with pertinent supporting materials, to NYSDOT, the Department, any affected local air or transportation agency, USDOT, and EPA.

(ii) NYSDOT shall provide a final copy of program of projects conformity determinations with pertinent supporting materials for nonattainment or maintenance areas outside MPO boundaries to the Department, any affected local air or transportation agency, USDOT, and EPA.

(iii) The Department shall provide a final copy of all applicable SIP revisions and pertinent supporting materials to NYSDOT, any affected local air or transportation agency, any affected MPO, FHWA/FTA, and EPA.

(iv) In the event that the final documents and supporting materials to be provided pursuant to this paragraph are excessively voluminous, the agency providing such documentation may provide a list of pertinent supporting documents necessary to analyze the final materials. Upon receipt of such list, the receiving agency may indicate which supporting documents on such list, or any other pertinent supporting materials, are necessary to analyze the final materials.

(i) Resolution of conflicts.

(1) Specific Processes. In the event that the involved agencies are unable to reach agreement on any matter set forth in subdivisions (g) or (h) of this section, the unresolved issue or issues shall be referred to the Commissioners of the Department and NYSDOT for resolution.

(2) Conformity Determinations for MPO Transportation Plans, MPO TIPS, and Programs of Projects in areas outside any MPO. Each lead conformity agency making conformity determinations for a MPO transportation plan, MPO TIP, or program of projects in a nonattainment or maintenance area outside any MPO shall provide the Department and any affected local air agency with the proposed conformity determination accompanied by pertinent supporting documentation.
(i) Upon closing of the consultation period provided for in section 240.6 hereof, the agency making the transportation plan, TIP, or program of projects conformity determination shall transmit to the Department the proposed conformity determination reflecting the resolution of comments submitted. The Department shall have fourteen (14) calendar days from the receipt of such transmittal to appeal to the Governor as provided for in this subdivision.

(ii) The Department may invoke the conflict resolution procedure provided for in subdivision 240.6(i) of this Part by delivering to the Governor or Governor’s designee, the Commissioner of NYSDOT, and the conformity contacts designated pursuant to subdivision (c) of this section, a letter requesting that the Governor exercise his or her discretion under this subdivision.

(iii) In the event that the Department invokes the conflict resolution procedure provided for in subdivision 240.6(i) of this Part. The final conformity determination must have the concurrence of the Governor or Governor’s designee. If the Department does not appeal to the Governor within the specified 14 days, the affected MPO or NYSDOT may proceed with the final conformity determination.

(3) TCMs and Motor Vehicle Emissions Budgets in the State Implementation Plan. The Department shall provide NYSDOT with any proposed revision to the SIP which contains any TCMs or motor vehicle emissions budgets.

(i) In the event that NYSDOT and the Department are unable to concur on the appropriate TCMs or motor vehicle emissions budgets for inclusion in the applicable SIP revision, NYSDOT may appeal the conflict to the Governor for resolution. NYSDOT shall have fourteen (14) calendar days from the receipt of notification from the Department that concurrence has not been reached to appeal to the Governor as provided for in this subdivision.

(ii) NYSDOT may invoke the conflict resolution procedures provided for in subdivision 240.6(i) of this Part by delivering to the Governor or Governor’s designee, the Commissioner of the Department, and the conformity contacts designated pursuant to subdivision (c) of this Part, a letter requesting that the Governor exercise his or her discretion under this subdivision.

(iii) In the event that NYSDOT invokes the conflict resolution procedure provided for subdivision 240.6(i) of this Part, the proposed applicable SIP revision must be approved by the Governor or Governor’s designee before it is submitted to the EPA. If NYSDOT does not appeal to the Governor within the specified 14 days, the Department may proceed with the SIP revision.

(j) Public Participation procedures.
(1) Conformity determinations for MPO transportation plans and MPO TIPs shall follow the specific public involvement process established by the MPO, consistent with the requirements of 23 CFR Part 450 (see section 200.9 of this Title), which provides opportunity for public review and comment prior to formal action on a conformity determination for all MPO transportation plans and MPO TIPs. This process must provide reasonable public access to technical and policy information considered by the affected Agencies, making the conformity determination at the beginning of the public review period.

(2) Conformity determinations must specifically address, in writing, all significant 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 MPO transportation plan or MPO TIP.

(3) Conformity determinations in isolated rural nonattainment and maintenance areas and rural portions of nonattainment and maintenance areas outside MPO boundaries shall follow the specific public involvement process established by NYSDOT, consistent with the requirements of 23 CFR 450 (see section 200.9 of this Title), which provides opportunity for public review and comment prior to formal action to update the statewide transportation improvement program (STIP) and the statewide transportation plan.

(4) Public involvement in conformity determinations for transportation projects shall be provided where otherwise required by law.

(k) Consultation Process for Regionally Significant Projects not from a Conforming Plan or TIP.

(1) In the event that any transportation project in a nonattainment or maintenance area not from a conforming plan or TIP is determined to be regionally significant pursuant to the provisions of paragraphs 240.6(h)(2) and 240.6(h)(11) of this Part, the conformity determination applicable to such project shall be made in accordance with Table 1 of subdivision 240.10(b) of this Part, as applicable to projects not from a conforming plan or TIP.

(2) In the event that the conformity determination or regional emissions analysis for a regionally significant project not from a conforming MPO transportation plan or MPO TIP is made using input or assumptions different from the air quality model inputs and parameters; the transportation model, inputs, and parameters; and the non-transportation inputs and parameters identified pursuant to subparagraphs 240.6(h)(1)(ii), (iii) and (iv) of this Part, paragraph 240.6(k)(3) of this Part shall apply.
(3) If required by paragraph 240.6(k)(2) of this Part, NYSDOT, and other involved agencies making conformity determinations or regional emissions analyses, shall provide the Department, prior to the issuance of a draft environmental document, an opportunity to review and comment on the air quality model inputs and parameters used in the regional emissions analysis, transportation models, inputs, and parameters associated with the project, and non-transportation inputs and parameters necessary to evaluate the air quality impacts and analysis of a regionally significant project not from a conforming MPO transportation plan or MPO TIP.

(4) The opportunity to review and comment provided for in subdivision 240.6(k) of this Part shall not extend beyond the issuance of a final environmental document issued pursuant to the SEQR or NEPA, whichever may be applicable.

Section 240.7 CONTENT OF TRANSPORTATION PLANS.

(a) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

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

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

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

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

(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 the consultation requirements specified by section 240.6 of this Part;

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

(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 and have an urbanized population greater than 200,000 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, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of sections 240.10 through 240.20.

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

Section 240.8 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA AND THE SEQR PROCESSES.

(a) The degree of specificity in the MPO transportation plan, its conformity determination, the MPO TIP, or its conformity determination, does not limit or preclude consideration of reasonable or feasible alternatives in the NEPA or SEQR processes or other project development studies. Similarly, the travel network identified in the conformity determination of the MPO transportation plan or MPO TIP does not limit or preclude consideration of reasonable or feasible alternatives in the NEPA or SEQR processes or other project development studies.
(b) An alternative does not become infeasible or unreasonable merely because its
design concept or design scope is significantly different from that specified in the
conforming MPO transportation plan or conforming MPO TIP.

(c) If the alternative selected during the NEPA or SEQR process has a design concept
or scope significantly different from that specified in the conforming MPO transportation
plan or the conforming MPO TIP, the project must meet the criteria for a projects not
from a conforming MPO transportation plan or MPO TIP in Table 1 of section 240.10 of
this Part before NEPA or SEQR process completion.

Section 240.9 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND
TIPS.

Transportation plans and TIPs must be fiscally constrained consistent with
USDOT's metropolitan planning regulations at 23 CFR Part 450 (see section 200.9 of
this Title) in order to be found in conformity.

Section 240.10 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY
OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL.

(a) In order for each transportation plan, program, and FHWA/FTA project to be found
to conform, the MPO and USDOT shall demonstrate that the applicable criteria and
procedures in this Part are satisfied, and the MPO and USDOT must comply with all
applicable conformity requirements of the the applicable SIP revision and of court
orders for the area which pertain specifically to conformity. The criteria for making
conformity determinations differ based on the action under review (transportation plans,
TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the SIP
revision.

(b) Table 1 in this subdivision indicates the criteria and procedures in sections 240.11
through 240.20 which apply for transportation plans, TIPs, and FHWA/FTA projects.
Paragraphs (c) through (f) of this section explain when the budget, emission reduction,
and hot spot tests are required for each pollutant. Paragraph (g) of this section
addresses isolated rural nonattainment and maintenance areas. Table 1 follows:
Table 1. Conformity Criteria and Procedures

ALL ACTIONS AT ALL TIMES

Section 240.11 LATEST PLANNING ASSUMPTIONS
Section 240.12 LATEST EMISSIONS MODEL
Section 240.13 CONSULTATION

TRANSPORTATION PLAN

Section 240.14(b) TCMs
Section 240.19 OR EMISSIONS BUDGET
Section 240.20 OR EMISSION REDUCTION

TIP

Section 240.14(c) TCMs
Section 240.19 OR EMISSIONS BUDGET
Section 240.20 OR EMISSION REDUCTION

PROJECT (FROM A CONFORMING PLAN AND TIP)

Section 240.15 CURRENTLY CONFORMING PLAN AND TIP
Section 240.16 PROJECT FROM A CONFORMING PLAN AND TIP
Section 240.17 CO AND PM_{10} HOT SPOTS
Section 240.18 PM_{10} CONTROL MEASURES

PROJECT (NOT FROM A CONFORMING PLAN AND TIP)

Section 240.14(d) TCMs
Section 240.15 CURRENTLY CONFORMING PLAN AND TIP
Section 240.17 CO AND PM_{10} HOT SPOTS
Section 240.18 PM_{10} CONTROL MEASURES
Section 240.19 OR EMISSIONS BUDGET
Section 240.20 OR EMISSION REDUCTION

(c) Ozone nonattainment and maintenance areas. In addition to the criteria listed in Table 1, in paragraph (b) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity.
determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by section 240.19 of this Part for conformity determinations made:

   (i) 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

   (ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy SIP revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy SIP revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by section 240.20 for conformity determinations made:

   (i) During the first 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

   (ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy SIP revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved applicable SIP revision or a previously submitted control strategy SIP revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NOx, as required by section 240.20, if the applicable applicable SIP revision or plan submission that is applicable for the purposes of conformity determinations is a 15 percent plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NOx. The applicable SIP revision will be considered to establish a motor vehicle emissions budget for NOx if the applicable SIP revision or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy SIP revision (usually marginal and below areas) must satisfy one of the following requirements:
(i) The emission reduction tests required by section 240.20; or

(ii) The State shall submit to EPA a SIP revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by section 240.19 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

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

(i) The emission reduction tests as required by section 240.20;

(ii) The budget test as required by section 240.19, using the motor vehicle emissions budgets in the submitted control strategy SIP (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by section 240.19, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(d) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by section 240.17(a) at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by section 240.17(b).

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by section 240.19 for conformity determinations made:

(i) 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or
(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy SIP revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (d)(4) of this section, in CO nonattainment areas the emission reduction tests must be satisfied as required by section 240.20 for conformity determinations made:

   (i) During the first 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

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

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

   (i) The emission reduction tests required by section 240.20; or

   (ii) The State shall submit to EPA a SIP revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by section 240.19 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).

(e) PM	extsubscript{10} nonattainment and maintenance areas. In addition to the criteria listed in Table 1, in paragraph (b) of this section that are required to be satisfied at all times, in PM	extsubscript{10} nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following:

   (1) FHWA/FTA projects in PM	extsubscript{10} nonattainment or maintenance areas must satisfy the hot spot test required by section 240.17(a);

   (2) In PM	extsubscript{10} nonattainment and maintenance areas the budget test must be satisfied as required by section 240.19 for conformity determinations made:
(i) 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy SIP revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM_{10} nonattainment areas the emission reduction tests must be satisfied as required by section 240.20 for conformity determinations made:

(i) During the first 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

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

(iii) If the submitted SIP revision is a demonstration of impracticability under the Act's section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) NO_{2} nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in paragraph (b) of this section, that are required to be satisfied at all times, in NO_{2} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In NO_{2} nonattainment and maintenance areas the budget test must be satisfied as required by section 240.19 for conformity determinations made:

(i) 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy SIP revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO_{2} nonattainment areas the emission reduction tests must be satisfied as required by section 240.20 for conformity determinations made:
(i) During the first 45 days after a control strategy SIP revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

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

(g) **Isolated rural nonattainment and maintenance areas.** This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections 240.11, 240.12, 240.13, 240.14(d), 240.17 and 240.18. Until EPA approves the control strategy SIP or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of section 240.17(b) ("Localized CO and PM$_{10}$ violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c) through (f) of this section, with the following modifications:

(i) When the requirements of sections 240.19 and 240.20 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(ii) In isolated rural nonattainment and maintenance areas that are subject to section 240.19, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(a) Section 240.19;
Section 240.20 (including regional emissions analysis for NOx in all ozone nonattainment and maintenance areas, notwithstanding section 240.20(d)(2)); or

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

(iii) The choice of requirements in subparagraph 240.10(g)(2)(ii) of this Part and the methodology used to meet the requirements of clause 240.10(g)(2)(ii)(c) of this Part must be determined through the interagency consultation process required in paragraph 240.6(h)(10) of this Part through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the Department, and NYSDOT should reach consensus about the option and methodology selected. EPA and USDOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in subdivision 240.6(i) of this Part.

Section 240.11 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS.

(a) The conformity determination, with respect to all other applicable criteria in section 240.12 through 240.20, shall be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of paragraphs (b) through (f) of this section.

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

(c) The conformity determination for each transportation plan and TIP shall 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 shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by section 240.6.

Section 240.12 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL.

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

(b) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period announced by EPA in the Federal Register or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document (including but not limited to an EIS required under SEQR, categorical exclusion, finding of no significant Impact, Record of Decision, Negative Declarations) for the project is issued no more than three years after the issuance of the draft environmental document.

Section 240.13 CRITERIA AND PROCEDURES: CONSULTATION.

Conformity must be determined according to the consultation procedures in this Part and in the applicable SIP revision, and according to the public involvement procedures established in compliance with 23 CFR Part 450 (see section 200.9 of this Title).
Section 240.14  CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATION OF TCMS.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMS from the applicable SIP revision.

(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 SIP revision which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws (see section 200.9 of this Title), consistent with schedules included in the applicable SIP revision; and

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

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

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMS which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws (see section 200.9 of this Title) are on or ahead of the schedule established in the applicable SIP revision, or, if such TCMS are behind the schedule established in the applicable SIP revision, the MPO and USDOT have determined that past obstacles to implementation of the TCMS have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMS are giving maximum priority to approval or funding of TCMS over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMS in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMS are behind the schedule in the applicable SIP revision, then the TIP cannot be found to conform if the funds intended for those TCMS are reallocated to projects in the TIP other than TCMS, or if there are no other TCMS in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

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

Section 240.15 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval in metropolitan nonattainment or maintenance areas.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in section 240.5.

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

Section 240.16 CRITERIA AND PROCEDURES: PROJECTS FROM A PLAN AND TIP.

(a) Metropolitan area projects must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of section 240.10(b) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable SIP revision are provided in paragraph (d) 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 section 240.7 ("Content of transportation plans"), the project is specifically included in the conforming transportation plan and the project’s design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
(2) For projects which are not required to be specifically identified in the 
transportation plan, the project is identified in the conforming transportation plan, 
or is consistent with the policies and purpose of the transportation plan and will 
not interfere with other projects specifically included in the transportation plan.

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

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

(2) If the TIP describes a project design concept and scope which includes 
project-level emissions mitigation or control measures, written commitments to 
implement such measures must be obtained from the project sponsor and/or 
operator in accordance with section 240.26(a) in order for the project to be 
considered from a conforming program. Any change in these mitigation or 
control measures that would significantly reduce their effectiveness constitutes a 
change in the design concept and scope of the project.

(d) TCMs. This criterion is not required to be satisfied for TCMs specifically 
included in an applicable SIP revision.

Section 240.17   CRITERIA AND PROCEDURES: LOCALIZED CO AND 
PM$_{10}$ VIOLATIONS (HOT SPOTS).

(a) This paragraph applies at all times. The FHWA/FTA or regionally significant 
project must not cause or contribute to any new localized CO or PM$_{10}$ violations 
or increase the frequency or severity of any existing CO or PM$_{10}$ violations in CO 
and PM$_{10}$ nonattainment and maintenance areas. This criterion 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. The 
demonstration must be performed according to the consultation requirements of 
section 240.6(c)(1)(i) and the methodology requirements of section 240.24.

(b) This paragraph applies for CO nonattainment areas as described in section 
240.10(d)(1). Each FHWA/FTA or regionally significant 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 
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. The demonstration must be performed
according to the consultation requirements of section 240.6(c)(1)(i) and the methodology requirements of section 240.24.

Section 240.18 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM\textsubscript{10} CONTROL MEASURES.

The FHWA/FTA or regionally significant project must comply with PM\textsubscript{10} control measures in the applicable SIP revision. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM\textsubscript{10} emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable SIP revision.

Section 240.19 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable SIP revision (or SIP submission). This criterion applies as described in section 240.10(c) through (g). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable SIP revision or SIP revision submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) SIP revision specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan’s forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

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

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

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by section 240.6 shall determine what must be considered in order to make such a finding;

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

(iii) If an approved control strategy SIP has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan’s motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in section 240.3(b) for which the area is in nonattainment or maintenance and for which the applicable SIP revision (or SIP revision submission) establishes a motor vehicle emissions budget.

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

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of sections 240.23 and 240.6(c)(1)(i).

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

(e) Motor vehicle emissions budgets in submitted control strategy SIP revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy SIP revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy SIP revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, a submitted SIP revisions does not supersede the motor vehicle emissions budgets in approved SIP revisions for the period of years addressed by the approved SIP revision.

(2) If EPA has declared a SIP revision submission’s motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there is no previous approved SIP revisions or SIP revision submissions with motor vehicle emissions budgets, the emission reduction tests required by section 240.20 must be satisfied.

(3) If EPA declares the SIP revision submission’s motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by USDOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy sections 240.15 and 240.16, which require a currently conforming transportation plan and TIP to be in place at the time of a project’s conformity determination and that projects come from a conforming transportation plan and TIP.

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

(i) The submitted control strategy SIP revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing.
(ii) Before the control strategy SIP revision or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full SIP revision documentation was provided to EPA; and EPA’s stated concerns, if any, were addressed;

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

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

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

(vi) Revisions to previously submitted control strategy SIP revisions or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see section 240.2 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the State’s compilation of public comments and response to comments that are required to be submitted with the SIP revision. EPA will document its consideration of such comments and responses in a letter to the State indicating the adequacy of the submitted motor vehicle emissions budget.

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

Section 240.20 CRITERIA AND PROCEDURES: EMISSION REDUCTIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS.
(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in subdivisions 240.10(c) through (g) of this Part. It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of the Act section 182(b)(1) (see section 200.9 of this Title) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section 240.23 of this Part and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the “Action” scenario are lower than 1990 emissions by any nonzero amount.

(c) This criterion may be met in PM$_{10}$ and NO$_x$ nonattainment areas, marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of the Act section 182(b)(1) (see section 200.9 of this Title), and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of section 240.23 of this part and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the “Action” scenario are less than the emissions predicted in the “Baseline” scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the “Action” scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity SIP revision required by 40 CFR 51.390 defines the baseline emissions for a PM$_{10}$ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy SIP revision.
(d) Pollutants. The regional emissions analysis must be performed for the following pollutants:

1. VOC in ozone areas;
2. NOx in ozone areas, unless the EPA Administrator determines that additional reductions of NOx would not contribute to attainment;
3. CO in CO areas;
4. PM$_{10}$ in PM$_{10}$ areas;
5. Transportation-related precursors of PM$_{10}$ in PM$_{10}$ nonattainment and maintenance areas if the EPA Regional Administrator or the Commissioner has made a finding that such precursor emissions from within the area are a significant contributor to the PM$_{10}$ nonattainment problem and has so notified the MPO and DOT; and
6. NOx in NO$_2$ areas.

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

(f) “Baseline” scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the “Baseline” scenario in each analysis year. The “Baseline” scenario must be defined for each of the analysis years. The “Baseline” scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in section 240.27 of this Part and projects exempt from regional emissions analysis as listed in section 240.28 of this Part need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying), come from
the first year of the previously conforming transportation plan and/or TIP, or have completed the NEPA and SEQR process.

(g) “Action” scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the “Action” scenario in each analysis year. The “Action” scenario must be defined for each of the analysis years. The “Action” scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The “Action” scenario must include the following (except that exempt projects listed in section 240.27 of this Part and projects exempt from regional emissions analysis as listed in section 240.28 of this Part need not be explicitly considered):

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

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

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

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

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

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

(h) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c) of this section, if the
project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

Section 240.21 CONSEQUENCES OF CONTROL STRATEGY SIP REVISION FAILURES.

(a) Disapprovals.

(1) If EPA disapproves any submitted control strategy SIP revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) (see section 200.9 of this Title) of the Act. No new transportation plan, TIP, or project may be found to conform until another control strategy SIP revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy SIP revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project which is not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy SIP revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA’s disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy SIP, unless another control strategy SIP revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to section 240.10.

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

(b) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and USDOT of the State’s failure to submit a control strategy SIP revision or submission of an incomplete control strategy SIP revision (either of which initiates the sanction process under the Act sections 179 or 110(m)) (see
section 200.9 of this Title), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Act (see section 200.9 of this Title), unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

Section 240.22 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Laws (see section 200.9 of this Title) shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

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

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections 240.19 and/or 240.20 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to section 240.10(g), no recipient of Federal funds designated under Title 23 U.S.C. or the Federal Transit Laws (see section 200.9 of this Title) shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

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

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of sections 240.19 and/or 240.20 for projects not from a conforming transportation plan and TIP).

Section 240.23  PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS.

(a) General requirements.

(1) The regional emissions analysis required by sections 240.19 and 240.20 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by section 240.6. Projects which are not regionally significant are not required to be explicitly modeled using the network-based transportation demand model, but vehicle miles traveled (VMT) and emissions from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

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

(3) Emissions reduction credit from projects, programs, travel demand strategies or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(i) The regulatory action is already adopted by the enforcing jurisdiction;
(ii) The project, program, or activity is included in the applicable SIP revision;

(iii) The control strategy SIP revision submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of section 240.19 contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

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

(ii) Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must demonstrate assurance that they will be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of section 240.20 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable SIP revision. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable SIP revision, unless modified after interagency consultation according to section 240.6(c)(1)(i) to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable SIP revision.
(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

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

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from USDOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by subparagraph 240.6(c)(1)(i). Network-based travel models must at a minimum satisfy the following requirements:

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

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

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

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

(v) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and
(vi) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

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

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of subparagraph 240.6(c)(1)(i).

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

(d) PM\textsubscript{10} from construction-related fugitive dust.

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

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

(e) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of section 240.19 ("Motor vehicle emissions budget") or 240.20 ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. 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;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan’s regional emissions at the time of the transportation plan’s conformity determination; 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.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of sections 240.19 or 240.20 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(i) not regionally significant; or

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

Section 240.24 PROCEDURES FOR DETERMINING LOCALIZED CO AND PM\textsubscript{10} CONCENTRATIONS (HOT-SPOT ANALYSIS).

(a) CO hot-spot analysis.
The demonstrations required by section 240.17 ("Localized CO and PM\textsubscript{10} violations") must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51 Appendix W ("Guideline on Air Quality Models") (see section 200.9 of this Title). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section 240.6 and approved by the EPA Regional Administrator are used:

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

(ii) For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

(iii) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable SIP revision; and

(iv) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable SIP revision.

In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by section 240.17 may be based on either:

(i) Quantitative methods that represent reasonable and common professional practice; or

(ii) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of section 240.17 are met.

(b) PM\textsubscript{10} hot-spot analysis.

(1) The hot-spot demonstration required by section 240.17 must be based on quantitative analysis methods for the following types of projects:

(i) Projects which are located at sites at which violations have been verified by monitoring;

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

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

(2) Where quantitative analysis methods are not required, the demonstration required by section 240.17 may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (b)(1)(i) and (ii) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in section 240.6. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

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

(c) General requirements.

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

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

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

(4) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by section 240.26(a).
(5) CO and PM$_{10}$ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

Section 240.25 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE SIP REVISION (OR SIP REVISION SUBMISSION).

(a) In interpreting an applicable SIP revision (or SIP revision submission) with respect to its motor vehicle emissions budget(s), the MPO, NYSDOT and USDOT may not infer additions to the budget(s) that are not explicitly intended by the SIP revision (or submission). Unless the SIP revision 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, NYSDOT and USDOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the SIP’s revision estimate of future emissions. This applies in particular to applicable SIP revisions (or submissions) which demonstrate that after implementation of control measures in the SIP revision:

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

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

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

(b) If an applicable SIP revision 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 SIP 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 SIP revision (or SIP revision submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the SIP revision establishes appropriate mechanisms for such trades.

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

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

Section 240.26  ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws (see section 200.9 of this Title), FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM$_{10}$ or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by sections 240.19 ("Motor vehicle emissions budget") and 240.20 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by section 240.17.

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

(c) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.
If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of section 240.17, emission budget requirements of section 240.19, and emission reduction requirements of section 240.20 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section 240.6. The MPO and USDOT must find that the transportation plan and TIP still satisfy the applicable requirements of sections 240.19 and/or 240.20 and that the project still satisfies the requirements of section 240.17, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in section 240.6(e) for conformity determinations for projects.

Section 240.27 EXEMPT PROJECTS.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see section 240.6(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 significant emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

Table 2. - Exempt Projects

SAFETY
Railroad/highway crossing.
Hazard elimination program.
Safer 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.
Guiderails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

MASS TRANSIT
Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles¹.
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 fleet¹.
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771 (see section 200.9 of this Title).

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. (See section 200.9 of this Title).
  Federal-aid systems revisions.
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Emergency or hardship advance land acquisitions (23 CFR 712.204(d)) (see section 200.9 of this Title).
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.

1In PM$_{10}$ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

Section 240.28 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM$_{10}$ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see subparagraph 240.6(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 follows:

Table 3. - Projects Exempt From Regional Emissions Analyses

<table>
<thead>
<tr>
<th>Projects Exempt From Regional Emissions Analyses</th>
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<tbody>
<tr>
<td>Intersection channelization projects.</td>
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<tr>
<td>Intersection signalization projects at individual intersections.</td>
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<tr>
<td>Interchange reconfiguration projects.</td>
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<tr>
<td>Changes in vertical and horizontal alignment.</td>
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<tr>
<td>Truck size and weight inspection stations.</td>
</tr>
<tr>
<td>Bus terminals and transfer points.</td>
</tr>
</tbody>
</table>

Section 240.29 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS.

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this subpart. However, all subsequent regional emissions analyses required by sections 240.19 and 240.20 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.