

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Air Pollution Control

SUBJECT: Conformity of Transportation Plans

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-201-105

EFFECTIVE DATES: April 17, 2012 through June 30, 2013

FISCAL IMPACT: The agency has provided the following fiscal impact information:

Since there is already an existing transportation conformity process and local governments are already participating in Metropolitan Planning Organizations as part of long-standing federal transportation law, this rulemaking should not represent an increase in local spending. Since this rule is intended to streamline the existing process, which is necessary for securing federal funding for transportation projects, this rulemaking rule could reduce the time spent in working on conformity by the making the process more clearly defined.

STAFF RULE ABSTRACT:

In this rulemaking, the requirements for the transportation conformity provisions in the Tennessee State Implementation Plan (SIP) are being reduced and simplified. The prior version of the rule incorporated much of the federal regulations at 40 CFR part 93, and this is no longer necessary as an EPA requirement for a state's transportation conformity provisions. Eliminating these provisions rather than re-stating these in rules accounts for most of the changes in this rulemaking. The other major change is to re-write and clarify and explain how the consultation process works for applying transportation conformity to planning and construction of transportation projects.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: Please provide details in the state implementation plan (SIP) indicating who the interagency partners are. We suggest including an exhibit identifying the Agency partners at the Federal, state and local level.

Response: The following was added to the end of Rule 1200-03-34-.01(1)(a)2: "Exhibit A illustrates stakeholders currently subject to this rule. Exhibit A is for illustrative purposes only; stakeholders need not be listed to be subject to this rule." Exhibit A is included at the end of the rule.

Comment: Part (1)(f)2 of Rule 1200-03-34-.01 states: "These supplementary procedures (in part 1 of this subparagraph) may be specific for each metropolitan area or each nonattainment, or maintenance area subject to the conformity rule." Please be advised that any supplemental document must be consistent with the conformity SIP.

Response: The Board agrees. These supplemental procedures are in addition to, and would need to be consistent with, the Conformity SIP.

Comment: Page 10 and 11 of the Conformity SIP includes the text "qualitative or interim hot spot determination process." Please delete the terms "Qualitative" and "interim" when referring to hot spot determinations.

Response: The Board agrees. These terms have been deleted from the regulations dealing with hot spot determinations.

Comment: Rule 1200-03-34-.01(1)(g) Resolving Conflicts discusses the appeals process related to conformity determinations on transportation plan, transportation improvement program and projects. For completeness, please include language regarding existing mechanisms and/or procedures for appeals process at the state level for motor vehicle emissions budgets in the SIP.

Response: The following sentence is added to the Rule 1200-03-34-.01(1)(g): "Conflicts regarding SIPs should be appealed to the State or Local Air Pollution Control Board as appropriate."

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The foregoing amendments to Rule 1200-03-34-.01 are being made to comply with § 176(c) of the federal Clean Air Act and 40 CFR 51.390. These amendments are a mandatory element of the required State Implementation Plan under the Clean Air Act, and they implement changes in federal rules; therefore, this rulemaking is exempt from the requirements of T.C.A. § 4-5-401 *et seq.*

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that these amended rules will have a financial impact on local governments.

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Environment & Conservation
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1200-03-34	Conformity
Rule Number	Rule Title
1200-03-34-.01	Conformity of Transportation Plans, Programs, and Projects

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-03-34
Conformity

Amendments

The Table of Contents to Rule Chapter 1200-03-34 Conformity is amended by deleting the title of 1200-03-34-.01 "Conformity of Transportation Plans, Programs, and Projects" and replacing it with the new title "Transportation Conformity Interagency Consultation and General Provisions" so that, as amended, the title of 1200-03-34-.01 in the Table of Contents shall read:

1200-03-34-.01 Conformity of Transportation Plans, Programs, and Projects Transportation Conformity Interagency Consultation and General Provisions.

Rule 1200-03-34-.01 Conformity of Transportation Plans, Programs, and Projects is amended by deleting it in its entirety and replacing with the following so that, as amended Rule 1200-03-34-.01 shall read as follows:

1200-03-34-.01 Conformity of Transportation Plans, Programs, and Projects Transportation Conformity Interagency Consultation and General Provisions

~~(1) Subpart T. Adopted herein by reference are the federal regulations in Paragraph (4) of this rule as published in the August 15, 1997 edition of the Code of Federal Regulations (CFR); 40 CFR 51.390 et seq.~~

~~(2) Subpart A. Adopted herein by reference are the federal regulations in Paragraph (5) of this rule as published in the August 15, 1997 edition of the Code of Federal Regulations (CFR); 40 CFR 93.100 et seq., except §93.102(c)(1), §93.102(d), §93.118(e)(1), §93.120(a)(2), §93.121(a)(1), and §93.124(b) to the extent that these portions of the regulations have been invalidated or otherwise affected by the federal court decisions in Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F.3d 137 (D.C. Cir. 1997).~~

(3)(1) Interagency Consultation Procedures

(a) General.

1. Pursuant to 40 CFR §51.390, this document provides procedures for interagency consultation (federal, state, and local), resolution of conflicts, public consultation procedures (per 40 CFR §93.105) and written commitments to control measures (40 CFR §93.122(a)(4)(ii)) and mitigation measures (40 CFR §93.125(c)). Such consultation procedures shall be undertaken by Metropolitan Planning Organizations (MPOs), the State department of transportation, and the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) with State and local air quality agencies and the Environmental Protection Agency (EPA) before prior to making conformity determinations, and by State and local air agencies and EPA with MPOs, the State department of transportation, and FHWA and FTA in developing applicable implementation plans.

2. The provisions of this rule shall apply in all nonattainment and maintenance areas for transportation related criteria pollutants or precursor pollutants for which the area is designated nonattainment or has a maintenance plan, and with respect to all actions outside any nonattainment area that in the judgment of the Tennessee Air Pollution Control Division (TAPCD) may cause or contribute to a new violation or increase the frequency or severity of any existing violation of any standard in any nonattainment area, or delay the timely attainment of any standard or any required interim emissions reduction or other milestone in any nonattainment area. Exhibit A illustrates stakeholders currently subject to this rule. Exhibit A is for illustrative purposes only; stakeholders need not be listed to be subject to this rule.

2-3. Additional Definitions:

Terms used but not defined in this rule shall have the meaning given them by the Clean Air Act (CAA), titles 23 and 49 U.S.C., other EPA regulations, or other United States Department of Transportation (DOT) regulations, in that order of priority.

(i) Local air agencies are those agencies which are charged under law with the control of air pollution existing within the geographic boundaries of the political subdivisions, as defined by the Tennessee Air Quality Act, T.C.A. §§ 68-201-101, et seq., organized and existing under the laws of the State of Tennessee.

(ii) Local transportation agencies are publicly owned transportation agencies which provide mass transportation by bus or rail which provides general service to the public on a fixed route on a regular and continuing basis. It does not include school buses or charter or sightseeing services, van pools, or small trolley fleets.

(iii) Project means a highway project or transit project.

(iv) TAPCD means the Tennessee Air Pollution Control Division.

(v) TDOT means the Tennessee Department of Transportation.

(b) Interagency consultation procedures: General factors.

1. Representatives of the MPOs, State and local air quality planning agencies, and State and department of transportation, and local publicly-owned transportation agencies not represented by an MPO, shall undertake an interagency consultation process in accordance with this section rule with each other and with the EPA, FHWA, and FTA on the development of the implementation plan, the unified planning work program, the transportation plan (Plan), the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.

2. The State of Tennessee Air Pollution Control Division (TAPCD), also referred to as the State air agency, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of applicable transportation related implementation plans and control strategy implementation plan revisions.

3. MPOs subject to conformity shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the Unified Planning Work Program, the long range transportation plan, the Transportation Improvement Program (TIP), and any amendments or revisions thereto, and for providing assistance for technical analyses by employing travel-demand modeling techniques and acquiring all necessary data in the metropolitan area(s) under their jurisdiction. In the case of non-metropolitan areas, the Tennessee Department of Transportation (TDOT) shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide long range transportation plan, the Statewide Transportation Improvement Program (STIP), and any amendments or revisions thereto and for providing assistance for technical analyses by employing travel-demand modeling techniques and acquiring all necessary data in non-metropolitan areas.

3-4. In addition to the lead agencies identified in parts 2 and 3 of this subparagraph, other agencies entitled to actively participate in the interagency consultation process under this rule include: the Federal Highway Administration, the Federal Transit Administration FHWA, the FTA, EPA, and local air agencies.

- 4-5. It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in parts 2 and 3 of this subparagraph, to confer with all other agencies identified in part 3, with an interest in the document to be developed parts 1 through 4 of this subparagraph, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in 40 CFR §93.105, assure policy-level contact with those agencies, consider the views of each such agency and respond to those views in a period not to exceed thirty (30) days from the date received, prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. Each lead agency shall provide all necessary documentation for review at the initiation, or prior to, the review and comment period. Information for scheduled meetings will be distributed to participants at least seven (7) days before the scheduled meeting. It shall be the role and responsibility of each agency specified in part 3 parts 1 through 4 of this subparagraph, when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a period not to exceed ~~fourteen (14)~~ thirty (30) days, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or consultation process in accordance with 40 CFR §93.105 when requested.
- 5-6. It shall be the responsibility of the MPOs, the State and local air agencies, and the State and local transportation agencies identified in parts 1 through 4 above of this subparagraph to schedule and convene meetings for their own agencies, and to notify all other agencies involved in the conformity process of these scheduled meetings at least fourteen (14) working days in advance, unless such meetings are of an internal nature and not immediately related to the conformity process. However, the participants may waive the fourteen (14) day advance notice requirement if all participants agree that an earlier scheduled meeting is in the best interest of the parties. Scheduling changes shall be coordinated in a timely manner. The lead agency will develop draft documents, record notes and distribute agendas prior to meetings (in person or by conference calls or other practical electronic means). The lead agency shall provide all appropriate information to those agencies needed for meaningful input and provide all draft and supportive documentation (hard copy or electronic format) in a timely manner to participating agencies. The lead agency responsible for preparing the final document subject to interagency consultation shall assure that all relevant documents and information are supplied to all participants in the consultation process prior to the release for public review.
- 6-7. Consultation on specific issues, other than the continual process of keeping all the conforming agencies informed on all conformity and State Implementation Plan (SIP) actions, may be initiated at any time during the conformity document development process by any of the conforming agencies specified in parts 1 through 4 of this rule subparagraph. It shall be the responsibility of the initiate initiator to ensure that all other agencies identified in parts 1 through 4 above of this subparagraph are notified of any such action. All agencies so notified must respond to the issue(s) raised within ~~seven (7)~~ fourteen (14) days, unless an alternate schedule is agreed upon by all participants.
- 7-8. It shall be the responsibility of the MPOs subject to this rule, and TDOT, to provide the State and local air agencies specified in this rule with the latest version of the TIP or STIP and the transportation plan.
- 8-9. It shall be the responsibility of the State and local air agencies to provide the MPOs, TDOT, FHWA, FTA and EPA with the latest version of the SIP as it applies to transportation conformity, in particular, attainment and maintenance plans.
- 11-10. It shall also be the responsibility of each of the conforming agencies specified in parts 1 through 4 of this rule subparagraph to keep their own superiors and constituents properly

informed of conformity determinations, as well as making this information available for the general public.

~~12.11.~~ The conforming agencies specified in parts 1 through 4 of this rule subparagraph may employ consultant consultation services at their own discretion.

(c) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

1. TAPCD and the local air agencies shall be responsible for, in relation to SIP development, the following:

- (i) Developing emissions inventories;
- (ii) Developing emissions budgets;
- (iii) Conducting air quality modeling;
- (iv) Developing attainment and maintenance demonstrations;
- (v) Revising control strategy implementation plans revisions;
- (vi) Regulatory Transportation Control Measures (TCMs) intended to provide enforceable emission reductions;
- (vii) ~~updated~~ Compiling motor vehicle emissions factors;
- (viii) Meeting all EPA reporting requirements related to air quality; and
- (ix) Responding to all comments concerning the SIP.

The local air quality agencies shall be responsible for their areas of jurisdiction, with the State air quality agency being responsible for all remaining counties, as well as being responsible for ensuring that the local air quality ~~programs~~ agencies fulfill these tasks. Local air agencies may request assistance from the State air quality agency ~~for assistance~~ in any of the responsibilities listed here.

2. The MPOs subject to the conformity rule shall be responsible for, in their area(s) of jurisdiction, the following:

- (i) Developing and monitoring transportation plans and TIPs;
- (ii) Evaluating ~~TCM~~ the transportation impacts and feasibility of TCMs;
- (iii) Developing transportation and socioeconomic data and latest planning assumptions and providing such data and planning assumptions to TAPCD for use in air quality analysis;
- (iv) Developing system- or facility-based or other programmatic (non-regulatory) TCMs;
- (v) Providing technical and policy input on emissions budgets;
- (vi) Performing transportation modeling, including:
 - (I) Selecting and evaluating such models;
 - (II) Documenting their use in conformity determinations, and

- (III) Alerting, for comment, the agencies identified in parts (b)1 through 4 of subparagraph (b) above this paragraph when any new model is being tested or employed, and;
- (vii) Developing conformity determinations within the MPO boundary draft and final conformity determination documents for all transportation plans, TIPs and projects;
- (viii) Monitoring and coding regionally significant projects into the transportation networks;
- (ix) Developing statistical information such as vehicle miles travelled (VMT), vehicle mix and vehicle speeds for use in on-road mobile emissions analysis;
- (x) Making elections regarding the timeframe of the conformity determination under 40 CFR §93.106(d); and
- (xi) Identifying planning assumptions and evaluating those assumptions for consistency with SIP assumptions.

3. The Tennessee Department of Transportation shall be responsible for:

- (i) Developing the Statewide transportation plan and STIP;
- (ii) Providing technical input on new and proposed revisions to motor vehicle emission factors budgets;
- (iii) Distributing draft and final ~~project~~ environmental documents to other agencies; ~~when requested by other agencies or as needed, and~~
- (iv) Providing the transportation related information needed for mobile emissions analysis;
- (v) Developing the statistical information, such as VMT, vehicle mix, and vehicle speeds, for use in on-road mobile emission analysis for areas outside the MPO boundary;
- (vi) Developing the draft document(s) related to the NEPA process, providing it for review, responding to comments and preparing the final document(s);
- (vii) Performing transportation modeling, including;
 - (I) Selecting and evaluating such models;
 - (II) Documenting their use in conformity determinations; and
 - (III) Alerting, for comment, the agencies identified in parts (b)1 through 4 of subparagraph (b) above this paragraph when any new model is being tested or employed, and;
- (viii) Making conformity determinations for areas outside of the MPO boundary;
- (ix) Convening consultation to cooperatively choose the appropriate conformity test(s) and methodologies for use in isolated rural nonattainment and maintenance areas, as required by 40 CFR §93.109(l)(2)(iii); and
- (x) Convening air quality technical review meetings on specific projects when requested by other agencies or as needed.

4. FHWA and FTA shall be responsible for:

- (i) Ensuring timely action on final determinations of conformity within fourteen (14) thirty (30) days of receiving a formal conformity determination, after consultation with other agencies as provided in this section rule and 40 CFR §93.105; and
- (ii) Providing guidance on conformity and the transportation planning process to participating agencies in an interagency consultation; in particular as if concerns determining what projects are exempt or regionally significant. and
- (iii) Reviewing and commenting on conformity determinations.

5. EPA shall be responsible for:

- (i) Reviewing and approving updated motor vehicle emissions factors budgets in submitted SIPs and finding them adequate or inadequate based on adequacy criteria and procedures;
- (ii) Providing guidance on conformity criteria and procedures to agencies in interagency consultation;
- (iii) commenting on conformity findings, and Approving or disapproving submitted SIP revisions (including TCMs) affecting conformity in forty five (45) days of the date submitted to EPA, or, in the case of a disapproval;
- (iv) Providing modeling and emissions inventory development assistance commenting to the TAPCD, in no less than thirty (30) days TDOT and MPOs; and
- (v) Providing comments on the regional emissions analyses and conformity determination of date submitted to EPA transportation plans, TIPs and projects.

(d) Conformity determinations:

1. All conformity determinations shall be initiated by the sponsor of the transportation plan, program or project subject to the conformity rule:
 - (i) MPOs shall be responsible for initiating conformity determinations for plans, programs or projects within the specific MPO boundary;
 - (ii) TDOT shall be responsible for initiating conformity determination for plans, programs or projects external to an MPO boundary, including isolated rural nonattainment and maintenance areas as required by §93.109(l)(2)(iii); and
 - (iii) MPOs and TDOT shall employ interagency consultation procedures to ~~insure~~ ensure compatibility of conformity determinations for the same or overlapping nonattainment or maintenance area(s).
2. It shall be the responsibility of the MPOs subject to conformity and TDOT to submit any conformity determinations to the FHWA, ~~and the EPA FTA, EPA, TACPD, local air agencies, TDOT, if not the sponsor, and local publicly-owned transportation agencies not represented by an MPO~~ for review and approval before the plan, program or project subject to the conformity rule may be found to conform, or found to be exempt.
3. All conformity determinations with all supporting documentation and data shall be made available for review and comment to the TAPCD, local air agencies, FHWA, FTA and the EPA no less than thirty (30) days prior to presentation to an executive committee a policy making body (electronic copy acceptable). Shorter review periods may be allowed occasionally in emergency situations with participant concurrence.

4. All conformity determinations shall also be made available to the general public, as defined in subparagraph ~~(h)~~(h) of this paragraph.
5. Conformity determinations, at a minimum, should include written documentation of the following:
 - (i) All the input run streams for the latest mobile emissions model and latest planning assumptions on the date that the conformity analysis began (with the beginning date and the criteria used to identify this date specified), and attestation that the latest mobile emissions model is being used;
 - (ii) Transportation related information and assumptions used for input into the mobile model, such as, vehicle miles traveled, vehicle speeds, and vehicle mix, along with a brief description of the source of this information, including documentation of any transportation related models used;
 - (iii) A description of the project, plan or program that is the subject of the conformity or exemption status determination(s); and
 - (iv) TAPCD may request further documentation; however, the agency making the conformity demonstration may appeal to the Technical Secretary if the request seems unreasonable.
6. TAPCD (and/or local air agencies, where applicable) shall review and provide written comment on final conformity determinations within fourteen (14) days of the date received. This process shall consist of:
 - (i) Review of mobile emissions model inputs and outputs;
 - (ii) Verification that the latest mobile emissions model is and planning assumptions are being used;
 - (iii) Review of the reasonableness of transportation related data; and
 - (iv) Ensuring consistency with the emissions budget and/or the build/no build test interim emission tests, as applicable.
7. It shall be the responsibility of the ~~FHWA, TDOT and~~ MPO (or the MPO TDOT, where applicable) making a conformity determination, to provide TAPCD and the applicable State and local air agencies, FTA, FHWA and the EPA with documentation of the conformity determination.
8. It shall be the responsibility of ~~the State air agency~~ TAPCD to provide affected MPOs, FHWA, FTA, EPA, local air agencies and TDOT with appropriate information regarding any SIP changes that could impact the conformity process.
9. It shall be the responsibility of the EPA to ~~comment on the adequacy of conformity determinations within fourteen (14) days of the date received, and to provide the State~~ TAPCD and local air agencies and FTA, FHWA, TDOT, and the affected MPOs information regarding changes to the Conformity Rule that could impact conformity determinations.
10. 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 written commitments to implementation are obtained by the MPO (or TDOT, where applicable) prior to the conformity determination and such commitments must be fulfilled by the implementing entities. This rule satisfies the requirement of 40 CFR §93.122(a)(4)(ii).

11. Written commitments to mitigation measures for project-level mitigation and control measures must be obtained by FHWA (or FTA for transit related projects), from project sponsors, prior to a positive project-level conformity determination, and that project sponsors must comply with such commitments. This rule satisfies the requirement of 40 CFR §93.125(c).
12. In order to assure the most recent planning assumptions are in place at the time the conformity analysis begins, the "time the conformity analysis begins" is to be determined by interagency consultation. This point in time should occur at the point at which the MPO (or TDOT, when applicable) or other designated agency begins to model the impact of the transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.
13. Consultation shall be undertaken, and conducted in accordance with this rule, to evaluate events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR §93.104, including any changes in planning assumptions, that may trigger a new conformity determination. The consultation process pursuant to this rule shall be initiated by FHWA, EPA, TAPCD, TDOT, or the MPO where one exists.

(e) Implementation Plans:

1. Any proposed revisions to the SIP, which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity, shall be made available to the MPOs specified in this rule, as well as TDOT, FHWA, FTA, and EPA in written or electronic form for their review and comment at least thirty (30) days before presentation to the Tennessee Air Pollution Control Board. Shorter review periods may be allowed occasionally in emergency situations with participant concurrence.
2. TAPCD shall also provide the public a period of ~~thirty (30) days~~ from the date of announcement to comment on any proposed SIP revisions which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity, as defined in ~~(3) (i)~~ subparagraph (h) of this paragraph.
3. Any proposed revisions to the SIP shall include documentation on methods of analysis, calculations, models employed and purpose of the revision.
4. ~~MPOs, TDOT, FHWA, FTA, EPA or any other interested party may request further documentation, however, TAPCD may appeal via the procedures defined in subparagraph (h) of this paragraph if the request seems unreasonable.~~

(f) Other processes:

1. TAPCD shall be responsible for initiating the process whereby MPOs, local air quality agencies, TDOT, FHWA, FTA and EPA shall study and develop supplementary consultation procedures to identify, evaluate and address, as needed, the following issues. In the absence of supplementary consultation procedures, TAPCD will include the following items for discussion during interagency consultation meetings in advance of a conformity determination:
 - (i) Hot spot analysis methods, models and assumptions;
 - (ii) Determination of regionally significant projects and projects considered to have a significant change in design concept and scope;
 - (iii) Evaluating when exempt projects should be treated as non-exempt;
 - (iv) Timely implementation of TCMs and processing of TCM substitutions;

- (v) Identifying conformity determination triggers other than those established in section 40 CFR §93.104; and
 - (vi) ~~determination as to which model or models are to be used in the Methods, models and assumptions for regional emissions analysis of these issues.~~
2. These supplementary procedures (in part 1 of this subparagraph) may be specific for each metropolitan area or each nonattainment or maintenance area subject to the conformity rule.
 3. TAPCD shall conduct meetings to discuss any supplementary consultation procedures as needed.
 4. Final document distribution for conformity determinations associated with Plans, TIPs and STIPs (occasionally, alternate schedules may be used with concurrence by participants):
 - (i) The final air quality conformity determination, necessary supporting documentation and the Plan and TIP will be submitted to the FHWA Division Office, the FTA Regional Office, the EPA Regional Office, TDOT, TAPCD and any applicable local air agencies. EPA will respond in writing, to the FTA Regional Office and FHWA Division Office, as soon as possible but not later than thirty (30) days from the date received;
 - (ii) Comments will be resolved by FHWA and FTA, in concert with EPA, with the MPO or TDOT, in their respective areas, as necessary;
 - (iii) FHWA and FTA will jointly prepare correspondence to make the conformity finding. Joint conformity findings will be addressed to the MPO (or TDOT where no MPO exists), with a copy to TDOT, EPA, TAPCD and any applicable local air agencies. The findings of FTA and FHWA together constitute the DOT conformity findings;
 - (iv) In the event that the MPO or TDOT in their respective areas, wishes to amend the TIP to add projects that are exempt from the conformity analysis requirement, FHWA or FTA or both, if necessary, will concur in the amendment and re-affirm the original DOT conformity finding by letter. This re-affirmation letter will reference the date(s) of the original FHWA and FTA findings. In cases where the amendment involves projects that are not exempt, a new conformity analysis and determination will be required, and will, in turn, require a new DOT conformity finding.

Within fifteen (15) days subsequent to approval and adoption of final documents, including transportation plans, TIPs, conformity determinations, applicable implementation plans and implementation plan revisions, the lead agency shall provide copies (electronic copies acceptable) of such documents and supporting information to all affected agencies.

5. Generalized hot-spot determination process:

Interagency consultation shall be undertaken to evaluate and choose a model(s), associated methods and planning assumptions to be used in hot-spot analyses.

Generalized hot-spot determination process (occasionally, alternate schedules may be used with concurrence by participants):

- (i) The project sponsor (or TDOT or the MPO), will seek consensus if the project is believed to be exempt from hot-spot analysis. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination;

- (ii) If the project is not exempt, the project sponsor (or TDOT or the MPO) will collect and organize and distribute specific data needed to determine whether nonexempt projects are or are not of air quality concern. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination;
- (iii) If it is determined the project is a project of air quality concern, the project sponsor (or TDOT or the MPO) will then engage and begin a consultation process to evaluate and choose a model (or models) and associated methods and assumptions to be used in hot-spot analysis. The project sponsor (or TDOT or the MPO) will make a PM2.5 hot-spot determination (i.e., project-level conformity determination) and request that other stakeholder agencies comment on the conclusions through formal interagency consultation as provided in this rule.

6. Regionally significant projects:

For purposes of regional emissions analysis, the MPO (TDOT where no MPO exists) shall actively consult with the affected agencies to determine which minor arterials and other transportation projects should be considered "regionally significant" projects (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. Prior to initiating any final action on these issues, the MPO (or TDOT, if applicable) shall consider the views of each agency that comments and respond in writing.

7. Transportation Control Measures (TCMs):

- (i) For each Plan or TIP update, the agencies specified in this rule to participate in consultation shall review whether past obstacles to implementation of Transportation Control Measures (TCMs) which are behind the schedule established in the applicable implementation plan are being overcome, and whether State and local agencies with influence over approval or funding for TCMs are giving maximum priority to approval or funding for TCMs. If necessary, consideration will be given as to whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.
- (ii) Where TCMs are to be included in an applicable implementation plan, a list of TCMs shall be developed by TDEC (and local air agencies, if applicable) in cooperation with the MPO, TDOT, or both.

8. Exempt projects which may be non-exempt:

The MPO (or TDOT where applicable) shall commence consultation regarding potentially exempt projects to (occasionally, alternate schedules may be used with concurrence by participants):

- (i) Identify exempt project as defined by 40 CFR §93.126 Table 2, and 40 CFR §93.127 Table 3;
- (ii) Identify exempt projects and categories of exempt projects which should be treated as non-exempt because they may have adverse air quality impacts and determine appropriate air quality analysis methodologies for analyzing such projects; and

- (iii) Identify transportation Plan and TIP/STIP revisions which add or delete exempt projects, as defined in 40 CFR §93.126 Table 2 and 40 CFR §93.127 Table 3.

The MPO (or TDOT where applicable), will seek consensus from the consultation participants if the project is believed to be exempt. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination.

9. Multi-jurisdictional consultation:

Agencies specified in this rule will consult on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. Where the nonattainment area crosses the boundaries of multiple MPOs, the MPOs shall share cooperatively the responsibilities of conducting conformity determinations on transportation activities. The MPOs will enter into a memorandum of agreement which will define the effective boundaries and the respective responsibilities for each MPO for regional emissions analysis. Adjacent MPOs of nonattainment or maintenance areas shall share information concerning air quality modeling assumptions and emissions rates that affect both areas. This provision also applies to MPOs and TDOT where the nonattainment area extends beyond the MPO's boundary. TAPCD and/or local air agencies (where applicable) will initiate consultation with other states when nonattainment areas extend beyond Tennessee's borders.

10. Project disclosure:

(i) The sponsor of any potentially regionally significant project, and any agency that is responsible for taking action(s) on any such project, shall disclose such project to TDOT or the MPO (whichever is appropriate) in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to TDOT or the MPO (whichever is appropriate) on a schedule prescribed by TDOT or the MPO (whichever is appropriate), but no less than annually, each project for which alternatives have been identified through the NEPA process, and any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow the MPO (or TDOT) to perform a regional emissions analysis. This consultation process pursuant to this rule shall be initiated by TDOT, or the MPO, where one exists;

(ii) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall not be considered to be included in the regional emissions analysis supporting the current conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan or interim budget.

11. Transportation model development:

An interagency consultation process in accordance with the interagency consultation procedures outlined in this rule shall be undertaken for the design, schedule, and funding

of research and data collection efforts related to regional transportation model development (such as household/ travel transportation surveys), to be initiated by MPOs (or TDOT, if applicable).

12. Responding to significant comments:

If the written response to a significant comment does not adequately address the commenting agency's concerns, further consultation is to be conducted. If a regularly scheduled meeting is to be held within a reasonable time frame of the receipt of the significant comment, it should be made a part of that meeting's agenda and information on the issue will be forwarded to all involved agencies. If necessary, discussion and resolution of the significant comment will be considered a reason to convene a special meeting with the commenting agency as the requester and the agenda consisting of the significant comment.

~~(g)~~ Voluntary Control Measures:

~~Emission reduction credits from non-regulatory control measures which are not included in the transportation plan or the TIP may be included in a conformity determination emission analysis if the following criteria are met:~~

- ~~1. Quantification of emission reductions from the measure has been demonstrated by approved EPA methodology;~~
- ~~2. written commitments have been obtained to ensure that all persons or entities so obligated must comply to the measure;~~
- ~~3. it has been demonstrated that dedicated adequate funding to execute the measure has been appropriated by the MPO, TDOT or FHWA, and~~
- ~~4. the control measure is an enforceable obligation included in the latest approved SIP.~~

~~(h)~~(g) Resolving conflicts:

Any conflict among State agencies or between State agencies and the MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. All agencies involved shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible. The appeal process described herein shall apply only to MPO (or TDOT) approved conformity determinations on the transportation plan, TIP, or projects (including project-level determinations), including any documents directly related to determinations of conformity and conflicts between state agencies or between one or more state agency(ies) and the MPO. Conflicts regarding SIPs should be appealed to the State or Local Air Pollution Control Board as appropriate.

1. In the event that the MPO or TDOT determines that every effort has been made to address TAPCD concerns and no further progress is possible, the MPO or TDOT shall notify the Director of TAPCD in writing to this effect. The memorandum shall delineate each unresolved issue to be appealed, and shall include, at a minimum:

- (i) The legal basis of the issue/conflict and steps taken to resolve the conflict;
- (ii) Relevant reference material needed to facilitate review and mediation of the conflict, including all relevant portions of state and federal law and regulations, conformity requirements, and any other relevant documents;
- (iii) A description of all reasonable alternatives and supporting data and justification for each alternative. This includes quantifying and documenting the need for the recommended alternative consistent with the Clean Air Act of 1990 and the applicable state and federal laws and regulations; and

- (iv) An explanation the consequences of not reaching a resolution.
- 1-2. If conflicts concerning conformity determinations cannot be resolved by the agreed upon interagency consultation procedures, then the State air agency shall notify the agency or agencies involved in the conflict of its intent to escalate the conflict resolution to the office Office of the Governor.
- 2-3. The fourteen (14) calendar day window shall commence:
- (i) On the date that the Technical Secretary of TAPCD and head of the agency or agencies involved in the conflict officially agree that the conflict cannot be resolved; or
- (ii) One When one or more agencies other than TAPCD request the start of the fourteen (14) day clock on a specified date, after notifying all other agencies involved of their intent, and TAPCD agrees.
- 3-4. If TAPCD does not contact the office Office of the Governor within the fourteen (14) calendar day window, then the issue in conflict is considered to be resolved in favor of the agency in conflict with TAPCD.
5. The Governor may delegate his or her role, but not to the head or staff of TAPCD, TDOT, a state transportation commission or board, or an MPO.
6. TAPCD shall notify involved parties of the final decision by the Office of the Governor.
7. In the case of interstate nonattainment areas, if the conflict involves agencies outside of Tennessee, and the conflict cannot be resolved by the affected agency heads, the conflicts may be resolved in a manner mutually agreed to by the parties involved.

(+)(h) Public participation:

1. Each agency subject to conformity shall provide the general public a thirty (30) day window of opportunity no less than thirty (30) days to review and comment on new conformity determinations before final formal action (approval or endorsement by an executive committee of the MPO, or where no MPO exists, TDOT management, for submission to FTA/FHWA for their finding) is taken on all transportation plans, TIPs and STIPs, TAPCD consistent with these requirements and those of 23 CFR §450.316(a). A comment period of no less than fourteen (14) days will be made available to the public on amendments to conformity determinations and associated documents. TAPCD and local air agencies shall offer the public the same opportunity to comment before final action on SIPs which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity. The notification process shall include, at a minimum, public notices and submittals to public depositories. In addition, all public comments that specifically address known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, and have not been properly reflected in the emissions analysis supporting a proposed conformity determination for a transportation plan or TIP, must be responded to, in writing, within thirty (30) days of the end of the comment period.
2. The public participation procedure defined in (+)-1- above part 1 of this subparagraph shall not be construed as superseding public involvement procedures already in effect for agencies subject to the conformity consultation process, such as the MPOs' citizen involvement process, the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-101 *et seq.*), the Tennessee Sunshine Law (T.C.A. §§ 8-44-101 *et seq.*), or any other established process which already meets or exceeds these standards. In addition, this subparagraph does not apply to project-level conformity determinations subject to NEPA where a NEPA public participation process exists.
3. The public or any interested party may also inspect any of the documents related to the conformity process upon request; any charges imposed on the public for inspection or

copying documents related to the conformity process shall be consistent with (or no greater than) the fee schedule contained in 49 CFR §7.43.

Exhibit A: Illustrative list of stakeholders subject to consultation as per this rule:

Federal Agencies:

United State Environmental Protection Agency (EPA)
Federal Transit Administration (FTA)
Federal Highway Administration (FHWA)

State Agencies:

Tennessee Air Pollution Control Division (TAPCD)
Tennessee Department of Transportation (TDOT)

Local Air Agencies:

Air Pollution Control Program, Memphis/Shelby County Health Department
Division of Pollution Control, Metropolitan Health Department for Davidson County
Department of Air Quality Management, Knox County Health Department
Air Pollution Control Bureau, Chattanooga/Hamilton County

Metropolitan Planning Organizations:

Chattanooga-Hamilton County Regional Planning Agency
Clarksville-Montgomery County Regional Planning Commission
Knoxville Regional Transportation Planning Organization
Memphis-Shelby County Department of Regional Services
Nashville Metropolitan Planning Organization

(4) ~~Subpart T of 40 CFR 51~~

~~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~~

~~Section 51.390 Implementation plan revision.~~

~~(a) States with areas subject to this subpart and part 93, subpart A, of this chapter must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with this subpart and part 93, subpart A, of this chapter. This revision is to be submitted by November 25, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). Further revisions to the implementation plan required by amendments to part 93, subpart A, of this chapter must be submitted within 12 months of the date of publication of such final amendments. EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart A, of this chapter only if the State's conformity provisions apply equally to non-federal as well as Federal entities.~~

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

~~the State submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA.~~

~~(c) The implementation plan revision required by this section must meet all of the requirements of part 93, subpart A, of this chapter.~~

~~(d) In order for EPA to approve the implementation plan revision submitted to EPA and DOT under this subpart, the plan must address all requirements of part 93, subpart A, of this chapter in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of part 93, subpart A, of this chapter in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in the following sections of this chapter: Secs. 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127.~~

~~(5) Subpart A of 40 CFR 93~~

~~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~~

~~93.100 Purpose.~~

~~93.101 Definitions.~~

~~93.102 Applicability.~~

~~93.103 Priority.~~

~~93.104 Frequency of conformity determinations.~~

~~93.105 Consultation.~~

~~93.106 Content of transportation plans.~~

~~93.107 Relationship of transportation plan and TIP conformity with the NEPA process.~~

~~93.108 Fiscal constraints for transportation plans and TIPs.~~

~~93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects:~~

~~General:~~

~~93.110 Criteria and procedures: Latest planning assumptions.~~

~~93.111 Criteria and procedures: Latest emissions model.~~

~~93.112 Criteria and procedures: Consultation.~~

~~93.113 Criteria and procedures: Timely implementation of TCMs.~~

~~93.114 Criteria and procedures: Currently conforming transportation plan and TIP.~~

~~93.115 Criteria and procedures: Projects from a plan and TIP.~~

~~93.116 Criteria and procedures: Localized CO and PM₁₀ violations (hot spots).~~

~~93.117 Criteria and procedures: Compliance with PM₁₀ control measures.~~

~~93.118 Criteria and procedures: Motor vehicle emissions budget.~~

~~93.119 Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.~~

~~93.120 Consequences of control strategy implementation plan failures.~~

~~93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.~~

~~93.122 Procedures for determining regional transportation-related emissions.~~

~~93.123 Procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).~~

~~93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).~~

~~93.125 Enforceability of design concept and scope and project level mitigation and control measures.~~

~~93.126 Exempt projects.~~

~~93.127 Projects exempt from regional emissions analyses.~~

~~93.128 Traffic signal synchronization projects.~~

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

~~93.100 Purpose.~~

~~The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans,~~

programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

93.101 Definitions.

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

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

"CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

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

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

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

"Clean data" means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

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

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

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

"DOT" means the United States Department of Transportation.

"EPA" means the Environmental Protection Agency.

"FHWA" means the Federal Highway Administration of DOT.

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

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

"FTA" means the Federal Transit Administration of DOT.

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

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

~~"Hot spot analysis" is an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.~~

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

~~"Lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.~~

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

~~"Maintenance plan" means an implementation plan under section 175A of the CAA, as amended.~~

~~"Metropolitan planning organization (MPO)" is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.~~

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

~~"Motor vehicle emissions budget" is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.~~

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

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

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

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

~~"Project" means a highway project or transit project.~~

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

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

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

~~"Safety margin" means 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.~~

~~"Standard" means a national ambient air quality standard.~~

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

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

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

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

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

~~"Transportation project" is a highway project or a transit project.~~

~~"Written commitment" for the purposes of this subpart means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.~~

~~93.102 Applicability.~~

~~(a) Action applicability.~~

~~(1) Except as provided for in paragraph (c) of this section or 93.126, 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 by an MPO or DOT;~~

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

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

~~(2) Conformity determinations are not required under this subpart for individual projects which are not FHWA/FTA projects. However, 93.121 applies to such projects if they are regionally significant.~~

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

~~(1) The provisions of this subpart 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 subpart apply with respect to emissions of the following precursor pollutants:~~

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

~~(ii) NO_x in NO₂ areas; and~~

~~(iii) VOC, NO_x, and PM₁₀ in PM₁₀ areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.~~

~~(3) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.~~

~~(c) Limitations.~~

~~(1) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F. 3d 137 (D.C. Cir. 1997).~~

~~(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.~~

~~(d) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F. 3d 137 (D.C. Cir. 1997).~~

~~93.103 Priority.~~

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

~~93.104 Frequency of conformity determinations.~~

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

~~(b) — Frequency of conformity determinations for transportation plans.~~

~~(1) — Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.~~

~~(2) — All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in 93.126 or 93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.~~

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

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

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

~~(2) — A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 93.126 or 93.127.~~

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

~~(4) — After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in Secs. 93.126 and 93.127. 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 DOT:~~

~~(1) — November 24, 1993;~~

~~(2) — The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;~~

~~(3) — EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;~~

~~(4) — EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and~~

~~(5) — EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.~~

~~93.105 Consultation.~~

~~(a) General. The implementation plan revision required under Sec. 51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local), resolution of conflicts, and public consultation as described in paragraphs (a) through (e) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.~~

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

~~(2) Before EPA approves the conformity implementation plan revision required by Sec. 51.390 of this chapter, MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section, before making conformity determinations.~~

~~(b) Interagency consultation procedures: General factors.~~

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

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

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

~~(ii) The organizational level of regular consultation;~~

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

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

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

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

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

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

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

~~(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;~~

~~(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see Secs. 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;~~

~~(iv) Making a determination, as required by 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;~~

~~(v) Identifying, as required by 93.123(b), projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis;~~

~~(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 93.126 or 93.127; and~~

~~(vii) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 93.109(g)(2)(iii).~~

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

~~(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 93.104; and~~

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

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

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

~~(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of 93.122.~~

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

~~(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.~~

~~(d) Resolving conflicts. Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by Section 51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.~~

~~(e) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.~~

~~93.106 Content of transportation plans.~~

~~(a) Transportation plans adopted after January 1, 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 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 93.105;~~

~~(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies 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 Secs. 93.109 through 93.119.~~

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

~~93.107 Relationship of transportation plan and TIP conformity with the NEPA process.~~

~~The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in Secs. 93.109 through 93.119 for projects not from a TIP before NEPA process completion.~~

~~93.108 Fiscal constraints for transportation plans and TIPs.~~

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

~~93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.~~

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

~~(b) Table 1 in this paragraph indicates the criteria and procedures in Secs. 93.110 through 93.119 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

All Actions at all times:	
93.110	Latest planning assumptions.
93.111	Latest emissions model.
93.112	Consultation.
Transportation Plan:	
93.113(b)	TCMs.
93.118 or 93.119 reduction.	Emissions budget or Emission
TIP:	
93.113(c)	TCMs.
93.118 or 93.119 reduction.	Emissions budget or Emission
Project (From a Conforming Plan and TIP):	
93.114	Currently conforming plan and TIP.
93.115	Project from a conforming plan and
TIP.	
93.116	CO and PM ₁₀ hot spots.
93.117	PM ₁₀ control measures.
Project (Not From a Conforming Plan and TIP):	
93.113(d)	TCMs.
93.114	Currently conforming plan and TIP.
93.116	CO and PM ₁₀ hot spots.
93.117	PM ₁₀ control measures.
93.118 or 93.119 reduction.	Emissions budget or Emission

(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 93.118 for conformity determinations made:

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

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

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by 93.119 for conformity determinations made:

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

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

~~(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.~~

~~(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:~~

~~(i) The emission reduction tests required by 93.119; or~~

~~(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 93.118 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 93.119;~~

~~(ii) The budget test as required by 93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or~~

~~(iii) The budget test as required by 93.118, 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:~~

~~(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by 93.116(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 93.116(b).~~

~~(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by 93.118 for conformity determinations made:~~

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

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

~~(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 93.119 for conformity determinations made:~~

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

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

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

~~(i) — The emission reduction tests required by 93.119; or~~

~~(ii) — The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(2) of this section).~~

~~(e) — PM₁₀ 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 PM₁₀ 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 PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by 93.116(a).~~

~~(2) — In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by 93.118 for conformity determinations made:~~

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

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

~~(3) — In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by 93.119 for conformity determinations made:~~

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

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

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

~~(f) — NO₂ 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 NO₂ 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 NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by 93.118 for conformity determinations made:~~

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

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

~~(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by 93.119 for conformity determinations made:~~

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

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

~~(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 Secs. 93.110, 93.111, 93.112, 93.113(d), 93.116, and 93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of 93.116(b) ("Localized CO and PM₁₀ 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 Secs. 93.118 and 93.119 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 93.118, 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) 93.118;~~

~~(B) 93.119 (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding 93.119(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 standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.~~

~~(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation~~

process required in 93.105(e)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in 93.105(d), which applies for any State air agency comments on a conformity determination.

~~93.110 Criteria and procedures: Latest planning assumptions.~~

~~(a) The conformity determination, with respect to all other applicable criteria in Secs. 93.111 through 93.119, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.~~

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

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

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

~~(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs 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 93.105.~~

~~93.111 Criteria and procedures: Latest emissions model.~~

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

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

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

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

~~(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.~~

~~93.112 Criteria and procedures: Consultation.~~

~~Conformity must be determined according to the consultation procedures in this subpart and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by Sec. 51.390 of this chapter is fully approved by EPA, the conformity determination must be made according to 93.105 (a)(2) and (e) and the requirements of 23 CFR part 450.~~

~~93.113 Criteria and procedures: Timely implementation of TCMs.~~

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

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

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

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

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

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

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

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

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

~~93.114 Criteria and procedures: Currently conforming transportation plan and TIP.~~

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

~~(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 93.104.~~

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

~~93.115 Criteria and procedures: Projects from a plan and TIP.~~

~~(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of 93.109(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 implementation plan 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 93.106 ("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 as required by 93.125(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.~~

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

~~93.116 Criteria and procedures: Localized CO and PM₁₀ violations (hot spots).~~

~~(a) — This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of 93.105(c)(1)(i) and the methodology requirements of 93.123.~~

~~(b) — This paragraph applies for CO nonattainment areas as described in 93.109(d)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This 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 93.105(c)(1)(i) and the methodology requirements of 93.123.~~

~~93.117 Criteria and procedures: Compliance with PM₁₀ control measures.~~

~~The FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.~~

~~93.118 Criteria and procedures: Motor vehicle emissions budget.~~

~~(a) — The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in 93.109(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 implementation plan or implementation plan submission.~~

~~(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the 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 implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and~~

~~(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 implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.~~

~~(2) When a maintenance plan has been submitted:~~

~~(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 93.105 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 implementation plan 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 93.102(b) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.~~

~~(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the 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 Secs. 93.122 and 93.105(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 implementation plan revisions and submitted maintenance plans.~~

~~(1) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F.3d 137 (D.C. Cir. 1997).~~

~~(2) If EPA has declared an implementation plan 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 are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by 93.119 must be satisfied.~~

~~(3) If EPA declares an implementation plan 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 DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy Secs. 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.~~

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

~~(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;~~

~~(ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;~~

~~(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 implementation plan 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 implementation plan revision or maintenance plan; and~~

~~(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).~~

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

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

~~93.119 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 93.109(c) through (g). It applies to the net effect of~~

the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

~~(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 93.122 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 PM₁₀ and NO₂ nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 93.122 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 implementation plan revision required by Sec. 51.390 of this chapter defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.~~

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

~~(1) VOC in ozone areas;~~

~~(2) NO_x in ozone areas, unless the EPA Administrator determines that additional reductions of NO_x would not contribute to attainment;~~

~~(3) CO in CO areas;~~

~~(4) PM₁₀ in PM₁₀ areas;~~

~~(5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPC and DOT; and~~

~~(6) NO_x in NO₂ 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 93.126 and projects exempt from regional emissions analysis as listed in 93.127 need not be explicitly considered):~~

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

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

~~(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.~~

~~(g) "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 93.126 and projects exempt from regional emissions analysis as listed in 93.127 need not be explicitly considered):~~

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

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

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

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

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

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

~~(h) 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.~~

~~93.120 Consequences of control strategy implementation plan failures.~~

~~(a) Disapprovals.~~

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

~~(2) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F.3d 137 (D.C. Cir. 1997).~~

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

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

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

~~93.121 Requirements for adoption or approval of projects by other 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 shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:~~

~~(1) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F.3d 137 (D.C. Cir. 1997).~~

~~(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 Secs. 93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).~~

~~(b) In isolated rural nonattainment and maintenance areas subject to 93.109(g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:~~

~~(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 these 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 Secs. 93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP).~~

~~93.122 Procedures for determining regional transportation-related emissions.~~

~~(a) General requirements.~~

~~(1) The regional emissions analysis required by Secs. 93.118 and 93.119 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 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.~~

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

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

~~(i) The regulatory action is already adopted by the enforcing jurisdiction;~~

~~(ii) The project, program, or activity is included in the applicable implementation plan;~~

~~(iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 93.118 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) The conformity implementation plan revision required in Sec. 51.390 of this chapter must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.~~

~~(5) A regional emissions analysis for the purpose of satisfying the requirements of 93.119 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.~~

~~(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to 93.105(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 implementation plan.~~

~~(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 DOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by 93.105(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 93.105(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) PM₁₀ from construction-related fugitive dust.~~

~~(1) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.~~

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

~~(e) — Reliance on previous regional emissions analysis.~~

~~(1) — The TIP may be demonstrated to satisfy the requirements of Secs. 93.118 (“Motor vehicle emissions budget”) or 93.119 (“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 93.118 or 93.119 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.~~

~~93.123 Procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).~~

~~(a) — CO hot-spot analysis.~~

~~(1) — The demonstrations required by 93.116 (“Localized CO and PM₁₀ 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). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in 93.105 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 implementation plan; 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 implementation plan.~~

~~(2) — In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by 93.116 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 93.116 are met.~~

~~(b) — PM₁₀ hot-spot analysis.~~

~~(1) The hot spot demonstration required by 93.116 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 93.116 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 93.105. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.~~

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

~~(c) General requirements.~~

~~(1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total 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) PM₁₀ 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 93.125(a).~~

~~(5) CO and PM₁₀ hot spot analyses are not required to consider construction related activities which cause temporary increases in emissions. Each site which is affected by construction related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.~~

~~93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).~~

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

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

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

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

~~(b) The language appearing in the federal regulations at this point is not incorporated herein due to federal court decision. See paragraph (2) of this rule. Environmental Defense Fund v. Environmental Protection Agency, 167 F.3d 641 (D.C. Cir. 1999) and Sierra Club v. EPA, et al., 129 F. 3d 137 (D.C. Cir. 1997).~~

~~(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.~~

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

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

~~93.125 Enforceability of design concept and scope and project level mitigation and control measures.~~

~~(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ 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 Secs. 93.118 ("Motor vehicle emissions budget") and 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project level hot-spot analysis required by 93.116.~~

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

~~(c) The implementation plan revision required in Sec. 51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.~~

(d) ~~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 93.116, emission budget requirements of 93.118, and emission reduction requirements of 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 93.105. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of Secs. 93.118 and/or 93.119 and that the project still satisfies the requirements of 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in 93.105(e) for conformity determinations for projects.~~

93.126 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 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 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.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.~~

Mass Transit

~~Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit 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.~~

Air Quality

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

~~Other~~

~~Specific activities which do not involve or lead directly to construction, such as:~~

- ~~_____ Planning and technical studies.~~
- ~~_____ Grants for training and research programs.~~
- ~~_____ Planning activities conducted pursuant to titles 23 and 49 U.S.C.~~
- ~~_____ Federal aid systems revisions.~~

~~Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.~~

~~Noise attenuation.~~

~~Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).~~

~~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.~~

~~Note: ⁴ In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.~~

~~93.127 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 PM₁₀ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:~~

~~Table 3. Projects Exempt From Regional Emissions Analyses~~

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

~~93.128 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 Secs. 93.118 and 93.119 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.~~

Authority: T.C.A. § 68-201-105.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Tracy R. Carter	X				
Dr. Brian Christman	X				
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett	X				
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Mayor Larry Waters	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board on 12/09/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/27/09

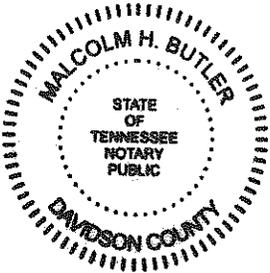
Rulemaking Hearing(s) Conducted on: (add more dates). 10/20/09

Date: December 23, 2009

Signature: [Handwritten Signature]

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: December 23, 2009

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

1-17-12

Date

Department of State Use Only

Filed with the Department of State on: 01/18/2012

Effective on: 04/17/2012

[Handwritten Signature]

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Health Science Education Licensure

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-302

EFFECTIVE DATES: June 30, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: On July 30, 2010, the State Board of Education approved a clarification of the guidelines for the Health Science Education Licensure Standards via Board policy. This rule change will align the requirements for an occupations education license in Health Sciences Education with the Teacher Licensure Standards and Induction Guidelines of the State Board of Education Policies, Standards, and Guidelines that were approved at the July 2010 Board meeting.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

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For Department of State Use Only

Sequence Number: 01-10-12
Rule ID(s): 5/30
File Date: 01/20/2012
Effective Date: 06/30/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: State Board of Education
Division:
Contact Person: Dannelle F. Walker
Address: 9th Floor, 710 James Robertson Parkway, Andrew Johnson Tower,
Nashville, TN
Zip: 37243
Phone: 615-253-5707
Email: Dannelle.Walker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-02-04	LICENSURE
Rule Number	Rule Title
0520-02-04-.13	Requirements for Occupational Education License

Chapter Number	Chapter Title
Rule Number	Rule Title

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-04
LICENSURE

0520-02-04-.13 REQUIREMENTS FOR THE OCCUPATIONAL EDUCATION LICENSE.

(1) Apprentice Occupational Education License.

(a) Issuance of License.

An apprentice occupational education license may be issued to individuals who meet the following requirements. Qualifications including experience and educational preparation shall be reviewed by the Department of Education staff who shall recommend issuance of the apprentice occupational education license.

1. Health Sciences Education.

(i) The health science education teacher must hold an associate or higher degree that is related to their health care license. The license, registration or certification must be in an allied health occupation, or as a registered nurse, or in an appropriate medical profession in Tennessee that can be verified by Tennessee Department of Health Licensure or a national license accreditation agency. (EX: Radiological Technologist, Nuclear Medicine, etc.)

~~The secondary health science teacher shall have completed three years of successful employment within the past five (5) years in a related health occupation prior to teaching.~~

(ii) Applicant shall have completed three years of full-time successful employment within the past five years in a health care clinical setting having a current active health care license. (Ex: hospital, long-term care facility, rehabilitation or athletic training facility, dental or medical office, home health, day surgery center, etc.)

~~Health science teachers must hold an associate or higher degree in a health-related area and hold current licensure registration or certification in an allied health occupation or current licensure as a registered nurse in Tennessee. Teachers must successfully complete a comprehensive test administered or accepted by the Tennessee Health Related Boards.~~

Authority: T.C.A. T.C.A. § 49-1-302 **Administrative History:** Original rule filed March 16, 1992; effective June 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed June 11, 2007; effective October 25, 2007.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers				X	
Edwards	X				
Justice	X				
Pearre				X	
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright				X	
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on _____ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 12-9-11

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 12/9/11

Notary Public Signature: Phyllis E Childress

My commission expires on: _____

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
1-11-12
 Date

Department of State Use Only

Filed with the Department of State on: _____

01/20/2012

Effective on: _____

06/30/2012

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Communicable and Environmental Disease Services

SUBJECT: HIV Drug Reimbursement Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-1-103

EFFECTIVE DATES: June 30, 2012 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

This rule provides applicants with clear guidance on the criteria for obtaining insurance assistance or drug assistance for the treatment of HIV/AIDS. It sets forth the criteria for acceptance into the program and, in the event that the program should exhaust available funds before the end of its fiscal year, makes provision for certain priority patients to obtain emergency assistance, and sets the guidelines for a waiting list. It repeals a provision for drug assistance which was limited to a specific and outdated formulary and gives enough latitude for the use of drugs which may become available in the future.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

These rule amendments do not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rule amendments are not expected to have an impact on local governments.

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Sequence Number: 01-02-12
Rule ID(s): 5123
File Date: 01/03/2012
Effective Date: 06/30/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Health
Division:	Communicable and Environmental Disease Services
Contact Person:	Carolyn Wester, M.D.
Address:	425 5 th Avenue North, 1 st Floor, Nashville TN
Zip:	37243
Phone:	615-741-7247
Email:	Carolyn.Wester@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-14-02	HIV Drug Reimbursement (HDR) Program Rules
Rule Number	Rule Title
1200-14-02-.01	Definitions
1200-14-02-.02	Purpose and Administration of the HDR Program
1200-14-02-.03	Program Limited to Available Funds
1200-14-02-.04	Eligibility Criteria
1200-14-02-.05	Deeming of Income and Resources
1200-14-02-.06	Certification of Coverage by Program
1200-14-02-.07	Confidentiality of Records

**RULES
OF
THE DEPARTMENT OF HEALTH
AIDS PROGRAM DIVISION**

**CHAPTER 1200-14-2
HIV DRUG REIMBURSEMENT (HDR) PROGRAM RULES
AIDS DRUG ASSISTANCE PROGRAM RULES**

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1200-14-2-.03	Program Limited to Available Funds Eligibility Criteria	1200-14-2-.06	<u>Certification of Coverage by Program</u> <u>Reconsideration of Denial</u>
1200-14-2-.04	<u>Eligibility Criteria, Program Limited to Available Funds</u>	1200-14-2-.07	Confidentiality of Records

~~1200-14-2-.01 DEFINITIONS.~~

(1) ~~For the purpose of these regulations the terms used herein are defined as follows:~~

- ~~(a) ALPHA INTERFERON — An FDA approved drug also known by the brand names *Intron-A* or *Roferon*.~~
- ~~(b) AEROSOLIZED PENTAMIDINE — A formulation of the FDA approved drug Pentamidine isethionate, also known by the brand name *Nebupent*.~~
- ~~(c) AIDS — Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome.~~
- ~~(d) AZT — The drug Azidothymidine, also known by the generic name “zidovudine” and the brand name *Retrovir*.~~
- ~~(e) CERTIFICATION — The determination that an eligible applicant shall become an approved recipient of the HDR program.~~
- ~~(f) COMMISSIONER — The Commissioner of the Tennessee Department of Health or his designee.~~
- ~~(g) DEPARTMENT — The Tennessee Department of Health~~
- ~~(h) ELIGIBLE APPLICANT — An applicant who has an income that does not exceed the maximum monthly income level established by the program (reference paragraph 3, section 1200-14-2-.02), has liquid resources that do not exceed \$8,000 and who has no other source to pay for the drug(s) prescribed under the program.~~
- ~~(i) FDA — The U.S. Food and Drug Administration.~~
- ~~(j) HDR PROGRAM — HIV Drug Reimbursement Program.~~
- ~~(k) HDR PROGRAM APPLICATION — A form available from the Tennessee Department of Health that provides for : 1) a physician’s declaration of medical appropriateness for an applicant to receive the drug and the physician’s intent to medically follow the applicant; and 2) an applicant’s declaration that they meet all eligibility criteria to participate in the HDR program.~~
- ~~(l) HIV — Human Immunodeficiency Virus.~~

(Rule 1200-14-2-.01, continued)

- (m) ~~HIV DISEASE~~ The state of being infected with the Human Immunodeficiency Virus.
- (n) ~~HIV DRUG REIMBURSEMENT PROGRAM~~ A program of the Tennessee Department of Health, Bureau of Health Services, to provide drugs specifically approved for HIV disease to certain eligible applicants. Also referred to as the "HDR program" or as the "program".
- (o) ~~MEDICAID~~ The State Medicaid Program of the Tennessee Department of Health.

Authority: ~~T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~
Administrative History: ~~Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

~~1200-14-2-.02 PURPOSE AND ADMINISTRATION OF THE HIV DRUG REIMBURSEMENT (HDR) PROGRAM.~~

The purpose of the HDR program is to pay for the cost of certain life-sustaining and infection-preventing drugs for low-income Tennessee residents with HIV disease who have no other method of procuring the drug(s). The drugs covered by the state program shall be chosen from among those authorized in the federally-funded HDR program and must have FDA approval for specific use in HIV disease. Drugs currently approved under the federal program include AZT, aerosolized pentamidine and Alpha interferon. Additional drugs may be considered for the state program as they are authorized under the federal HDR program. The determining criteria for including an authorized drug in the state program shall include relative demand and cost of the drug, available funds and distribution requirements. The decision to add or delete a drug from the program shall be made jointly by the AIDS Program Director, the Medical Director, and the HDR program administrator. Funds shall be used to purchase drugs at the lowest possible cost under state contracts to fill valid prescriptions for recipients enrolled in the program. Departmental resources shall be utilized for storage, accountability and distribution.

All aspects of the recipient's use of the drug(s) including dosage, directions, temporary or permanent withdrawal, etc. shall be under the direction of the recipient's physician who jointly signs the program application.

Income eligibility will be determined based upon a client's income at 300% of the current year's Federal Poverty Level.

In addition to monthly income limitations, applicants must have less than \$8,000 in liquid resources, must not have third party prescription coverage for the drug, and must not be authorized to receive Medicaid benefits.

The program shall develop and distribute applications and instructional forms. Current maximum income levels, specific drugs covered by the program and other guidelines for participation shall be published and made available to applicants, interested physicians, and other inquiring parties. The program shall require applicants and their attending physicians to complete and sign applications which state that they understand and meet all eligibility criteria for the program. In addition, the program shall incorporate procedures to provide drug inventory control from time of purchase to the filling of a legal prescription for an authorized program recipient. The program shall coordinate with Medicaid to ensure that persons shall not receive benefits from both programs simultaneously.

Authority: ~~T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~
Administrative History: ~~Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990. Amendment filed December 29, 1995; effective April 29, 1996.~~

*Example of monthly income level criteria for a single adult without dependents applying for *Retrovir* coverage under the program: If the current average out-of-pocket cost for a month's supply of *Retrovir* was \$800.00 and the current Federal Poverty Income Standard was \$480.00, then, the current maximum allowable monthly income for a program participant would be \$1280.00.

~~1200-14-2-.03 PROGRAM LIMITED TO AVAILABLE FUNDS.~~

The reimbursement for drugs by the HDR Program shall be limited by the availability of funds appropriated by the Tennessee General Assembly specifically for that purpose.

The approval of new applications shall cease if funding is not available to provide new recipients at least a six-month supply of drug(s). Applications meeting eligibility criteria but denied due to funding shortage shall be retained for reconsideration when funding becomes available. Priority for funding shall be given to recipients already in the program. Priority among pending applications shall be based upon the date received in the program office.

Authority: ~~T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~
Administrative History: ~~Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

~~1200-14-2-.04 ELIGIBILITY CRITERIA.~~

- (1) ~~To be deemed eligible for coverage by the HDR program a recipient must meet all of the following criteria:~~
 - (a) ~~meet the medical criteria established by generally accepted and proven treatment standards for HIV disease, including standards derived from published drug trials and recommendations of federal agencies;~~
 - (b) ~~have been prescribed the drug(s) by a physician licensed in Tennessee;~~
 - (c) ~~have a signed statement from the prescribing physician indicating the physician's intent to medically follow the applicant and monitor the intake and potential side effects of the drug(s);~~
 - (d) ~~declare that they are not receiving and are not authorized to receive Medicaid benefits;~~
 - (e) ~~meet the program's financial and resource criteria;~~
 - (f) ~~not be covered by any other source of third-party reimbursement for the prescribed drug(s);~~
 - (g) ~~submit a completed and signed HDR program application form.~~

Authority: ~~T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~
Administrative History: ~~Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

~~1200-14-2-.05 DEEMING OF INCOME AND RESOURCES.~~

- (1) ~~ADULTS: for the purpose of eligibility determination for an applicant 18 years of age or older, only the income and resources of the applicant and the applicant's legal spouse with whom the applicant resides shall be used in the HDR program eligibility determination~~
- (2) ~~MINORS: for the purpose of eligibility determination for an applicant under the age of 18, the income and resources of the applicant and the income and resources of the legal parent or parents with whom the applicant resides shall be used in the HDR program eligibility determination. Income and resources of stepparents and legal guardians shall not be used in the HDR program eligibility determination.~~

(Rule 1200-14-2-.05, continued)

~~Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~

~~Administrative History: Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

~~1200-14-2-.06 CERTIFICATION OF COVERAGE BY PROGRAM.~~

~~Upon approval of an application, the recipient shall be notified in writing of their certification to receive coverage by the HDR program. The recipient shall additionally be informed that the benefit coverage shall continue for a minimum of 6 months, or until the person gains Medicaid benefits, or until the end of the federal fiscal year during which the person was certified; whichever comes first. The applicant shall be further informed that assurance of coverage shall not extend beyond the current federal fiscal year.~~

~~Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~

~~Administrative History: Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

~~1200-14-2-.07 CONFIDENTIALITY OF RECORDS.~~

~~All applicant or recipient identifying information or records of the HDR program shall be considered confidential as required by the federal legislation authorizing funding assistance to the program. Such information or records shall not be disclosed by the program except for those purposes for which a signed release is provided by the person served. All correspondence containing the identity of program applicants or recipients shall be sealed and marked "CONFIDENTIAL".~~

~~Authority: T.C.A. §§4-5-204, 10-7-504(a)(1), 68-1-103, 68-1-106, 68-10-109, 68-10-113 and 68-10-114.~~

~~Administrative History: Original rule filed March 31, 1988; effective May 15, 1988. Amendment filed January 26, 1990; effective March 12, 1990.~~

1200-12-02-.01 Definitions

(1) For the purpose of these regulations the terms used herein are defined as follows:

- (a) "ADAP" means the AIDS Drug Assistance Program, the federal earmark in the Ryan White Part B grant providing funding for HIV Clients' medications, which encompasses HDAP and IAP.
- (b) "AIDS" means Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome.
- (c) "Certification" means the determination that an applicant meets the eligibility criteria to receive assistance through the Ryan White Program.
- (d) "Client" means a person enrolled in the Ryan White Program.
- (e) "Department" means the Tennessee Department of Health.
- (f) "FDA" means the U.S. Food and Drug Administration.
- (g) "Formulary" means the HDAP Formulary, which lists the FDA approved medications provided by Tennessee's HDAP Program.
- (h) "HDAP" means the HIV Drug Assistance Program, a program through which the Department provides Formulary medications to Clients.

- (i) "HIV" means Human Immunodeficiency Virus.
- (j) "IAP" means Insurance Assistance Program, a program through which the Department provides assistance paying health insurance premiums, co-payments, and/or deductibles for eligible Clients.
- (k) "Priority Group" means those eligible for temporary emergency access to HDAP or IAP services if there is a waiting list.
- (l) "Program Director" means the Department employee responsible for the overall management of grants and programs in the HIV/AIDS/STD Section of the Department.
- (m) "Provider" means a health care professional with prescriptive authority, licensed pursuant to Title 63 of the Tennessee Code.
- (n) "Ryan White Program" means the Departmental program that receives federal Ryan White Part B funding and provides medical services, medications, and support services to eligible individuals.
- (o) "TennCare" means Tennessee's State Medicaid Program.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

1200-14-02-02 Purpose and Administration of ADAP Funds

(1) HDAP

Through HDAP, the Department shall:

- (a) Provide applications and instructional forms regarding eligibility criteria, the Formulary, and other guidelines for participation;
- (b) Determine which medications shall be included in the Formulary;
- (c) Purchase Formulary medications for Clients;
- (d) Contract licensed pharmacists to Provide Formulary medications to Clients pursuant to prescriptions by providers; and
- (e) Coordinate with TennCare to ensure that Clients do not receive benefits from both programs simultaneously.

(2) IAP

Through IAP, the Department shall:

- (a) Provide applications and instructional forms regarding eligibility criteria, the Formulary, and other guidelines for participation;
- (b) Provide assistance paying health insurance premiums, co-payments, and/or deductibles for eligible Clients.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

1200-14-02-.03 Eligibility Criteria

- (1) To qualify for Ryan White Program services, an applicant must submit a completed and signed Ryan White Program application including evidence that applicant meets the following eligibility requirements:
 - (a) Is a resident of Tennessee;
 - (b) Meets the generally accepted medical criteria for HIV disease;
 - (c) Has an annual income of less than 300% of the current year's federal poverty level;
 - (d) Has no more than \$8,000.00 in liquid assets; and
 - (e) For ADAP applicants, presents certification that applicant has no other source of third party reimbursement for prescription drugs.
- (2) For purposes of establishing income and assets the following shall apply:
 - (a) For applicants 18 years and older, only the income and assets of the applicant and the applicant's legal spouse with whom the applicant resides will be considered.
 - (b) For applicants less than 18 years of age, the income and assets of the applicant and the legal parent or parents with whom the applicant resides will be considered. Income and assets of step-parents and legal guardians shall not be considered.
- (3) In order to continue to receive any Ryan White Program services, a Client must submit the following every six (6) months:
 - (a) Confirmation that the Client continues to meet the eligibility criteria; and
 - (b) A completed and signed recertification application.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, 68-10-109.

1200-14-02-.04 Program Limited to Available Funds

- (1) The availability of funds limits the number of Clients receiving ADAP services. The Department shall cease approval of applications if funding is insufficient to sustain additional recipients.
- (2) Current Clients shall have priority for funding.
- (3) Eligible applicants who are denied ADAP enrollment due to a funding shortage shall be placed on a waiting list managed by the Ryan White Program.
- (4) Individuals on the ADAP waiting list in one of the following Priority Groups shall be provided with temporary emergency ADAP services as follows:
 - (a) Pregnant women shall be eligible for ADAP services during pregnancy and up to 90 days post partum; and

- (b) Infants up to one year of age shall be eligible for ADAP services for up to 180 days of coverage.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

1200-14-02-.05 Certification of Coverage by Program

- (1) The Department will notify applicants whether certification of coverage has been awarded. Applicants for whom coverage is certified are not guaranteed ADAP services beyond the federal fiscal year of the current grant.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

1200-14-02-.06 Reconsideration of Denial

- (1) Applicants denied or removed from participation in HDAP or IAP may request reconsideration.

- (a) The applicant must request reconsideration in writing, directed to the Program Director, within twenty one (21) calendar days of denial or removal. The Program Director will issue a reconsidered decision in writing within fourteen (14) days of the request for reconsideration. The Program Director's review is limited to a determination of whether or not the applicant meets eligibility criteria. The decision of the Program Director is final.

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

1200-14-2-.07 Confidentiality of Records

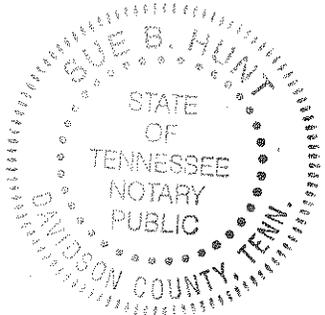
All applicant or recipient identifying information or records of the ADAP program shall be considered confidential as required by the federal legislation authorizing funding assistance to the program. Such information or records shall not be disclosed by the program except for those purposes for which a signed release is provided by the person served. All correspondence containing the identity of program applicants or recipients shall be sealed and marked "CONFIDENTIAL".

Authority: T.C.A. §§4-5-202, 68-1-103, 68-1-106, and 68-10-109.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
NA					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Department of Health on 11/08/2011, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 11/14/11

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel
Tennessee Department of Health

Subscribed and sworn to before me on: Nov. 14, 2011

Notary Public Signature: Sue B. Hunt

My commission expires on: July 8, 2013

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Attorney General and Reporter
12-19-11
 Date

Department of State Use Only

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 PUBLICATIONS

Filed with the Department of State on: 01-03-12

Effective on: 06/30/2012

Tre Hargett
 Tre Hargett
 Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Health

DIVISION: Maternal and Child Health

SUBJECT: Investigations of Sudden, Unexplained Infant and Child Deaths; Sudden Infant Death Syndrome

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-1-1103

EFFECTIVE DATES: June 30, 2012 through June 30, 2013

FISCAL IMPACT: The agency anticipates that these rules will increase state expenditures by \$161,800, while decreasing local expenditures by \$99,300.

STAFF RULE ABSTRACT: These new rules establish minimum standards for conducting and completing an investigation, including an autopsy if deemed necessary, into the sudden, unexplained death of an infant or child. The Sudden Infant Death Syndrome rules found in Chapter 1200-21-1, which were more limited in scope, are repealed. The new rules address deaths attributed to SIDS, as well as the sudden, unexplained deaths of children who are 1 year of age through age 17.

Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

These rules do not affect small businesses. The rules affect county governments and families or other members of the public impacted by sudden, unexplained infant or child death.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

It is anticipated this rule amendment will have a decrease in local government expenditures.

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For Department of State Use Only

Sequence Number: 01-15-12
 Rule ID(s): 5136-5137
 File Date: 01/24/2012
 Effective Date: 06/30/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Health
Division:	Maternal and Child Health
Contact Person:	Margaret Major
Address:	Cordell Hull Building, 5 th Floor 425 Fifth Avenue Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-0377
Email:	Margaret.Major@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-15-03	Investigations of Sudden, Unexplained Infant and Child Deaths
Rule Number	Rule Title
1200-15-03-.01	Purpose
1200-15-03-.02	Definitions
1200-15-03-.03	Standards for Investigations
1200-15-03-.04	Reimbursement of County Governments

Chapter Number	Chapter Title
1200-21-01	Sudden Infant Death Syndrome
Rule Number	Rule Title
1200-21-01-.01	Purpose
1200-21-01-.02	Availability and Appropriateness of Services
1200-21-01-.03	Definitions
1200-21-01-.04	Description of Services

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF HEALTH SERVICES ADMINISTRATION**

**CHAPTER 1200-21-1
SUDDEN INFANT DEATH SYNDROME**

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1200-21-1-.01 Purpose	1200-21-1-.03 Definition
1200-21-1-.02 Availability and Appropriateness of Services	1200-21-1-.04 Description of Services

~~1200-21-1-.01 PURPOSE~~

~~The purpose of these regulations is to provide services for parents and families victimized by Sudden Infant Death Syndrome (SIDS).~~

~~*Authority: T.C.A. §68-1-1102. Administrative History: Original rule filed August 27, 1984; effective September 26, 1984.*~~

~~1200-21-1-.02 AVAILABILITY AND APPROPRIATENESS OF SERVICES~~

- ~~(1) — Services provided for the SIDS programs will be available throughout the state in 95 counties, and will be provided in accordance with T.C.A. §68-1-1101.~~
- ~~(2) — Every parent or guardian of a SIDS incident will be offered an autopsy to validate the diagnosis.~~
- ~~(3) — Diagnosis of SIDS will be certified on the death certificate.~~

~~*Authority: T.C.A. §68-1-1102. Administrative History: Original rule filed August 27, 1984; effective September 26, 1984.*~~

~~1200-21-1-.03 DEFINITIONS~~

- ~~(1) — Sudden Infant Death Syndrome means the death of an ostensibly healthy child who is less than (3) years of age which occurs suddenly and unexpectedly with no known or apparent cause and which remains unexplained after the performance of an autopsy.~~
- ~~(2) — Autopsy as defined in this program means the post mortem examination of the deceased infant by a licensed pathologist to rule out all potential causes of infant death.~~
- ~~(3) — Physician means a person licensed to practice medicine or osteopathy in the State of Tennessee.~~
- ~~(4) — Medical Examiner means the physician designated as county medical examiner pursuant to T.C.A. §38-7-104.~~

~~*Authority: T.C.A. §68-1-1102. Administrative History: Original rule filed August 27, 1984; effective September 26, 1984.*~~

~~1200-21-1-.04 DESCRIPTION OF SERVICES~~

~~(1) Provision of autopsy will be made available to all parents or legal guardians of suspected SIDS incidents.~~

~~(a) The parents or legal guardians shall authorize or refuse autopsy through completion of the following form. The local medical examiner shall assist the parents or legal guardians in completing the form.~~

**PARENTAL AUTHORIZATION
OR
REFUSAL OF AUTOPSY FORM**

SUDDEN INFANT DEATH SYNDROME PROGRAM

DATE: _____

COUNTY: _____

BE IT KNOWN, that on this date, I, _____,

do voluntarily authorize _____,

refuse _____,

the performance of an autopsy on my child _____

by Dr. _____

acting for the Tennessee Department of Health and Environment.

Signed

Witness

Date

~~(b) The refusal of the parents or legal guardians to authorize the autopsy shall in no way interfere with the duties of the District Attorney General, County Coroner, and/or County Medical Examiner as set forth in T.C.A. §38-7-106.~~

~~(c) Autopsies will be performed by pathologists licensed to practice in Tennessee.~~

~~(d) The county medical examiner will assign a pathologist to perform the post-mortem examination. All transportation costs of the deceased infant to and from the pathologist will be submitted to the county court. Transportation costs will not exceed the current state rate.~~

~~(e) Parents or legal guardians will be given a preliminary report of death within 24 to 48 hours of autopsy.~~

Authority: T.C.A. §68-1-1102. Administrative History: Original rule filed August 27, 1984; effective September 26, 1984.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner on 10/25/10, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 9/8/2011

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: September 8, 2011

Notary Public Signature: Sue B. Hunt

My commission expires on: July 8, 2013

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
10-11-11
 Date

Department of State Use Only

Filed with the Department of State on: 01/24/2012

Effective on: 06/30/2012

Tre Hargett by Tpm Hart, PC
 Tre Hargett
 Secretary of State

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