

**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE
STATE OF NEW YORK
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CHAPTER III. AIR RESOURCES
SUBCHAPTER A. PREVENTION AND CONTROL OF AIR CONTAMINATION AND
AIR POLLUTION
PART 240: TRANSPORTATION CONFORMITY**

SUBPART 240-1 TRANSPORTATION CONFORMITY GENERAL PROVISIONS

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305)

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§240-1.1 Definitions

(a) The general definitions of Part 200 of this Title apply to this Part unless they are inconsistent with the specific definitions in subdivision (b) of this section.

(b) The following specific definitions apply to this Part:

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

(2) *Applicable State implementation plan (SIP) revision*. The portion (or portions) of the State implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the act, and which implements the relevant requirements of the act for the purpose of determining conformity of federally funded transportation plans, programs or projects to State implementation plans, and meets the requirements of an implementation plan as defined in section 302(q) of the act (see Table 1, section 200.9 of this Title).

(3) *Consultation*. The process by which involved agencies confer with each other, provide appropriate information needed for meaningful input, and consider the views of other involved agencies prior to any final decisions made pursuant to this Part. At a minimum, consultation means substantial compliance with the requirements of subpart 240-2 of this Part.

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

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

(6) *Facility*. That which is built, installed, established or operated to serve a transportation purpose.

(7) *FHWA*. The Federal Highway Administration of USDOT.

(8) *FHWA/FTA project*. 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.

(9) *FTA*. The Federal Transit Administration of USDOT.

(10) *Governor*. The Governor of the State of New York, or the Governor's designee.

(11) *Highway project*. An undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(i) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(ii) 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

(iii) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(12) *Hot-spot analysis*. An estimation of likely future localized CO, PM10, and/or PM2.5 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards (NAAQS). Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

(13) *Involved agencies*. The department, NYSDOT, EPA, FHWA, FTA, affected MPOs, affected counties in nonattainment or maintenance areas outside MPO planning boundaries, affected local air agencies, and any other agencies responsible for project level conformity.

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

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

(16) *Maintenance area*. Any geographic region of the United States previously designated nonattainment pursuant to the act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the act (see Table 1, section 200.9 of this Title).

(17) *Maintenance plan*. An applicable SIP revision meeting the requirements of section 175A of the act (see Table 1, section 200.9 of this Title).

(18) *Metropolitan planning organization (MPO)*. That organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. section 134 and 49 U.S.C. section 5303 (see Table 1, section 200.9 of this Title). It is the forum for cooperative transportation decision-making. The metropolitan planning organizations in New York are the Adirondack-Glens Falls Transportation Council, Binghamton Metropolitan Transportation Study, Capital District Transportation Committee, Elmira-Chemung Transportation Council, Genesee Transportation Council, Greater Buffalo-Niagara Regional Transportation Council, Herkimer-Oneida Counties Transportation Study, Ithaca-Tompkins County Transportation Council, Orange County Transportation Council, New York Metropolitan Transportation Council, Poughkeepsie-Dutchess County Transportation Council, Syracuse Metropolitan Transportation Council and the Ulster County Transportation Council.

(19) *Milestone*. A milestone has the meaning given in sections 182(g)(1) or section 189(c) of the act (see Table 1, section 200.9 of this Title) for serious and above ozone nonattainment areas and PM10 nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable act provision for reasonable further progress towards attainment.

(20) *Motor vehicle emissions budget (MVEB)*. That portion of the total allowable emissions defined in the applicable submitted or approved control strategy SIP revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any

criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

(21) *National ambient air quality standards (NAAQS)*. Those standards established pursuant to section 109 of the act (see Table 1, section 200.9 of this Title).

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

(23) *Nonattainment area*. Any geographic region of the United States which has been designated as nonattainment under section 107 of the act (see Table 1, section 200.9 of this Title) for any pollutant for which a national ambient air quality standard exists.

(24) *NYS DOT*. The New York State Department of Transportation.

(25) *Project*. highway project or transit project.

(26) *Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws*. Any State, county, city, or regional government agency 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.

(27) *Regionally significant project*. A transportation project (other than an exempt project as defined in 40 CFR 93.126 and 93.127 (see Table 1, section 200.9 of this Title)) that is on a facility which serves regional transportation needs (such as access to and from transportation terminals, the area outside of the region, major activity centers in the region, and major planned developments such as new retail malls, sports complexes, etc., or transportation terminals) 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.

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

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

(30) *Transit project*. An undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of

local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

- (i) connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (ii) have independent utility or independent significance, *i.e.*, be a reasonable expenditure even if no additional transportation improvements in the area are made; and
- (iii) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(31) *Transportation control measure (TCM)*. Any measure that is specifically identified and committed to in the applicable SIP revision, including a substitute or additional TCM that is incorporated in the applicable SIP revision through the process established in section 176(c)(8) of the act (see Table 1, section 200.9 of this Title), that is either one of the types listed in section 108 of the act (see Table 1, section 200.9 of this Title), or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing travel flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this Part.

(32) *Transportation Improvement Program (TIP)*. A transportation improvement program developed by a MPO under 23 U.S.C. 134(j) (see Table 1, section 200.9 of this Title). A statewide transportation improvement program (STIP) is not a TIP subject to this Part.

(33) *Transportation plan*. The official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450 (see Table 1, section 200.9 of this Title). A statewide transportation plan is not a transportation plan subject to the conformity requirements.

(34) *Transportation project*. A highway project or a transit project.

(35) *USDOT*. The United States Department of Transportation.

(36) *Written commitment*. 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 SIP revision.

§240-1.2 Applicability

Part 240 establishes the department's transportation conformity requirements. Applicability for this program is defined at 40 CFR 93.102 (see Table 1, section 200.9 of this Title).

SUBPART 240-2 CONSULTATION

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305)

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§240-2.1 General requirements.

The affected MPOs and NYSDOT shall provide involved agencies with reasonable opportunity for consultation throughout the process of determining conformity of MPO long range transportation plans and TIPs. The department shall provide reasonable opportunity for consultation with involved agencies throughout the process of developing applicable SIP revisions. Such reasonable opportunity shall include substantial compliance with all applicable consultation procedures set forth in this Subpart.

§240-2.2 Interagency communications.

(a) In order to provide for an appropriate integration of air quality and transportation planning, the affected MPOs and NYSDOT shall provide an opportunity for involved agencies to be fully and actively involved throughout the development of MPO transportation plans, MPO TIPs, and program of transportation projects conformity determinations. The department shall provide an

opportunity for involved agencies to be fully involved throughout the development of applicable SIP revisions, including, but not limited to, the TCM and emissions budget components.

(1) The communications required by this subdivision shall include communications necessary to fully involve involved agencies throughout the development of MPO transportation plans, MPO TIPs, and program of transportation projects conformity determinations. The communications required by this subdivision shall also include communications necessary to fully involve involved agencies in the development of the applicable SIP revision.

(2) The lead conformity agency or the department shall convene meetings:

(i) among technical representatives of such agency and involved agencies at least every 180 days for MPO transportation plans, MPO TIPs conformity determinations and proposed SIP revisions applicable to other nonattainment or maintenance areas.

(ii) among policy level representatives of such agency and involved agencies at least once annually for MPO transportation plans, MPO TIP conformity determinations and proposed SIP revisions applicable to other nonattainment or maintenance areas.

(3) The department, NYSDOT, and the affected MPOs may agree to waive any of the meetings required pursuant to paragraph (2) of this subdivision if the meeting is not necessary for consultation.

§240-2.3 List transmittals.

The department shall annually provide to NYSDOT and the other involved agencies a list of all applicable SIP revisions expected to be submitted to EPA that calendar year. NYSDOT shall annually provide to the department and the other involved agencies a list of all actions requiring a conformity determination that calendar year.

§240-2.4 Conformity contacts.

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

§240-2.5 Provision of draft documents.

(a) The lead conformity agency and the department shall provide the other involved agencies with relevant draft documents in accordance with this subdivision.

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

(2) The department shall provide involved agencies with draft proposed applicable revisions to the SIP, draft emissions budgets, and pertinent supporting documentation.

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

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

§240-2.6 Consultation obligations and procedures.

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

(1) The department shall:

(i) cooperatively develop, with NYSDOT and the affected MPOs, a list of TCMs for potential inclusion in the applicable SIP revision in accordance with section 240-2.7 of this Subpart;

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

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

(iv) provide guidance, expertise, and assistance to other involved agencies on applicable SIP revision related issues which impact conformity determinations; and

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

(2) NYSDOT shall:

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

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

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

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

(v) develop a public involvement process which provides opportunity for public review and comment on conformity determinations for transportation programs for which NYSDOT is making a conformity determination in accordance with 23 CFR 450.212 (see Table 1, section 200.9 of this Title);

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

(vii) in cooperation with affected MPOs, provide transportation data and transportation related parameters to the department for calculation of mobile source emissions for applicable SIP revisions;

(viii) maintain the list of all conformity contacts, including necessary updates submitted pursuant to section 240-2.4 of this Subpart;

(ix) convene, as necessary, meetings among appropriate staff to facilitate review under this section; and

(x) coordinate, as necessary, the processes outlined in subdivision (b) of this section.

(3) The affected MPOs shall:

- (i) develop metropolitan area transportation plan and TIP conformity determinations;
- (ii) develop a public involvement process which provides opportunity for public review and comment on conformity determinations for MPO transportation plans and MPO TIPs;
- (iii) cooperatively develop, with NYSDOT and the department, a list of TCMs for potential inclusion in the applicable SIP revision in accordance with section 240-2.7 of this Subpart;
- (iv) document consideration of all significant comments received from involved agencies with respect to conformity determinations for MPO transportation plans and MPO TIPs;
- (v) in consultation with NYSDOT and the department, involve local transportation planning and local air agencies as required by this section; and
- (vi) in consultation with NYSDOT, the department, EPA, FHWA and FTA, provide the proposed list of exempt and non-exempt projects, proposed list of regionally significant projects and pertinent supporting documentation as required in section 240-2.5(a)(1) of this Subpart in an agreed upon format.

(b) Consultation procedures.

- (1) In order to meet the consultation obligations in subdivision (a) of this section, involved agencies shall establish a meeting schedule at the beginning of each calendar year. This schedule should establish an agreed upon minimum number of meetings to accomplish anticipated consultation in that calendar year. When applicable, involved agencies can adjust scheduled dates to ensure that their respective agency is represented.
- (2) Each involved agency may request special meetings, in addition to those scheduled in paragraph (1) of this subdivision, subject to the availability and approval of all the other involved agencies.
- (3) Meetings may be convened via teleconference, webinar, in person or in any other acceptable manner determined through consultation with all involved agencies.
- (4) Each conformity contact on the list maintained by NYSDOT pursuant to subparagraph (a)(2)(viii) of this section shall receive a reminder notice of each scheduled meeting.
- (5) Each involved agency shall retain records used in the consultation process in accordance with their respective records retention policy.

§240-2.7 Transportation control measures and emissions budgets in the applicable SIP revision.

(a) Transportation control measures (TCMs).

- (1) NYSDOT and the affected MPOs, in consultation with the department, shall develop a list of TCMs for potential inclusion in the applicable SIP revision.
- (2) If NYSDOT, the department, and the affected MPOs cannot reach agreement on which TCMs, if any, to include in the state air quality implementation plan, the matter shall be resolved in accordance with the procedures in section 240-2.9 of this Subpart.
- (3) The TCMs designated pursuant to this subdivision shall be specifically identified in the applicable SIP revision.

(b) Emissions budget.

- (1) The department shall develop any proposed motor vehicle emissions budget in consultation with involved agencies and provide such proposed budget to NYSDOT and the affected MPOs for review and comment at least 30 days, or an adequate amount of time as determined through consultation with involved agencies, prior to the submittal of the motor vehicle emissions budget to EPA for inclusion in the applicable SIP revision.
- (2) If NYSDOT, the department, and the affected MPOs cannot reach an agreement on the proposed motor vehicle emissions budget to include in the applicable SIP revision, the matter shall be resolved in accordance with the procedures in section 240-2.9 of this Subpart.

§240-2.8 Specific procedures.

(a) Model evaluation and selection:

- (1) NYSDOT shall consult with involved agencies to select the air quality model inputs and parameters to use for MPO transportation plan and TIP conformity determinations;
- (2) NYSDOT shall consult with the department, USDOT, and EPA to select the air quality models and parameters to use for regionally significant project conformity determinations and hot spot analyses;
- (3) affected MPOs and NYSDOT shall develop procedures for transportation models and transportation inputs and parameters in consultation with the department, affected local air and transportation agencies, USDOT, and EPA; and
- (4) the department shall select air quality models and develop non-transportation related inputs and parameters used to develop the emissions budget in the applicable SIP revision during the SIP revision process in consultation with involved agencies.

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

(1) The following list includes, but is not limited to, thresholds which shall be used to foster concurrence between MPOs, the department and NYSDOT as to whether the subject project constitutes a regionally significant project:

(i) highway/roadway projects:

(a) new construction on new alignment of roadways classified as principal arterial or higher, one mile or longer;

(b) widening of principal arterials or higher class roads to provide additional through-traffic lanes one mile or longer in total;

(c) widening of roadways classified as principal arterial or higher to provide a new continuous turn lane, two miles or longer, or affecting five or more signalized intersections;

(d) widening or reallocation of lane use by high occupancy vehicles (HOVs) or as a high occupancy toll (HOT) lane on roadways classified as principal arterials or higher, one mile or longer;

(e) additional grade-separated ramps or new interchanges on roadways classified as principal arterials or higher; and

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

(ii) traffic signalization projects:

(a) coordination or upgrade of signal systems on roadways classified as principal arterials or higher, encompassing at least 10 signalized intersections and at least 2.5 miles of highway;

(b) coordination and upgrade of traffic signal systems on facilities indicated in clause (i)(f) of this paragraph for highways or roadways, encompassing at least 10 signalized intersections and at least 2.5 miles of highway;

(iii) transit/rail projects:

(a) new passenger rail or bus service and extensions of existing service, five miles or longer, including new rail stations and new or expanded rail/bus connections to provide new regional transit service;

(b) purchase of additional (not replacement) rolling stock to support increased frequency and higher ridership;

(c) new or expanded exclusive park-and-ride facilities resulting in at least 100 new parking spaces;

(iv) other projects:

(a) automated toll collection facilities (electronic toll and traffic management or automatic vehicle identification) with impacts on regional travel;

(b) transportation system improvements using intelligent transportation system (ITS) technologies that affect regional travel on a daily or routinely recurring interval;

(v) air quality or emissions impact. Any transportation project that the commissioner of the department identifies, after consultation with NYSDOT and the affected MPO, as having the potential to affect air quality on a regional basis.

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

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

(4) NYSDOT shall, in consultation with the appropriate affected local transportation and air agencies, make the determinations required under paragraphs (1)-(3) of this subdivision for arterials and projects in nonattainment and maintenance areas outside MPO boundaries.

(5) In the event that the department, NYSDOT, and the affected MPOs cannot reach agreement as to which projects are regionally significant, the matter shall be resolved in accordance with the procedures in section 240-2.9 of this Subpart.

(c) Procedures for the evaluation of certain exempt projects.

(1) The affected MPOs and NYSDOT shall, in consultation with the department, determine which exempt projects under 40 CFR 93.126 (see Table 1, section 200.9 of this Title) and 40 CFR 93.127 (see Table 1, section 200.9 of this Title) should be treated as non-exempt due to significant emissions impacts.

(2) NYSDOT shall, in consultation with the department and affected local air and transportation agencies, make the determination required under paragraph (1) of this subdivision for projects in nonattainment and maintenance areas outside MPO boundaries.

(d) Timely TCM implementation.

(1) NYSDOT, the department, and the affected MPOs shall cooperatively determine:

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

(ii) whether State and local agencies with the appropriate authority are giving maximum priority, consistent with 40 CFR 93.113 (see Table 1, section 200.9 of this Title), to approving or funding of TCMs specifically identified in the applicable SIP revision; and

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

(e) Procedures for projects in PM10 and/or PM2.5 nonattainment area.

(1) The lead conformity agency shall determine through interagency consultation if projects located in PM10 and/or PM2.5 nonattainment areas require a quantitative PM10 and/or PM2.5 hot-spot analysis in accordance with 40 CFR 93.123(b)(1) (see Table 1, section 200.9 of this Title).

(f) Procedures for notification of MPO transportation plan or MPO TIP amendments adding or deleting only exempt projects.

(1) Each affected MPO shall determine, in consultation with NYSDOT, whether MPO TIP or MPO transportation plan amendments solely concern the addition or deletion of exempt projects listed in 40 CFR 93.126 (see Table 1, section 200.9 of this Title) and 40 CFR 93.127 (see Table 1, section 200.9 of this Title).

- (2) NYSDOT shall make the determination required under paragraph (1) of this subdivision for projects outside MPO boundaries in nonattainment or maintenance areas.
- (3) The department, NYSDOT, USDOT, EPA and, as appropriate, affected local air and transportation agencies, shall be notified in writing of any determinations made pursuant to this subdivision within 30 days of such determination.
- (g) Procedures for events triggering new conformity determinations. NYSDOT shall, in consultation with the department and affected MPOs, identify instances when new conformity determinations are required, in addition to those determinations required by 40 CFR 93.104 (see Table 1, section 200.9 of this Title).
- (h) Procedures for transportation activities crossing MPO or nonattainment areas boundaries. NYSDOT, in consultation with the department and affected MPOs, shall coordinate emissions analyses where a non-exempt transportation project crosses the border of nonattainment or maintenance areas or MPO boundaries.
- (i) Nonattainment or maintenance areas not entirely included in a single MPO boundary.
- (1) NYSDOT shall make, in accordance with the provisions of this Part, air quality analyses in nonattainment or maintenance areas that do not include any MPO boundaries.
- (2) NYSDOT shall make, in accordance with the provisions of this Part, air quality analyses in nonattainment or maintenance areas which are not entirely included in MPO boundaries. The results of any regional emissions analysis outside the MPO boundary shall be coupled with the MPO analysis for the remainder of the nonattainment or maintenance area, as appropriate, to allow a conformity determination based on the entire nonattainment or maintenance area.
- (3) If more than one MPO is within the same nonattainment or maintenance area, NYSDOT shall coordinate the conformity determinations, in accordance with the provisions of this Subpart.
- (j) Isolated rural nonattainment or maintenance areas. In isolated rural nonattainment and maintenance areas, NYSDOT shall coordinate, in accordance with the provisions of this section, the preparation of conformity determinations and air quality analysis. As required by 40 CFR 93.109(l) (see Table 1, section 200.9 of this Title), the conformity analysis to be used must be determined through consultation with all involved agencies.
- (k) Consideration of regionally significant projects that are not FHWA/FTA projects.
- (1) The affected MPOs and NYSDOT, as appropriate, shall work with the department to identify regionally significant projects that are not FHWA/FTA projects so that proper project information is included in the regional emissions analysis. The MPO shall solicit the necessary information from agencies that are recipients of Federal funding under title 23 U.S.C. or the Federal Transit Act for any regionally significant projects, regardless of

the project funding source, in conjunction with MPO transportation plan and MPO TIP updates. In non-attainment and maintenance areas outside of MPO boundaries, NYSDOT shall solicit such information.

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

(l) Criteria and procedures: Localized CO, PM₁₀, and PM_{2.5} violations (hot-spots).

(1) The FHWA/FTA or regionally significant project must not cause or contribute to any new localized CO, PM₁₀, and/or PM_{2.5} violations, increase the frequency or severity of any existing CO, PM₁₀, and/or PM_{2.5} violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM₁₀, and PM_{2.5} nonattainment and maintenance areas for FHWA/FTA or regionally significant projects that are not identified in 40 CFR 93.123(b)(1) (see Table 1, section 200.9 of this Title). This criterion is satisfied for all other FHWA/FTA or regionally significant projects in CO, PM₁₀, and PM_{2.5} nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan 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 and the project has been included in a regional emissions analysis that meets applicable requirements in 40 CFR sections 93.118 and/or 93.119 (see Table 1, section 200.9 of this Title). The demonstration must be performed according to the consultation requirements in section 242-2.8 of this Part and the methodology requirements of 40 CFR 93.123 (see Table 1, section 200.9 of this Title).

(2) This paragraph applies for CO nonattainment areas as described in 40 CFR 93.109(f)(1) (see Table 1, section 200.9 of this Title). Each FHWA/FTA or regionally significant project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of section 242-2.8 of this Part and the methodology requirements of 40 CFR 93.123 (see Table 1, section 200.9 of this Title).

(m) Criteria and procedures. Compliance with PM₁₀ and PM_{2.5} control measures. The regionally significant project must comply with any PM₁₀ and PM_{2.5} control measures in the applicable implementation plan. The project-level conformity determination must contain 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 and PM_{2.5} emissions

from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

(n) Research and data collection and transportation model development. The affected MPOs shall consult with NYSDOT, the department, and affected local air and transportation agencies before formally adopting initiatives related to research and data collection efforts in support of regional transportation model development.

(o) Provision of final documents.

(1) The affected MPOs shall provide a final copy of the MPO transportation plans, MPO TIPs and associated MPO transportation plan and MPO TIP conformity determinations with pertinent supporting materials to involved agencies.

(2) NYSDOT shall provide a final copy of program of transportation projects conformity determinations with pertinent supporting materials for nonattainment or maintenance areas outside MPO boundaries to the involved agencies.

(3) The department shall provide a final copy of all applicable SIP revisions and pertinent supporting materials to involved agencies.

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

§240-2.9 Resolution of conflicts.

(a) Specific processes. In the event that the involved agencies are unable to reach agreement on any matter set forth in sections 240-2.7 and 240-2.8 of this Subpart, the unresolved issue or issues shall be referred to the commissioners of the department and NYSDOT for resolution.

(b) Conformity determinations for MPO transportation plans, MPO TIPS, and programs of transportation projects in areas outside any MPO. Each lead conformity agency making conformity determinations for a MPO transportation plan, MPO TIP, or program of transportation projects in a nonattainment or maintenance area outside any MPO shall provide the department and any affected local air agency with the proposed conformity determination accompanied by pertinent supporting documentation.

(1) Upon closing of the consultation period provided for in this section, the agency making the transportation plan, TIP, or program of transportation projects conformity determination shall transmit to the department the proposed conformity determination reflecting the resolution of comments submitted. The department shall have 14 calendar days from receipt of such transmittal to appeal to the Governor as provided for in this section.

(2) The department may invoke the conflict resolution procedure provided for in this section by delivering to the Governor, the Commissioner of NYSDOT, and the conformity contacts designated pursuant to section 240-2.4 of this Subpart, a letter requesting that the Governor exercise his or her discretion under this subdivision.

(3) In the event that the department invokes the conflict resolution procedure provided for in this subdivision, the final conformity determination must have the concurrence of the Governor. If the department does not appeal to the Governor within the specified 14 days, the affected MPO or NYSDOT may proceed with the final conformity determination.

(c) TCMs and motor vehicle emissions budgets in the State implementation plan. The department shall provide NYSDOT with any proposed revision to the SIP which contains any TCMs or motor vehicle emissions budgets.

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

(2) NYSDOT may invoke the conflict resolution procedures provided for in this section by delivering to the Governor, the commissioner of the department, and the conformity contacts designated pursuant to section 240-2.4 of this Subpart, a letter requesting that the Governor exercise discretion under this subdivision.

(3) In the event that NYSDOT invokes the conflict resolution procedure provided for in this subdivision, the proposed applicable SIP revision must be approved by the Governor before it is submitted to the EPA. If NYSDOT does not appeal to the Governor within the specified 14 days, the department may proceed with the SIP revision.

§240-2.10 Public participation procedures.

(a) Conformity determinations for MPO transportation plans and MPO TIPs shall follow the specific public involvement process established by the MPO, consistent with the requirements of 23 CFR 450.316(a) (see Table 1, section 200.9 of this Title), which provides opportunity for public review and comment prior to formal action on a conformity determination for all MPO transportation plans and MPO TIPs. Reasonable public access to technical and policy information considered by the affected agencies making the conformity determination must be provided at the beginning of the public review period.

(b) Conformity determinations must specifically address, in writing, all significant public comments claiming that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a MPO transportation plan or MPO TIP.

(c) Conformity determinations in isolated rural nonattainment and maintenance areas and rural portions of nonattainment and maintenance areas outside MPO boundaries shall follow the specific public involvement process established by NYSDOT, consistent with the requirements of 23 CFR 450 (see Table 1, section 200.9 of this Title), which provides opportunity for public review and comment prior to formal action to update the statewide transportation improvement program (STIP) and the statewide transportation plan.

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

(e) Copy fees shall be assessed in accordance with the access to records policy, rule or regulation of the involved agency responsible for the creation of the applicable record.

§240-2.11 Consultation process for regionally significant projects not from a conforming plan or TIP.

(a) In the event that any transportation project in a nonattainment or maintenance area not from a conforming plan or TIP is determined to be regionally significant pursuant to the provisions of section 240-2.8(b) and 240-2.8(k) of this Subpart, the conformity determination applicable to such project shall be made in accordance with Table 1 of 40 CFR 93.109(b) (see Table 1, section 200.9 of this Title), as applicable to projects not from a conforming plan or TIP.

(b) In the event that the conformity determination or regional emissions analysis for a regionally significant project not from a conforming MPO transportation plan or MPO TIP is made using inputs or assumptions different from those identified in section 240-2.8(a)(2), (3) and (4) of this Subpart, subdivision (c) of this section shall apply.

(c) If required by subdivision (b) of this section, NYSDOT, and other involved agencies making conformity determinations or regional emissions analyses, shall provide the department, prior to the issuance of a draft environmental document, an opportunity to review and comment on the air quality model inputs and parameters used in the regional emissions analysis, transportation model inputs and parameters associated with the project, and non-transportation inputs and parameters necessary to evaluate the air quality impacts and analysis of a regionally significant project not from a conforming MPO transportation plan or MPO TIP.

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

SUBPART 240-3 REGIONAL TRANSPORTATION-RELATED EMISSIONS AND ENFORCEABILITY

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305)

[Adoption filed 8/14/13. Effective 30 days after filing.]

Contents:

Sec.

- 240-3.1 Procedures for determining regional transportation-related emissions
- 240-3.2 Enforceability of design concept and scope, and project-level mitigation and control measures

§240-3.1 Procedures for determining regional transportation-related emissions

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

§240-3.2 Enforceability of design concept and scope, and project-level mitigation and control measures

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